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PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

DECISION
October 5, 2021

Major Project Site Plan Special Permit
SPMP No. 2021-03
Needham Nutrition, LLC
915 Great Plain Avenue

Decision of the Planning Board (hereinafter referred to as the Board) on the petition of Needham Nutrition LLC, 915 Great Plain Avenue, Needham, MA (hereinafter referred to as the Petitioner) for property located at 915 Great Plain Avenue, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan, No. 50 as Parcel 30 containing 6,602 square feet.

This decision is in response to an application submitted to the Board on August 24, 2021, by the Petitioner for: (1) a Major Project Site Plan Review Special Permit under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law); (2) a Special Permit under Section 3.2.2 of the By-Law for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises in the Center Business District; (3) a Special Permit under Section 3.2.2 of the By-Law for more than one non-residential building use on a lot; and (4) a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Off-Street Parking Requirements).

The requested Major Project Site Plan Review Special Permit, would, if granted, permit the Petitioner to occupy approximately 864 square feet of existing first floor commercial space, in an existing three-unit commercial building of approximately 4,578 square feet. The Petitioner proposes to operate a business selling high nutrition, low calorie Smoothies, Protein Shakes, Energy Drinks, Immune Booster Drinks, Collagen Drinks, Fitness Drinks, and similar items for consumption on and off the premises. The business will also have a small retail component, selling items such as nutritional ingredients for some of its drinks. A total of seven (7) seats are proposed for on-site food consumption.

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 Vice Chairperson, Adam Block on Tuesday, September 21, 2021 at 7:20 p.m. by Zoom Web ID Number 826-5899-3198. Board members Adam Block, Jeanne S. McKnight, Martin Jacobs and Natasha Espada were present throughout the September 21, 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.

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

- Exhibit 1** Properly executed Application in support of Application for Site Plan Review under Section 7.4 of the By-law, for a Special Permit under Section 3.2.2 of the By-Law, and for a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the parking requirements under Section 5.1.2 and Section 5.1.3, dated August 24, 2021.
- Exhibit 2** Letter from Evans Huber, Attorney, dated August 20, 2021.
- Exhibit 3** Plan Sheet A-100, entitled “Smoothie Bar Floor Plan,” prepared by SDP Architects, undated.
- Exhibit 4** Certified Plot Plan, prepared by Boston Survey Inc., dated July 22, 2021.
- Exhibit 5** Interdepartmental Communication (IDC) to the Board from Chief Dennis Condon, Needham Fire Department, dated August 31, 2021; IDC from Chief John Schlittler, Needham Police Department, dated August 31, 2021; IDC from Thomas Ryder, Assistant Town Engineer, dated September 7, 2021; and IDC to the Planning Department from Tara Gurge, Needham Health Department, dated September 16, 2021.

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

FINDING AND CONCLUSIONS

- 1.1 The subject property is identified as Parcel 30 on Town of Needham Assessor’s Map No. 50. The subject property is located in the Center Business District and contains a total of 6,602 square feet of area. The property is currently developed as a one-story commercial building.
- 1.2 The total space to be leased by the Petitioner for a business selling high nutrition, low calorie Smoothies, Protein Shakes, Energy Drinks, Immune Booster Drinks, Collagen Drinks, Fitness Drinks contains approximately 864 square feet. The proposal does not include use of the basement.
- 1.3 The Petitioner proposes to operate a business selling high nutrition, low calorie Smoothies, Protein Shakes, Energy Drinks, Immune Booster Drinks, Collagen Drinks, Fitness Drinks, and similar items for consumption on and off the premises. As a subordinate and accessory use to the primary use, the Petitioner also proposes to have a small retail component, selling items such as nutritional ingredients for some of its drinks. A total of seven (7) seats are proposed for on-site food consumption.
- 1.4 No exterior changes are proposed for the building or property of which the premises are a part are planned except for associated signage.
- 1.5 The Petitioner requested at the hearing: (1) that the permitted hours of operation be Monday through Friday, 10 a.m.- 6 p.m.; Saturday 10 a.m. - 6 p.m.; Sunday closed; (2) that there be a maximum of 4 staff persons.
- 1.6 The other two tenants in the building are a dental office and a martial arts studio. Both tenants have a special permit that includes a parking waiver; the dental office has a

waiver of 13 spaces and was issued by the Zoning Board of Appeals, the Martial Arts studio has a waiver of 10 spaces and was issued by the Planning Board.

- 1.7 Presently there is a dumpster at the rear of the building that services the businesses at 905-915 Great Plain Avenue. The Petitioner intends to share the existing dumpster as well as add a recycling receptacle, per the requirements of the Board of Health.
- 1.8 The Petitioner has requested a special permit pursuant to Section 5.1.1.6 of the By-Law to waive strict adherence to the requirements of Section 5.1.2 and 5.1.3 of the By-Law. There are 3 parking places on site, and none are allocated to the proposed use. The parking requirement for the proposed operation is 16 spaces based on the following computation: (a) 864 square feet of retail space at 1 space per 300 square feet equals 2.88 spaces = 3 spaces, (b) seven seats at 1 space for every 3 seats = 3, and (c) one take-out station at 10 spaces for each station = 10 spaces, for a total of 16 parking spaces. Petitioner has requested a waiver from the required number of parking spaces from sixteen spaces to zero spaces.
- 1.9 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and sight buffers and preservation of views, light and air. The site is presently fully developed and apart from future signage (which has not yet been planned or submitted to the Design Review Board for approval), only internal renovations are proposed. Therefore, no material additional impact is anticipated to surface water drainage, sound and sight views, light and air.
- 1.10 The proposed project will ensure the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets. The site is presently fully developed, and the Petitioner is proposing only internal renovations in the building, other than the signage. The premises are located in Needham Center and there is on-street parking available, in addition to the municipal parking lot located behind Great Plain Avenue and Chestnut Street. The municipal parking lot is within easy walking distance of the property.
- 1.11 Adequacy of the arrangement of parking and loading spaces in relation to the proposed use of the premises has been assured. As with other businesses in the vicinity, there is no on-site parking but there is street parking and a municipal lot nearby.
- 1.12 Adequate methods for disposal of refuse and waste will be provided. The site is already developed with infrastructure in place. Relatively little refuse will be generated by the operation. All waste and refuse will be disposed of in a timely fashion and in conformance with all applicable regulations by a private contractor.
- 1.13 The 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 as the site is presently fully developed and the footprint of the building will not change. The only significant community assets in the area are the Town Petitioner's business, purchase a nutrition drink to take away, and in good weather, walk to the Town Common to enjoy it.
- 1.14 Mitigation of adverse impacts 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 is fully developed, and the Petitioner is only proposing internal renovations of an existing space, other potential future new signage.

- 1.15 Under Section 7.4 of the By-Law, a Major Project Site Plan Review Special Permit may be granted within the Center Business District provided the Board finds that the proposed development will be in compliance with the goals and objectives of the Master Plan, the Town of Needham Design Guidelines for the Business Districts, and the provisions 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, for the site plan review, to be in harmony with the purposes and intent of the By-Law and Town Master plans, to comply with all applicable By-Law requirements, to have minimized adverse impact, and to have promoted a development which is harmonious with the surrounding area.
- 1.16 Under Section 3.2.2 of the By-Law, a Special Permit may be granted for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises in the Center Business District, 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 and to comply with all applicable By-Law requirements.
- 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 the 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) and Section 5.1.3 of the By-Law (Off-Street Parking Requirements) may be granted provided the Board finds that owing to special circumstances, the particular use, structure or lot does not warrant the application of certain design requirements, but that a reduction in the number of spaces and certain design requirements is warranted. On the basis of the above findings and conclusions, the Board finds that there are special circumstances for a reduction in the number of required parking spaces and design requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 4-0 to GRANT: (1) the requested Major Project Site Plan Review Special Permit under Section 7.4 of the By-Law; (2) the requested Special Permit under Section 3.2.2 of the By-Law for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises in the Center Business District; (3) the requested Special Permit under Section 3.2.2 of the By-Law for more than one non-residential use on a lot; and (4) the requested Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Off-Street Parking Requirements); 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.

- 2.1 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.
 - a. The Plan shall be revised to show the location for the proposed new dumpster.
 - b. The Architectural Plan shall be revised to designate the total square footage for the Needham Nutrition establishment. The Architectural Plan shall be revised to include a plan date. The Architectural Plan shall be revised to state the number of seats proposed for the establishment at seven (7) seats.

CONDITIONS

- 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 3.20 hereof.
- 3.1 The primary use of the premises shall be of a food retail operation (selling Smoothies, Protein Shakes, Energy Drinks, Immune Booster Drinks, Collagen Drinks, Fitness Drinks) for the sale of “frozen custard, ice cream, frozen yogurt and other frozen custard novelty items”. As a subordinate and accessory use to the primary use, as described above, accessory sales of items such as nutritional ingredients for some of its drinks shall be permitted. It is anticipated by the Petitioner that the vast majority of sales shall be from the nutrition drinks.
- 3.2 Needham Nutrition store shall contain no more than seven (7) seats for on-site food consumption and one take-out station. The seating may be configured at the owner’s discretion provided the overall seating capacity of 7 seats is not exceeded.
- 3.3 The Petitioner may operate the Needham Nutrition store Monday through Friday, 10 a.m.- 6 p.m.; Saturday 10 a.m. - 6 p.m.; Sunday closed. There shall be a maximum of four (4) employees present at any one time.
- 3.4 The Petitioner shall inform customers not to park illegally if the parking demand for the operation exceeds the number of parking spaces available in the vicinity of the business.
- 3.5 The Petitioner shall use due diligence and make reasonable efforts to prevent customers of the facility from parking illegally on Great Plain Avenue and Pickering Street or from otherwise improperly disrupting the flow of traffic while patronizing the facility.

- 3.6 All cooking facilities shall be properly vented so as not to create any disturbing odors. There shall be provision for disposal of refuse, which shall be removed on a timely basis.
- 3.7 This Special Permit to operate the Needham Nutrition store at 915 Great Plain Avenue is issued to Needham Nutrition, LLC, 915 Great Plain Avenue, lessee only, and may not be transferred, set over, or assigned by Needham Nutrition, LLC, to any other person or entity other than an affiliated entity in which the current members of Needham Nutrition, LLC retain a controlling interest in the LLC 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.
- 3.8 The Needham Nutrition store shall be located and constructed in accordance with the Plan, as modified by this decision. Any changes, revisions or modifications to the Plan, as modified by this decision, shall require approval by the Board.
- 3.9 The proposed Needham Nutrition store 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 of no concern to the Board. 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.
- 3.10 The Petitioner shall purchase parking stickers for all employees driving to the facility and not otherwise utilizing public transportation through the Town of Needham permit parking program and shall provide annual certification to the Planning Board confirming that such arrangements are in place. Notwithstanding the above, the Petitioner shall purchase a minimum of three (3) parking stickers from the Town of Needham to park its employees in the employee sections of the municipal parking lots or other off-street locations if lawfully permitted. The off-street parking shall be provided without cost to the employees and said employees shall be prohibited from parking in any location outside of the Lincoln Street or Dedham Avenue municipal parking lots except between the hours of 11:00 p.m. and 6:00 a.m. where parking in the Chapel Street municipal parking lot shall be permitted.
- 3.11 All new utilities, including telephone and electrical service, shall be installed underground from the street line.
- 3.12 Additional trash receptacles shall be provided if required and the area shall be kept free of litter from the Needham Nutrition store operation. The dumpsters shall be emptied as needed, cleaned and maintained to meet Board of Health Standards.
- 3.13 All solid waste associated with this project shall be removed from the site by a private contractor. Deliveries and trash barrel pick up shall occur only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between the hours of 9:00 a.m. and 1:00 p.m. Saturday, Sunday and Holidays. Trash shall be picked up no less than two times per week.
- 3.14 Additional trash receptacles shall be provided if required and the area shall be kept free of litter from the Needham Nutrition LLC operation. The dumpster shall be emptied as needed, cleaned and maintained to meet Board of Health Standards.

- 3.15 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:
- a) The Petitioner shall submit two hard copies and one PDF of the final Plans as approved by the Board.
 - b) Where approvals are required from persons other than the Building Inspector, the Petitioner shall be responsible for providing a written copy of such approval to the Building Inspector.
 - c) The final plans shall be in conformity with those previously approved by the Board in this Decision, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
 - d) 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 title deed or notice endorsed thereon.
- 3.16 No portion of the building or structure to be occupied by the Petitioner that is subject to this Special Permit and Site Plan approval shall be occupied until:
- a) A Final Affidavit and an as-built plan floor plan, signed by the registered architect of record certifying that the project was built according to the approved documents, has been submitted to the Board.
 - b) There shall be filed, with the Building Inspector, a statement by the Board approving the Certificate of Compliance and as-built plan floor plan for the proposed improvements, in accordance with this Decision and the approved Plan.
 - c) There shall be filed with the Building Inspector a statement by the Board acknowledging the arrangements for the provision of the off-site employee parking stickers.
- 3.17 In addition to the provision of 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.
- 3.18 The portion of the building or structures authorized by this permit shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted on site until a Certificate of Occupancy and Use has been issued by the Building Inspector.
- 3.19 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.
- 3.20 Violation of any of the conditions of this Approval 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 Approval, 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 Approval 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 Approval 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 improvements, which are the subject of this petition. All construction to be conducted on 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 shall lapse on October 5, 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 October 5, 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 unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.
- 4.7 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 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 the General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this decision with the Needham Town Clerk.

