



TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

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

AMENDMENT TO DECISION

July 20, 2021

PLANNING

Major Project Site Plan Special Permit

SPMP No. 2005-07

Needham Gateway, LLC

100, 120 Highland Avenue

Application 2005-07

(Original Decision dated January 24, 2006,
amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011,
March 6, 2012, July 10, 2012 and August 13, 2012)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Needham Gateway LLC, 66 Cranberry Lane, Needham, MA (hereinafter the Petitioner), for property located at 100 and 120 Highland Avenue, Needham, Massachusetts, shown on Assessor's Map No. 73 as Parcel 18 containing 82,582 square feet and partially located in the New England Business Center Zoning District and partially located in the Highland-Commercial 128 Zoning District.

This Decision is in response to an application submitted to the Board on June 3, 2021, by the Petitioner for an amendment to a Major Project Site Plan Review Special Permit issued by the Needham Planning Board on January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012 and August 13, 2012, under Section 7.4 of the Needham Zoning By-Law and Major Project Site Plan Review Special Permit No. 2005-07, Section 4.2.

The requested Major Project Site Plan Review Special Permit Amendment would, if granted, amend the Decision to allow in the existing development (originally permitted by Special Permit No. 2005-07) all of the uses allowed by right or by special permit in the underlying zoning district. Currently, Section 3.2 of the Special Permit, limits the use of 10,628 square feet of the building at 100 Highland Avenue and 8,020 square feet of the building at 120 Highland Avenue "exclusively for general retail purposes" and "craft, consumer, professional or commercial service establishments dealing directly with the general public." However, even though otherwise allowed as of right or by special permit in the underlying Highland Commercial-128 Zoning District, Section 3.3 of the Special Permit expressly prohibits the following uses in the development: (1) all sit down food and beverage restaurants; (2) all fast food pick up and/or delivery restaurants, excepting Panera Bread; (3) all sports clubs and/or athletic merchandise stores; (4) all convenience markets; (5) all pharmacy stores; (6) all banks; and (7) all video rental stores. Leasing space has been challenging due, in particular, to the Covid 19 pandemic.

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 Chairperson, Paul S. Alpert on Tuesday, June 29, 2021 at 7:30 p.m. by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Jeanne S. McKnight, Martin Jacobs, Adam Block and Natasha Espada were present throughout the June 29, 2021 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.

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

- Exhibit 1 - Application Form for Further Site Plan Review completed by the applicant dated June 3, 2021.
- Exhibit 2 - Rider A to application.
- Exhibit 3 - Interdepartmental Communication (IDC) to the Board from Chief John Schlittler, Needham Police Department, dated June 29, 2021; IDC from Thomas Ryder, Assistant Town Engineer, dated June 24, 2021; IDC to the Board from Chief Dennis Condon, Needham Fire Department, dated June 29, 2021; and IDC to the Planning Department from Tara Gurge, Needham Health Department, dated June 9, 2021.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board confirmed its findings and conclusions as contained in its original Decision dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012 and August 13, 2012, except as modified herein.

- 1.1 The Petitioner is seeking the modification to Section 3.3 of Decision 2005-07, dated January 24, 2006 to allow all of the uses allowed by right or by special permit in the underlying Highland Commercial-128 Zoning District, instead of those prohibited by said Section.
- 1.2 The Petitioner asserts that the primary rationales for the proposal are:
 - a. Since the original permit was issued in 2006, there has been a sea change in the world of brick and mortar retail caused by the increasing trend towards on-line purchasing, making some of the uses that were originally envisioned in the development to be difficult or impossible to obtain;
 - b. The Covid 19 pandemic has made it difficult to locate potential tenants; and
 - c. Not permitting uses in the development that are allowed in the underlying zoning district puts the development on an uneven playing field with other commercial properties in the same zoning district, a result that is not fair and equitable.
- 1.3 The Planning Board does not concur with all of the assertions of the Petitioner, noting that some of the restricted land uses may bring the on-site parking demand to a point beyond the capacity of the existing parking, and further that the location of the development adjacent to a residential neighborhood warrants the continued prohibition of certain land uses. Therefore, the Board decided to only eliminate the prohibition on the following uses: athletic merchandise stores; all pharmacy stores; all banks; and all video rental stores.

DECISION

THEREFORE, the Board voted 5-0 to GRANT: (1) an amendment to a Major Site Plan Review Special Permit issued by the Needham Planning Board on January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012 and August 13, 2012, under Section 7.4 of the Needham Zoning By-Law and Special Permit 2005-07, Section 4.2; subject to 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, 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.

2.0 No Plan modifications are required.

CONDITIONS

The conditions contained in Major Project Site Plan Special Permit No. 2005-07, dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012 and August 13, 2012, are ratified and confirmed except as modified herein.

3.1 Paragraph 3.3 of the January 24, 2006 Decision is deleted and replaced with a new Paragraph 3.3 that reads as follows:

“That the following uses shall not be permitted in either of the buildings, notwithstanding anything contrary contained in the By-Law, Section 3.2.5: (1) all sit down food and beverage restaurants; (2) all fast food pick up and/or delivery restaurants, excepting Panera Bread; (3) all sports clubs; and (4) all convenience markets.”

This approval shall be recorded in the Norfolk District Registry of Deeds. This 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 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 of Deeds and until the Petitioner has delivered a certified copy of the recorded document to the Board.

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 on 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 20th day of July, 2021.

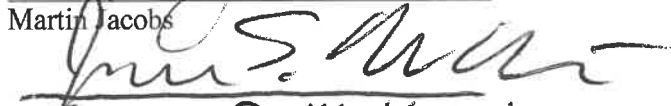
NEEDHAM PLANNING BOARD


Paul S. Alpert, Chairman


Adam Block

Natasha Espada

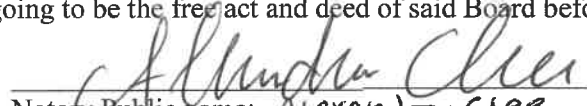

Martin Jacobs


Jeane S. McKnight
COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

July 22, 2021

On this 22 day of July, 2021, before me, the undersigned notary public, personally appeared Martin Jacobs, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was personally known to me 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.


Notary Public name: Alexandra Clee
My Commission Expires: March 18, 2022

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by Needham Gateway LLC, 66 Cranberry Lane, Needham, MA, for Property located at 100 and 120 Highland Avenue, 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 # _____
Town Clerk
Building Inspector
Conservation Commission
Parties in Interest

Board of Selectmen
Engineering
Fire Department
Police Department

Board of Health
Director, PWD
Design Review Board
Rick Mann, Attorney