

TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

2021 J 500 Dedham Ave Needham, MA 02492 781-455-7500

PLANNING

AMENDMENT

MAJOR PROJECT SITE PLAN SPECIAL PERMIT NO. 98-10 Katherine Pennington Klein June 1, 2021

(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 Katherine Pennington Klein, 40 Eaton Road, Needham, MA, (to be referred to hereinafter as the Petitioner) for property located at 30-50 Chestnut Street, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan No. 47 as Parcel 59, containing 12,340 square feet.

This decision is in response to an application submitted to the Board on April 29, 2021, by the Petitioner for an amendment to a Special Permit issued under Sections 3.2.2., 5.1.1.6, 5.1.2 and 7.4 of the Needham Zoning By-Law (hereinafter the By-Law). The Petitioner has made application to the Planning Board under Sections 5.1.1.6, 5.1.2 and 7.4 of the By-Law and Section 3.2 of Site Plan Special Permit No. 98-10, dated September 1, 1998. The requested Major Project Site Plan Special Permit Amendment would, if granted, permit the Petitioner to renovate approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice. The property is the subject of Site Plan Special Permit No. 98-10, issued to Wilma Realty Trust, Alfred Greymont, Trustee, by the Planning Board on September 1, 1998, and filed with the Town Clerk on September 8, 1998 and amended on July 30, 2002, filed with the Town Clerk on August 15, 2002.

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 the Chairman, Jeanne McKnight, on Tuesday, May 18, 2021 at 7:20 p.m., via remote meeting using Zoom ID 826-5899-3198. Board members Jeanne S. McKnight, Paul S. Alpert Martin Jacobs, Natasha Espada and Adam Block were present throughout the proceedings. 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 Properly executed Application submitted by the applicant Katherine Pennington Klein, DMD dated April 29, 2021.
- **Exhibit 2 -** Addendum A to Application.
- Exhibit 3 Katherine Pennington Klein Authorization Letter, dated April 15, 2021.
- Exhibit 4 Alfred W. Greymont Authorization Letter, dated April 15, 2021.
- **Exhibit 5** Letter from Attorney George Giunta Jr., dated April 16, 2021.

- Exhibit 6 Plan set entitled "Katie Klein Orthodontics," prepared by Lagrasse Yanowitz & Feyl, consisting of 10 sheets: Sheet 1, entitled "Existing Conditions," dated April 15, 2021; Sheet 2, entitled "Proposed Floor Plan," dated April 15, 2021; Sheet 3, showing "Existing Front Façade" and "Proposed Front Façade," dated April 15, 2021; Sheet 4, showing "Existing Rear Façade," and "Proposed," dated April 15, 2021; Sheet 5, entitled "3D Rendering," undated; Sheet 6, entitled "3D Rendering," undated; Sheet 8, entitled "3D Rendering," undated.
- Exhibit 7 Interdepartmental Communication (IDC) to the Board from Tara Gurge, dated April 22, 2021, with attachment containing guidance from the Massachusetts Department of Public Health (DPH) and the Board of Registration in Dentistry (BORID) in response to the Massachusetts COVID-19 State of Emergency; IDC to the Board from Chief Dennis Condon, Needham Police Department, dated April 22, 2021; IDC to the Board from Chief John Schlittler, Needham Police Department, dated April 22, 2021; IDC to the Board from Thomas Ryder, Assistant Town Engineer, dated May 14, 2021; and IDC to the Board from the Design Review Board, dated May 10, 2021.

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 Site Plan Special Permit No. 98-10, issued to Wilma Realty Trust, Alfred Greymont, Trustee, on September 1, 1998 ("the Decision") to permit the Petitioner to renovate approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice.
- 1.2 The building consists of two parts: a one-story, older portion, and a two-story, newer portion. According to the records of the Assessor's Department, the older portion appears to have been built in 1926. The newer portion was built in or around 2001 pursuant to Major Project Site Plan Special Permit, Application 98-10, dated September 1, 1998, filed with the Town Clerk on September 8, 1998 (the "Decision"), as affected by Amendment dated July 30, 2002, filed with the Town Clerk on August 15, 2002 (the "Amendment"). Pursuant to the Decision, the Planning Board issued several Special Permits to allow the construction of a new building at 50 Chestnut Street (the "Premises"). In connection therewith, the Board approved the use and occupancy of the first floor (3,548 square feet) for retail purposes and the second floor (3,548 square feet) for either retail or office purposes, depending on tenant availability. The basement floor area (3,548 square feet) was approved for storage purposes, except that up to 300 square feet of the basement area was approved to be used for office purposes. As relates the building located at 30-34 Chestnut Street, the Board approved the Petitioner's continued use of the 4,951 square-foot first-floor space for retail and consumer service purposes.
- 1.3 The Premises is located at the northerly end of the old portion of the building and consists of approximately 1,751 square feet of floor space. It was last used for retail purposes by the Art Emporium as an art and framing store. The rest of the older portion of the building is currently occupied by a tailor, a television sales and service store, a nail salon, and a vacant storefront. The newer portion of the building is currently occupied by a bank on the first floor and offices on the second floor.
- 1.4 Dr. Klein intends to renovate the Premises for use as an orthodontics office. Examples of some of the work she will perform include braces, Invisalign, making retainers, and tooth bleaching. Because individuals of all ages seek corrective tooth changes with orthodontics, patients are

expected to range from as young as 7 years old up to 80 years old. However, it is expected that the majority of patients will be between 10-12 years of age.

- 1.5 The office is proposed to operate 7 AM to 7 PM, Monday through Friday, as well as some Saturdays. There is proposed to be a minimum of three staff on site at any given time and a maximum of seven; no more than one dentist, and administrative staff and clinical assistants up to an additional six people maximum.
- 1.6 Although the Planning Board had previously viewed a dental use as medical office and therefore not being permitted, the Board now relies on prior interpretations of the Building Commissioner and the Zoning Board of Appeals (see Decision of the Zoning Board of Appeals, dated November 19, 2015, issued to Salib Fanikos Dental Care, LLC concerning property in the Center Business District known and numbered 905-915 Great Plain Avenue) and now finds that the proposed orthodontic office constitutes a "Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section" in Section 3.2.2 of the Zoning By-Law. As such, the use is permitted as of right.
- 1.7 Pursuant to Section 5.1.1.6 of the By-Law, Petitioner seeks to Amend the Decision to increase the waiver of off-street parking by three spaces, from 46 spaces to 49 spaces. Originally, the Premises required a total of 45 parking spaces. As a result of the 586 square-foot increase of dedicated office space in the basement under the 2002 amendment, the Premises required a total of 46 parking spaces.

Section 5.1.2 of the Bylaw (Required Parking) does not include a category for dental practice. However, it does include a category for "Medical, dental and related health service structures or clinics". In as much as the structure in which the Premises is located is not exclusively medical, dental or related health services, and whereas neither the proposed dental practice nor the building constitutes a clinic, as that term is defined in the By-Law, such category does not appear to apply. Nevertheless, it is the closest category in Section 5.1.2, and it is the standing practice to apply such category to all medical, dental and related health service uses. Therefore, such category has been used to analyze the parking impact of the proposed use.

The Premises contains approximately 1,751 square feet of area. Applying the aforementioned parking requirement of one car for every 200 square feet of area, the resulting parking demand will be 9 spaces, calculated as follows:

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1,751 \div 200 = 8.75 spaces, rounded up = 9 spaces required
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Compare this to the parking demand for the prior retail use (at a demand of 1 space for every 200 square feet, pursuant to Section 5.1.2), and the increase in demand is only 3 spaces:

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1,751 \div 300 = 5.84 spaces, rounded up = 6 spaces required 9 - 6 = increase of 3 spaces
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Because there is no off-street parking available on the property, such increase will require an amendment and increase to the existing special permit parking waiver, from 46 spaces to 49 Spaces.¹ Provided such amendment and increase is granted, the parking will comply with the By-

¹ See paragraphs 1.6 and 1.7 of the Decision and paragraph 1.6 of the Amendment. Note that the lack of land available to provide off-street parking was caused in substantial part by a land swap between the Town of Needham and the owner of the property, pursuant to which the total number of parking spaces in the municipal parking lot was substantially increased.

Law and the Decision, as affected by the Amendment.

- 1.8 The Board finds that the use of the Premises for an orthodontics practice will not constitute a "seriously detrimental use" within the terms of the By-Law. Moreover, the property and the building are already fully developed, and the only renovations proposed are limited to interior changes and cosmetic exterior changes. Therefore, no material additional impact is anticipated to surface water drainage, sound and sight, views, light and air.
- 1.9 The building and property are currently fully developed and bounded by existing established ways. Furthermore, whereas only interior modifications and cosmetic exterior changes are proposed, existing traffic patterns are not expected to be affected in a material way. Therefore, the use of the first-floor unit for orthodontic purposes is not anticipated to affect vehicular or pedestrian movement in any significant way.
- 1.10 The property does not contain any parking or loading spaces, but instead relies upon the adjacent municipal parking lot. Whereas the proposed orthodontics practice will only result in a net parking demand increase of three spaces, there should not be any significant or material additional impacts to off-site parking and loading spaces. The Board finds that the arrangement of parking and loading spaces to the proposed uses of the Premises is still adequate.
- 1.11 The property and building are already developed with infrastructure in place. Moreover, the nature of the proposed use is such that the amount of waste expected to be generated is no greater than the retail use that previously occupied the Premises. Therefore, the Board finds that the methods of disposal of refuse and other wastes remain adequate.
- 1.12 The property and the building are situated in a highly developed, commercial area. Exterior cosmetic changes are proposed. The property and building are fully developed, and no material expansion or fundamental changes are proposed, the Board 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.
- 1.13 The Board finds that no adverse impacts on the Town's resources are anticipated in connection with the alterations currently proposed by the Petitioner, including the use of the first-floor space for orthodontic purposes.
- 1.14 Based upon the foregoing, the Board finds that the use of the first-floor unit at the Premises for orthodontic purposes is consistent with the applicable provisions of the By-Law and with the Decision.
- 1.15 The Board finds that all of its findings and conclusions contained in Site Plan Special Permit No. 99-10, issued to Wilma Realty Trust, Alfred Greymont, Trustee, by the Planning Board on September 1, 1998, and filed with the Town Clerk on September 8, 1998, and amended on July 30, 2002, filed with the Town Clerk on August 15, 2002, are applicable to this Amendment, except as specifically set forth in this Amendment.
- 1.16 Under Section 7.4 of the By-Law, a Major Project Site Plan Review Special Permit may be granted in the Center Business District if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions, the Board finds that the proposed development Plan, as conditioned and limited herein for the site plan review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, to have minimal adverse impact and to have

promoted a development which is harmonious with the surrounding area.

- 1.17 Under Section 3.2.2 of the By-Law, a Special Permit may be granted to allow for more than one nonresidential use on a lot, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.18 Under Section 5.1.1.6 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) may be granted in the Center Business District provided the Board finds that the project: (i) Replaces or substantially improves an existing building or site; (ii) Promotes the goal of preserving and enhancing the Center Business District as a pedestrian-oriented local shopping and business district; (iii) Incorporates the recommendation of the Design Review Board; and (iv) Demonstrates that it is providing the maximum number of offstreet parking spaces practicable. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 5-0 to GRANT: (1) the requested Special Permit for Site Plan Review, pursuant to Section 7.4 of the By-Law and Section 3.2 of Site Plan Special Permit No. 98-10; (2) the requested Special Permit under Section 3.2.2 of the By-Law for more than one nonresidential use on a lot; and (3) the requested Special Permit pursuant to Section 5.1.1.6 of the By-Law to 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

- 2.0 Prior to the issuance of a building permit or the start of any construction on the site specifically authorized by this 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 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 three paper copies and an electronic copy 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 Plans shall be modified to include the requirements and recommendations of the Board as set forth below. The modified plans shall be submitted to the Board for approval and endorsement. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.

The coping at the top of the wall above the orthodontics practice space will be repainted. A note shall be added to the Plan stating that the remainder of the building coping over the other tenant spaces will be repainted as well.

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 3.22 hereof.
- 3.1 The plan modifications, conditions and limitations set forth in Site Plan Special Permit No. 98-10, issued to Wilma Realty Trust, Alfred Greymont, Trustee, by the Planning Board on September 1, 1998, and filed with the Town Clerk on September 8, 1998 and amended on July 30, 2002, filed with the Town Clerk on August 15, 2002, are ratified and confirmed except as noted below.
- 3.2 The Plan described under Exhibit 6 of this Decision shall be included in the approved plan set.
- The Board hereby approves the orthodontic use on 1,751 square feet of the first floor of the building as shown on the Plan approved by this Decision.
- 3.4 The Petitioner may operate the orthodontic use 7 AM to 7 PM, Monday through Friday, as well as any Saturdays, as desired by the Petitioner. There shall be a maximum of seven staff members at any given time: no more than one dentist, and administrative staff and clinical assistant up to an additional six people maximum.
- 3.5 This Special Permit Amendment to operate an orthodontic practice at 32 Chestnut Street is issued to Katherine Pennington Klein, 40 Eaton Road, Needham, Massachusetts. Prior to any change in the entity operating the facility (other than a change to an affiliated entity under common control with Katherine Pennington Klein), Petitioner shall provide written notice of the anticipated change to the Board, and the new operating entity shall provide a written statement to the Board, signed by a person who will be responsible for the operations of the facility, that they have read this Decision and acknowledge that the terms hereof are binding on the new entity. Notwithstanding the above, a general dental use may be substituted for an orthodontic use compliant with the conditions and limitations of this Decision.
- 3.6 The Petitioner recognizes the desire of the Board to assure a viable active retail storefront presence on the major thoroughfares of the Town and shall work in its configuration of its operation to assure that goal is met. To that end, the first set of windows along Chestnut Street, as shown on the Plan, as modified by the decision, shall not be obscured by window treatments, or display cases that prevent customers and pedestrians from seeing inside. The Petitioner shall assure that the subject storefront window system remains open and transparent providing the maximum amount of visibility into the facility.
- 3.7 Additional trash receptacles shall be provided, if required by the Planning Board or Board of Health, and the area shall be kept free of litter from the orthodontic operation.
- 3.8 The Petitioner shall apply for a minimum of three (3) employee parking stickers and up to seven (7), depending on the number of staff present at any one time, from the Town of Needham for parking in the areas of the Dedham Avenue, Lincoln Street, and Chapel Street/Eaton Square parking lots which have been designated as "Permit Parking Only". The Petitioner shall retain employee parking stickers sufficient in number to accommodate the maximum of employees present at any one time. The Petitioner shall apply for said permits on an annual basis and shall provide such parking stickers to the Petitioner's employees for as long as the Petitioner operates at the subject location and for as long as the sticker program is in existence.

- 3.9 In constructing and operating the proposed orthodontic establishment on the locus pursuant to this Special Permit due diligence be exercised and reasonable efforts be made at all times to avoid physical damage to the surrounding areas or adverse physical impact on the environment.
- 3.10 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.
- 3.11 No building or structure, or portion thereof, subject to this Special Permit and Site Plan Approval shall be occupied until:
 - a. There shall be filed with the Board and Building Inspector a Final Affidavit (or Final Construction Control Document) signed by a registered architect upon completion of the building renovation certifying that the project was built according to the approved documents.
 - b. An as-built plan, supplied by the architect of record certifying that the project was built according to the approved documents, has been submitted to the Board.
 - c. That there shall be filed, with the Building Inspector, a statement by the Board approving the as-built floor plan for the orthodontic facility, in accordance with this decision and the approved Plan.
- 3.12 In addition to the provision for this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commissions or other agencies, including, but not limited to, the Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.13 The Petitioner, by accepting this permit decision, 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.
- 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 owner of such violation and give the owner 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 The conditions contained within this Decision are limited to this specific application and are made without prejudice to any further modification or amendment.
- 4.5 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.6 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.
- 4.7 This Site Plan Special Permit Amendment shall lapse on June 1, 2023, 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 June 1, 2023. 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 except for good cause.
- 4.8 This decision shall be recorded in the Norfolk District Registry of Deeds and shall not become effective until the Petitioner has delivered a certified copy of the document to the Board. In accordance with G.L. Chapter 40A, Section 11, this Major Site Plan Special Permit 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 office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time is recorded in the Norfolk District Registry of Deeds and is indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at the risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The provisions of this Special Permit 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 of the Plan, as modified by this Decision, 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 General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this Decision with the Needham Town Clerk.

Witness our hands this 1st day of June, 2021. NEEDHAM PLANNING BOARD Natasha Espada COMMONWEALTH OF MASSACHUSETTS June 4 Norfolk, ss 2021 day of June _____, 2021, before me, the undersigned notary public, personally Paul Alpert, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was to be the person whose name is signed on the proceeding or attached document, and acknowledged the foregoing to be the free act, and deed of said Board before me. My Commission Expires: __ TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by Katherine Pennington Klein, 40 Eaton Road, Needham, MA, for property located at 30-50 Chestnut Street, Needham, Massachusetts, has passed, and there have been no appeals filed in the Office of the Town Clerk or there has been an appeal filed. Date Theodora K. Eaton, Town Clerk Copy sent to: Petitioner-Certified Mail # Board of Selectmen Board of Health Town Clerk Engineering Director, PWD **Building Inspector** Fire Department Design Review Board Conservation Commission Police Department George Giunta, Jr.

Parties in Interest