



2022 MAR 22 AM 11:52

PLANNING DIVISION
Planning & Community Development

**MAJOR PROJECT SITE PLAN SPECIAL PERMIT
Amendment
March 15, 2022**

**Wingate Development, LLC
Application No. 93-3
(Original Decision dated July 27, 1993, as amended August 9, 1994, August 8, 1995,
November 21, 1995, June 3, 1997, and March 15, 2011,
Insignificant Change on April 18, 2013, and further amended on December 17, 2013)**

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Wingate Development, LLC, 63 Kendrick Street, Needham, Massachusetts 02494, (hereinafter referred to as the Petitioner), for property located at 589 Highland Avenue, Needham, Massachusetts. The property is shown on Assessor's Map 77 as Parcel 1 containing 110,490 square feet in the Elder Services Zoning District.

This Decision is in response to an application submitted to the Board on February 1, 2022 by the Petitioner for an Amendment to Major Project Site Plan Review Special Permit issued by the Needham Planning Board on July 27, 1993, under Sections 3.2.1, 5.1.1.5 and 7.4 of the Needham Zoning By-Law and Section 4.2 of Major Project Special Permit No. 1993-03, dated July 27, 1993. The July 27, 1993, decision was further amended on August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997, and March 15, 2011, Insignificant Change on April 18, 2013, and on December 17, 2013.

The requested amendment would, if granted, permit the conversion of the existing 142-bed skilled nursing facility to 50 independent living units. No other use is proposed and no change to the ground, exterior or the building or footprint of the building is proposed. Additionally, the Petitioner notes that the original Site Plan Special Permit No. 93-03, dated July 27, 1993, was issued to Continental Healthcare VII Limited Partnership. Section 4.5 of the July 27, 1993, decision states that the Special permit shall not be transferred or assigned without approval of the Board, after notice and a hearing. By decision dated March 15, 2011, approval was granted to transfer the Special Permit to NHP Properties Business Trust, and Section 4.5 of the Decision was amended accordingly. The current owner, Wingate at Needham, Inc. acquired the property in 2016. The Petitioner and owner now seek approval of the transfer to Wingate at Needham, Inc.

In accordance with the By-Law, Section 3.12.4, a special permit is required for independent living units in the Elder Services Zoning District. In accordance with the By-Law, Section 7.4, a Major Project Site Plan Review Amendment is required.

After causing notice of the time and place of the public hearing and of the subject matter hereof 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, March 1, 2022, at 7:30 PM by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S.

McKnight, Martin Jacobs and Natasha Espada 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.

EVIDENCE

Submitted for the Board's review were the following exhibits:

- Exhibit 1 - Application Form for Site Plan Review completed by the applicant dated February 1, 2022.
- Exhibit 2 - Letter from Attorney Evans Huber, dated January 25, 2022.
- Exhibit 3 - Plan entitled "Site Plan, 589 Highland Avenue, Wingate Needham, Needham Mass." Prepared by R.E. Cameron and Associates, Inc., dated January 12, 2022.
- Exhibit 4 - Architectural Plans, entitled "Wingate at Needham Rehabilitation," prepared by The Architectural Team, In., consisting of 7 sheets: Sheet 1, Sheet D1.00, entitled "Demolition Overall Plan – Basement," dated January 19, 2022; Sheet 2, Sheet D1.01, entitled "Demolition Overall Plans (Schematic)," dated January 19, 2022; Sheet 3, Sheet A1.00, entitled "Proposed Overall Plan – Basement," dated January 19, 2022; Sheet 4, Sheet A1.01, entitled "Proposed Overall Plans (Schematic)," dated January 19, 2022; Sheet 5, Sheet A2.10, entitled "Enlarged Unit Plans," dated January 19, 2022; Sheet 6, Sheet 2.11, entitled "Enlarged Unit Plans," dated January 19, 2022; Sheet 7, Sheet A2.12, entitled "Enlarged Unit Plans," dated January 19, 2022.
- Exhibit 5 - Traffic Analysis, prepared by Ron Müller and Associates, dated December 10, 2021.
- Exhibit 6 - Interdepartmental Communication (IDC) to the Board from Thomas Ryder, Acting Town Engineer, dated February 24, 2022; IDC to the Board from Timothy McDonald, Health Department, dated February 24, 2022; and IDC to the Board from Chief Dennis Condon, Fire Department, dated February 8, 2022.

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

FINDINGS AND CONCLUSIONS

The findings and conclusions made in Major Project Site Plan Special Permit No. 93-3, dated July 27, 1993, as amended August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997, and March 15, 2011, Insignificant Change on April 18, 2013, and further amended on December 17, 2013, were ratified and confirmed except as follows:

- 1.1. The property has been the subject of several site plan special permit decisions and amendments thereto. The original decision was dated July 27, 1993, and was amended as follows: August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997, and March 15, 2011, Insignificant Change on April 18, 2013, and further amended on December 17, 2013.
- 1.2 The requested amendment would, if granted, permit the conversion of the existing 142-bed skilled nursing facility to 50 independent living units consisting of studios, 1-bedroom and 2-bedroom apartments with full kitchens and washers and dryers. No other use is proposed and no change to the ground, exterior or the building or footprint of the building is proposed.
- 1.3 The Petitioner stated that before filing with the Massachusetts Department of Public Health to close the skilled nursing facility, only 98 of the 142 beds were filled. Staffing was also low. The

Petitioner has expressed that they could not maintain the long-standing quality of care that they were accustomed to giving the residents.

- 1.4 Additionally, the Petitioner notes that the original Site Plan Special Permit No. 93-03, dated July 27, 1993, was issued to Continental Healthcare VII Limited Partnership. Section 4.5 of the Decision states that the Special permit shall not be transferred or assigned without approval of the Board, after notice and a hearing. By decision dated March 15, 2011, approval was granted to transfer the Special Permit to NHP Properties Business Trust, and Section 4.5 of the Decision was amended accordingly. The current owner, Wingate at Needham, Inc. acquired the property in 2016. The Petitioner and owner now seek approval of the transfer to Wingate at Needham, Inc. The Board approves the requested transfer from NHP Properties Business Trust to Wingate at Needham, Inc. as conditioned by Section 4.5 of this decision.
- 1.5 A traffic study was included as part of this application (Exhibit 5). The traffic study shows the project will result in a reduction in vehicle trips and a reduction in parking demand. On a typical weekday, the independent living units will generate a total of 260 fewer vehicle trips (entering and exiting), including fewer trips during the morning and afternoon peak hours. On Saturdays, it is expected that the independent living units will likewise generate fewer trips during the peak hour than the existing facility.
- 1.6 Per Section 3.12.9 of the By-Law, the parking requirement for independent living units is .5 spaces per unit, resulting in a required parking supply for this proposed redevelopment of 25 spaces. The Petitioner also anticipates 5 full time employees which would require an additional 2.5 spaces (1 space per 2 employees). The additional parking requirement would bring the total required parking to 28 spaces. As the existing number of spaces on this site is 98 (96 constructed, 2 reserved) there is more than sufficient existing parking to satisfy the requirement. By prior special permit, permission was granted to count 10 spaces on the adjacent property (known as "Lot A") towards the required parking total. However, because the required parking supply is decreasing so significantly, to 28, it will no longer be necessary to utilize those spaces on the adjacent property.
- 1.7 As indicated in the Zoning Table shown on the Plan, the lot conforms to zoning requirements as to area and frontage. As indicated in the Zoning Table shown on the Plan, the proposed building will comply with all applicable dimensional and density requirements of the Elder Services Zoning District for an elder service use namely, front, side and rear setback, maximum building height, maximum number of stories, and floor area ratio. As indicated in the Zoning Table shown on the Plan, the proposed parking lot currently already complies with all the Design Guidelines under Section 5.1.3 of the Zoning By-Law except for the installation of a bicycle rack, which the Petitioner proposes to install.
- 1.8 Pursuant to Section 3.12.10 of the Zoning By-Law, at least 10% of the Independent Living Apartments shall be Affordable Housing Units. Since the proposal includes the creation of fifty (50) independent living units, the Petitioner has proposed that five (5) will be designated as Affordable Housing Units. At the Planning Board's request, the Petitioner will include 12.5% of the units as affordable for a total of 7 units (rounded up from 6.25).
- 1.9 Adjoining premises will be protected against any seriously detrimental uses of the proposed project by minimizing new impervious soil, screening with louvers, and acoustical levels that meet all state of Massachusetts airborne noise requirements. There will be no new building nor any new parking surfaces added.
- 1.10 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets and the location of driveway openings in relation to traffic or to adjacent streets has been

assured. The proposed change in use from skilled nursing to independent living units will greatly reduce parking demand and vehicle trips.

- 1.11 Adequate parking has been provided for staff, deliveries, visiting professionals, family and friends of residents.
- 1.12 Adequate methods of disposal of refuse and other wastes resulting from the uses permitted on the site have been provided. No change to the waste disposal plan is being proposed.
- 1.13 The proposed project will not have any 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. The site is already developed and the total number of people living there will be reduced.
- 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 has been met. The site is already developed. The parking lot as currently constructed contains many more parking spaces than are required. The petitioner may in the future return to the Board to amend the site plan to include more open space. In the meantime, the Petitioner will maintain the existing landscaping.
- 1.15 Under Section 3.12.4 of the By-Law, a special permit to operate independent living units in the Elder Services Zoning District may be granted if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. Based on the above findings and conclusions, the Board finds that the proposed development Plan, as conditioned and limited herein, 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.
- 1.16 Under Section 7.4 of the By-Law and Section 4.2 of Major Project Site Plan Special Permit No. 93-3, dated July 27, 1993, as amended August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997 and March 15, 2011, Insignificant Change on April 18, 2013 and further amended on December 17, 2013, a Major Project Site Plan Special Permit Amendment may be granted in the Elder Services Zoning District, if the Board finds that the proposed project complies with the standards and criteria set forth in the provisions of the By-Law. Based on the above findings and criteria, the Board finds that the Approved Plan Set, as conditioned and limited herein for 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 proposed a development which is harmonious with the surrounding area.

THEREFORE, the Board voted 5-0 to GRANT (1) the requested special permit for 50 independent living units in the Elder Services Zoning District under Section 3.12.4 of the Zoning By-Law; and (2) a special permit for a Major Project Site Plan Review Amendment under Section 7.4 of the Zoning By-Law; 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 pertaining to this Decision, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building Commissioner shall not issue any building permit for the work proposed in this Decision nor shall he permit any construction activity pertaining to this Decision 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 Commissioner. Where approvals are required from persons other than the Building

Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any building permit or permit for any construction on the site. The Petitioner shall submit four copies of the final Plans as approved for construction by the Building Commissioner to the Board prior to the issuance of a Building Permit.

- 2.0 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 loading dock area converted to covered bike parking.
 - b) An existing condition as-built plan for the entire Elder Services District Campus shall be provided.

CONDITIONS AND LIMITATIONS

The plan modifications, conditions and limitations contained in Major Project Site Plan Special Permit No. 93-3, dated July 27, 1993, as amended August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997, and March 15, 2011, Insignificant Change on April 18, 2013, and further amended on December 17, 2013, are ratified and confirmed except as modified herein.

DECISION

NOW THEREFORE, by unanimous vote of the Planning Board, the Board votes that:

- 3.1 The plan modifications, conditions and limitations contained in Major Project Site Plan Special Permit No. 93-3, dated July 27, 1993, as amended August 9, 1994, August 8, 1995, November 21, 1995, June 3, 1997, and March 15, 2011, Insignificant Change on April 18, 2013, and further amended on December 17, 2013, are ratified and confirmed, except as follows:
- 3.2 The conversion of the existing 142-bed skilled nursing facility to 50 independent living units consisting of studios, 1-bedrooms and 2-bedrooms apartments with full kitchens and washers and dryers is approved. Any changes, revisions or modifications to the Plan, as modified by this Decision, shall require approval by the Board. Minor revisions to the floor plan are permitted provided that the total square footage of the building does not increase, and the total number units does not exceed 50.
- 3.3 No administrative use, other than that needed for operation of the independent living units, or other community activity incidental to the facility being conducted on the site, shall be allowed. There shall be no more than 5 full time employees.
- 3.4 At least 96 paved parking spaces including 59 full sized spaces and 37 compact spaces shall be provided on-site. With the conversion of the existing 142-bed skilled nursing facility to 50 independent living units the 10 additional parking spaces located on the adjacent property (known as "Lot A") which previously served the skilled nursing facility shall no longer be required for the independent living use.
- 3.5 Pursuant to Section 3.12.10 of the Zoning By-Law, at least 10% of the independent living apartments shall be Affordable Housing Units. At the request of the Board, the Petitioner, however, has committed to 12.5% of the units being Affordable Housing Units. Since after completion of the proposed addition, the project will contain 50 independent living apartments, a total of seven (rounded up from 6.25) of said apartments shall be Affordable Housing Units. The seven affordable units will be proportionately distributed throughout the new building in terms of both unit size and type consistent with Local Initiative Guidelines, Section VI.B.5.d.
- 3.6 There shall be seven new affordable units in the entire building. The seven affordable housing units in the project shall be as defined in Section 1.3 of the By-Law. Said units shall comply with

all applicable provisions of the Department of Housing and Community Development's (DHCD) Chapter 40B Guidelines, dated February 22, 2008, as amended, and shall be eligible for the Chapter 40B Subsidized Housing Inventory as "Local Action Units" under the DHCD Local Initiative Program. It shall be the Petitioner's responsibility to prepare all applications, exhibits, and supporting documentation that DHCD requires in order to approve the unit for the Subsidized Housing Inventory and to record a DHCD-approved affordable housing restriction with the Norfolk Registry of Deeds or the Land Court. No certificate of occupancy shall be issued for the project until the Petitioner provides evidence that such restriction has been recorded.

- 3.7 Subject to DHCD approval, the Petitioner shall set aside up to 70% of the affordable units as local preference units, i.e., offered first to Needham residents or persons with a connection to the Town, in accordance with a local preference policy determined by the Board of Selectmen consistent with DHCD directives and applicable state and federal laws. The Town will provide reasonable assistance to the Petitioner in designing an affirmative marketing plan for the Affordable Units. The Town may delegate oversight of an affirmative marketing plan and local preference selection procedures to another organization deemed appropriate by the Board to represent the Town interests. All costs associated with preparing and implementing the affirmative marketing plan and local preference procedures shall be paid by the Petitioner.
- 3.8 The Town of Needham intends to enter into an agreement with a person or entity selected by the Town Manager and approved by DHCD to monitor the Petitioner's compliance with the affordability restriction on an annual basis and to provide an annual report of its monitoring to the Town (the "Monitoring Agent"). The Petitioner shall pay for the cost of the Monitoring Agent pursuant to a separate agreement between the Town and the Petitioner. The Petitioner shall cooperate with the monitoring agent by providing all documentation necessary to demonstrate that the affordable housing units comply with Section 1.3 of the Zoning By-Law and this Decision and are occupied by income-eligible households.
- 3.9 In addition to the provisions 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 Board of Selectmen, Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.10 All construction staging shall be on-site. No construction parking shall be on public streets. Construction parking shall be all on site or a combination of on-site and off-site parking at locations in which the Petitioner can make suitable arrangements. Construction staging plans shall be included in the final construction documents prior to the filing of a Building Permit and shall be subject to the review and approval of the Building Commissioner.
- 3.11 The following interim safeguards shall be implemented during construction:
 - a. The hours of construction shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday not at all on Sundays and holidays.
 - b. The Petitioner's contractor shall provide temporary security chain-link or similar type fencing around the portions of the project site, which require excavation or otherwise pose a danger to public safety.
 - c. The Petitioner's contractor shall designate a person who shall be responsible for the construction process. That person shall be identified to the Police Department, the Department of Public Works, the Building Commissioner, and the abutters and shall be contacted if problems arise during the construction process. The designee shall also be responsible for assuring that truck traffic and the delivery of construction material does not interfere with or endanger traffic flow on Highland Avenue, Gould Street or surrounding streets.

- 3.12 No building permit shall be issued for the proposed project in pursuance of the Special Permit and Site Plan Approval until:
- The final plans shall be in conformity with those approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Commissioner.
 - A construction management and staging plan shall have been submitted to the Police Chief and Building Commissioner for their review and approval.
 - 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.
- 3.13 No building or structure, or portion thereof, subject to this Special Permit and Site Plan Approval shall be occupied until:
- There shall be filed with the Board and Building Commissioner a Final Construction Control Document signed by a registered architect upon completion of construction.
 - The Town shall have received a copy of the recorded DHCD-approved affordable housing restriction as described in paragraph 3.6.
- 3.14 In addition to the provisions 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 Board of Selectmen, Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.15 The building or structure authorized for construction by this permit 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 Commissioner.
- 3.16 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, that this information is true and valid to the best of the Petitioner's knowledge.
- 3.17 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 Commissioner 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 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 This Special Permit shall not be transferred or assigned by Wingate at Needham, Inc. without the prior approval of the Board after hearing and notice.
- 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 March 15, 2024, 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 March 15, 2024. 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.

