



TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

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Needham, MA 02492
781-455-7550

PLANNING

V.S.A. LLC & The Learning Tree Preschool, Inc.
Major Project Site Plan Special Permit
AMENDMENT OF DECISION
July 21, 2020

Application No. 2008-08
(Decision dated November 12, 2008,
Amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012)

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts of 2020)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of V.S.A. LLC, 180 Country Way, Needham, Massachusetts; and The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 (hereinafter referred to as the Petitioner) for property located at 225 Highland Avenue, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan No. 74 as Parcels 36 and 37 containing a total of 15,798 square feet.

This decision is in response to an application submitted to the Board on May 15, 2020, by the Petitioner for: (1) a Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law) and Section 4.2 of Major Project Special Permit No. 2008-08, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012; (2) a Special Permit under Section 3.2.5.2(c) of the By-Law for a private school, nursery or kindergarten not otherwise classified under Section 3.2.5.1, if not found to be an exempt use as defined in M.G.L. c.40A, Sec. 3; and (3) a Special Permit under Section 5.1.1.5 of the By-Law to further waive strict adherence with the requirements of Section 5.1.2 (Required Parking).

The requested Major Project Site Plan Special Permit Amendment, would, if granted, permit the Petitioner to build out 1,109 square feet of the first floor space in an existing commercial building for daycare/preschool purposes by The Learning Tree Preschool, Inc. The space was previously occupied by Huntington Learning Center. The proposed Learning Tree Preschool program would offer two programs: one for toddlers (15 months – 2.9 years) and the other for preschool age children (2.9-6 years). The facility is expected to operate from 7:30 AM to 5:30 PM, five days per week, with an anticipated maximum of four teachers/educators on site at all times. The expected maximum enrollment is 19, divided between 9 toddlers and 10 preschool age children.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted, and mailed to the Petitioner, abutters, and other parties in interest, as required by law, the hearing was called to order by Acting Chairperson, Paul S. Alpert, on Tuesday, July 7, 2020 at 7:15 p.m., via remote meeting using Zoom ID 826-5899-3198. Board members, Paul S. Alpert, Jeanne S. McKnight, Ted Owens, Martin Jacobs, and Adam Block were present throughout the July 7, 2020 public hearing. Board members, Paul S. Alpert, Jeanne S. McKnight, Martin Jacobs, and Adam Block were present throughout the July 21, 2020 deliberation and vote. The record of the proceedings and the submission upon which this decision is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation prior to the close of the public hearing were the following exhibits:

- Exhibit 1 - Completed Application Form for Amendment to Major Project Site Plan Special Permit dated May 15, 2020, with Addendum A.
- Exhibit 2 - A letter to Lee Newman, Planning Director, from George Giunta Jr., dated May 4, 2020.
- Exhibit 3 - Letter directed to Lee Newman, Director, Planning and Community Development, from Ted Giannacopulos, Manager, V.S.A. LLC, dated March 3, 2020.
- Exhibit 4 - Plan entitled “Proposed The Learning Tree Preschool, 225 Highland Avenue, Needham, MA,” prepared by Nunes Trabucco Architects, 315A Chestnut Street, Needham, MA, consisting of 3 sheets: Sheet 1, Sheet A1.0, entitled “First Floor Plan, Interior Elevations, Finish Schedule,” dated February 11, 2020; Sheet 2, Sheet A1.1, entitled “Reflected Ceiling Plan,” dated February 11, 2020; Sheet 3, Sheet A2.0, entitled “Existing Exterior Elevations,” dated February 11, 2020.
- Exhibit 5 - Plan entitled “Existing Conditions Site Plan, 225 Highland Avenue, Needham, MA,” prepared by Field Resources, Inc., 281 Chestnut Street, Needham, MA, dated January 8, 2017, revised February 4, 2020.
- Exhibit 6 - Inter Departmental Communication (IDC) to the Needham Planning Board from the Department of Public Works, Anthony DelGaizo, Assistant Director, dated June 30, 2020; IDC to the Needham, Planning Board from the Needham Police Department, Chief John Schlittler, dated June 29, 2020; IDC to the Needham Planning Board from the Needham Fire Department, Chief Dennis Condon, dated June 29, 2020; and IDC to the Needham Planning Board from the Building Commissioner, David Roche, dated June 30, 2020.

Exhibits 1, 2, 3, 4 and 5 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board found and concluded that:

- 1.1 The Petitioner is seeking to modify Major Project Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012, (“the Decision”) as follows: to build out 1,109 square feet of the first floor space in an existing commercial building for daycare/preschool purposes by The Learning Tree Preschool. The proposal is to offer two programs: one for toddlers (15 months – 2.9 years) and the other for preschool age children (3-6 years). The facility is expected to operate from 7:30 AM to 5:30 PM, five days per week, with an anticipated maximum of four teachers/educators on site at all times. The expected maximum enrollment is 19, divided between 9 toddlers and 10 preschool age children.
- 1.2 The Petitioner is requesting this modification because the Petitioner originally intended and the original permit specified that the first floor which totals 3,875 square feet be used entirely as retail space; however, finding retail tenants for the entire retail space has been extremely difficult. The Premises is one of three existing bays on the first floor of the Building and consists of approximately 1,109 square feet of floor space. It was last used for educational and tutoring purposes by Huntington Learning Center pursuant to Site Plan Special Permit Amendment dated June 12, 2012. The remainder of the first floor is currently occupied by UBreakiFix, a mobile phone and electronics repair shop and retail store, consisting of approximately 773 square feet of floor space, Snip-Its, a children’s hair salon, consisting of approximately 1,134 square feet of floor space, and common areas, including two shared bathrooms. The entire second floor of the

building is occupied by Gymboree Play & Music, pursuant to Site Plan Special Permit Amendment dated August 9, 2011.

- 1.3 The Petitioner proposes to lease the 1,109 square foot first floor space to The Learning Tree Preschool, Inc., a fully licensed preschool and group daycare center established in 1997. The Learning Tree Preschool currently operates two facilities serving children from 15 months through 6 years of age; one in Allston and the other in West Roxbury. The Learning Tree Preschool currently offers two programs: one for toddlers (15 months – 2.9 years) and the other for preschool age children (2.9-6 years). The toddler program includes a balance of child-initiated and teacher-directed activities featuring a variety of hands-on experiences and play. These activities keep the toddlers actively engaged and continuously learning more about themselves and the world around them and further helps to foster a desire for independence and an understanding of compassion.
- 1.4 The Petitioner asserts that the proposed use falls under the exempt use category as defined in M.G.L. c.40A, Sec. 3 which specifically exempts child care centers which are further defined in M.G.L. c.15D Sec.1A as “facilities operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under 7 years of age . . . for nonresidential custody and care during part or all of the day separate from their parents”. The Board finds that the proposed use falls under this section and is an exempt use not requiring a Special Permit for a private school.
- 1.5 The facility is expected to operate from 7:30 AM to 5:30 PM, five days per week, with an anticipated maximum of four teachers/educators on site at all times. The expected maximum enrollment is 19, divided between 9 toddlers and 10 preschool age children. There will be no separate administrative or support staff.
- 1.6 The Petitioner proposes to install a fence from the existing building to the property line at both the easterly and westerly ends of the building to create an outdoor play space for the children. Existing established trees will not be removed in order to install said fence.
- 1.7 The proposed use was not specifically detailed in the Table of Required Parking, Section 5.1.2 of the By-Law. Accordingly, the Planning Board may recommend to the Building Inspector the number of spaces required based on the expected parking needs of occupants, users, guests and employees. Such recommendation has previously been based on the ITE Journal of July 1994 entitled “Parking and Trip Generation Characteristics for Day-Care Facilities”. That standard imposes a parking requirement of one space for every five students, plus employee parking (defined as the maximum number of staff on duty at any one time), if enrollment is both known and less than 45 children. Applying such standard to the proposed use of the Premises, the required parking will be 10 spaces, calculated as follows:

19 Expected children ÷ 5 = 3.8 spaces
4 maximum staff = 4 spaces

Required Spaces: 3.8 + 4 = 7.8 (rounded up) = 8 total spaces required
- 1.8 Pursuant to the Huntington Learning Center Site Plan Special Permit Amendment, the parking requirement for that use was determined to be a total of 8 parking spaces. As a result, the proposed use will not result in an increase in parking demand, for a total building parking demand of 37 spaces calculated as follows: Basement: 1,294 square feet @ 1 per 850 square feet (warehouse) = 1.52 spaces; First Floor: 2,766 square feet @ 1 per 300 square feet (retail or consumer service) = 9.22 spaces and 1,109 square feet of Learning Tree Preschool @ 8 total

spaces = 8 spaces (First Floor total 17.22); Second Floor: 3,875 square feet @ 1 space per the maximum capacity of patrons, plus 1 space per the largest working staff = 18 spaces, totaling 36.74, or 37 spaces, rounded up.

- 1.9 There are currently 22 parking spaces on site, to the rear of the building. Because there is no increase in the required parking demand, no additional waiver over and above the existing waiver of 15 spaces is required or requested.

However, in addition to the 22 spaces available on site, another five spaces are available off-site on a property owned by the same property owner located at 43 Wexford Street. Employees are required to park in the off-site parking spaces so that the on-site parking spaces are available for parents doing drop off and pick up of the proposed Learning Tree use. Furthermore, the Petitioner has stated that these 27 spaces have adequately served the building without significant incident or issue since Huntington Learning was approved in 2012. Whereas the parking demand for the proposed use is primarily drop-off and pick-up, the Petitioner asserts that the existing parking is adequate to support the new use.

- 1.10 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and site buffers, and preservation of views, light and air. The Petitioner proposes no change in building footprint, no change in site plans and no change in operation or allowed use of the second floor.
- 1.11 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets have been assured. There is presently limited off-street parking associated with the property, which consists of 22 spaces to the rear of the building and 5 off-site parking spaces. No changes are contemplated for the parking layout or the current curb cuts. With the proposed hours (specifically, the drop off and pick up times), traffic patterns may be changing slightly, but both drop off and pick up occur over an hour and a half long period; therefore, the change should not cause any issue with traffic. The site has been designed to accommodate safe vehicular and pedestrian movement within the site and on adjacent streets.
- 1.12 Adequate parking exists for the proposed uses. The Petitioner is not seeking a waiver over what is currently approved for the space. The Board finds that, given the drop off/pick up nature of the proposed use, the site will function without problem. The Board further notes that the basement space with an associated parking requirement of 1.52 spaces is currently used for tenant storage and does not create any additional parking demand.
- 1.13 Adequate methods for the disposal of refuse and wastes will be provided. The site and building containing the Premises are already developed with infrastructure in place. Moreover, the nature of the proposed use is such that only minimal waste is expected to be generated, and there is an existing dumpster on site.
- 1.14 Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of the By-Law will be met. The site and the building containing the Premises are situated in a highly developed, commercial area. The Petitioner is not aware of any significant community assets in the area immediately adjoining the Premises. Moreover, the site itself is fully developed at present and whereas the Petitioner is not proposing any material expansion or fundamental changes to the existing building, it does not anticipate any significant or material impact from the proposed use. Therefore, the proposed redevelopment, renovation and reuse of the Premises is not anticipated to significantly affect the relationship of the Premises to any community assets or any adjacent landscape, buildings and structures.

- 1.15 Mitigation of adverse impact on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets will be met as there will be no adverse impact on the Town's resources. The site and building containing the Premises are presently fully developed and fully connected to Town infrastructure. Moreover, only interior modifications within an existing space are being proposed. Therefore, the Petitioner does not anticipate any significant or material change, or any adverse impacts to any Town resource.
- 1.16 The Board finds that all of its findings and conclusions contained in Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, by the Board on November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012 are applicable to this Amendment, except as specifically set forth in this Amendment.

THEREFORE, the Board voted 4-0 to GRANT: (1) the requested Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law and Section 4.2 of Major Project Special Permit No. 2008-08, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012; and (2) the requested Special Permit under Section 5.1.1.5 of the By-Law to further waive strict adherence with the requirements of Section 5.1.2 (Required Parking), subject to and with the benefit of the following Plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the Site relative to this Special Permit Amendment, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building Inspector shall not issue any building permit nor shall he permit any construction activity on the Site to begin on the Site until and unless he finds that the Plan is revised to include the following additional corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Inspector. Where approvals are required from persons other than the Building Inspector, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Inspector before the Inspector shall issue any building permit or permit for any construction on the Site. The Petitioner shall submit nine copies of the final Plans as approved for construction by the Building Inspector to the Board prior to the issuance of a Building Permit.

- 2.1 The Plan shall be modified to include the requirements and recommendations of the Planning Board as set forth below. The modified plans shall be submitted to the Planning Board for review, approval and endorsement. The Petitioner shall meet all requirements and recommendations, set forth below.
- a) The Plan shall be modified to show the current tenants.
 - b) The Plan shall be modified to show the proposed fence to create an outdoor play space.
 - c) The Plan shall be revised to show a north arrow.
 - d) The Petitioner shall provide an application for this project signed by The Learning Tree Preschool.

CONDITIONS AND LIMITATIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.16 hereof.
- 3.1 The conditions and limitations set forth in Major Project Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, dated November 12, 2008,

amended August 11, 2009, January 4, 2011, August 9, 2011 and June 12, 2012, and as further amended by this Amendment are ratified and confirmed.

- 3.2 The Board approves The Learning Tree Preschool use on 1,109 square feet of the first floor of the building as conditioned herein.
- 3.3 The proposed Learning Tree Preschool shall contain the floor plan and dimensions and be located on that portion of the locus, as shown on the Plan, as modified by this Decision, and in accordance with applicable dimensional requirements of the By-Law. Minor movement of fixed equipment, interior partitions or seating is allowed without further Board approval provided the use allocation as shown on the plan is maintained. Any changes revisions or modifications other than changes deemed “minor movement” to the Plan, as modified by this Decision, shall require approval by the Board.
- 3.4 The maximum number of children participating in classes or functions at any given time shall not exceed nineteen (19). The maximum number of staff persons present at any given time shall not exceed four (4). Notwithstanding the above, the Board hereby retains jurisdiction to reduce the maximum number of children participating in classes or functions at any given time, or to require additional off-street parking, as necessary in the event of parking problems on the site.
- 3.5 The Learning Tree Preschool may be open from 7:30 a.m. to 5:30 p.m. Monday through Friday.
- 3.6 Staff shall be required to park in the parking spaces available off-site at 43 Wexford Street (property also owned by the Property owner) so as to keep available on-site parking available for drop-off and pick-up.
- 3.7 The operation of The Learning Tree Preschool located at 225 Highland Avenue, Needham, Massachusetts shall be as described in Sections 1.3, 1.5 and 1.9 of this Decision and as further described under the support materials provided under Exhibits 1, 2, 4 and 5 of this Decision.
- 3.8 This Special Permit to operate The Learning Tree Preschool at 225 Highland Avenue, Needham, MA is issued to The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 and may not be transferred, set over, or assigned by The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 to any other person or entity other than an affiliated entity in which The Learning Tree Preschool has a controlling interest of greater than 50 percent, without the prior written approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient. For purposes of this section 3.8, a transfer or assignment of shares of stock of The Learning Tree Preschool, Inc. such that the current stockholders of The Learning Tree Preschool, Inc. as of the date of this decision no longer own or control more than fifty (50%) percent of the equity interests or no longer own or control more than fifty (50%) percent of the voting power of The Learning Tree Preschool, Inc. shall be considered a prohibited transfer or assignment.
- 3.9 The special permit and parking waivers granted herein are specifically premised upon the special characteristics of The Learning Tree Preschool located at 225 Highland Avenue, Needham, Massachusetts. In the event of any change in the use permitted hereunder which would result in a greater parking demand, further site plan review will be required, and the Planning Board shall be entitled to evaluate the parking demand of the building as a whole.
- 3.10 The proposed Learning Tree Preschool use shall contain the dimensions and shall be located in the building at 225 Highland Avenue, as shown on the Plan.
- 3.11 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:

- a. The final plans shall be in conformity with those previously approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
 - b. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this decision granting this Special Permit and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
 - c. The Petitioner shall provide the Planning Board with seven copies of the modified plan as approved by the Board (two plans wetstamped).
- 3.12 The approximately 1,109 square feet of the building that is the subject of this Decision shall not be occupied until:
- a. There shall be filed with the Board and Building Inspector a Certificate of Compliance signed by a registered architect upon completion of the project certifying that the project was built according to the approved documents.
 - b. There be filed, with the Building Inspector, a statement by the Board approving the Certificate of Compliance, in accordance with said Decision.
 - c. There shall be filed with the Board an as-built floor plan.
- 3.13 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commission or other agencies, including, but not limited to the Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, Board of Health and Department of Early Education and Care.
- 3.14 The portion of the building that is authorized for construction by this Approval shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Inspector.
- 3.15 The Petitioner, by accepting this Approval, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, and that this information is true and valid to the best of the Petitioner's knowledge.
- 3.16 Violation of any of the conditions of this Decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this Decision, the Town will notify the Petitioner of such violation and give the Petitioner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this Decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this Decision.
- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this Decision and to take other action necessary to determine and ensure compliance with the Decision.
- 4.3 This Decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.
- 4.6 This Site Plan Special Permit Amendment shall lapse on July 21, 2022, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to July 21, 2022. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.

This approval shall be recorded in the Norfolk District Registry of Deeds. This Special Permit Amendment shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry Deeds and until the Petitioner has delivered a certified copy of the recorded document to the Board.

The provisions of this Special Permit Amendment shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on the Plan, in full force and effect for the benefit of and enforceable by the Town of Needham.

Any person aggrieved by this decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within twenty (20) days after filing of this decision with the Needham Town Clerk.

