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PLANNING DIVISION
Planning & Community Development

AMENDMENT TO DECISION
May 17, 2022

MAJOR PROJECT SITE PLAN SPECIAL PERMIT
The James
1027 Great Plain Avenue, Needham, MA 02492
Application No. 91-07

(Original Decision dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, and October 10, 2017)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Henry Hospitality Inc., d/b/a The James, 18 Clifondale Street, Roslindale, MA, (hereinafter referred to as the Petitioner) for property located at 1027 Great Plain Avenue, Needham, Massachusetts, 02492. Said property is shown on Needham Town Assessors Plan, No. 51 as Parcel 11 containing 14,800 square feet in the Center Business Zoning District.

This decision is in response to an application submitted to the Board on March 17, 2022, by the Petitioner to amend the decision by the Board dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, and October 10, 2017. The Petitioner seeks: (1) a Major Project Site Plan Review Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law); (2) a Special Permit Amendment to Major Project Site Plan Review Special Permit No. 91-7, Section 4.2; and (3) a Special Permit Amendment under Section 5.1.1.6, to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the By-Law (required parking and parking plan and design requirements, respectively).

The requested Major Project Site Plan Review Special Permit Amendment would, if granted, amend the Decision to permit up to 69 outdoor seats by the James Pub on 5 on-site parking spaces located on the eastern edge of the restaurant building which the Petitioner had previously made available for public use in the municipal parking lot on Chapel Street and on private property which the Petitioner controls along the southern edge of the restaurant building.

The outdoor dining is proposed to be year-round, subject to approval by the Select Board. The 5 private parking spaces, which had been, by decision dated September 8, 2015, made available to the public and restricted to two-hour use, are now proposed to be used for outdoor dining purposes.

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, May 3, 2022 at 7:20 p.m. by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight,

Natasha Espada and Artie Crocker were present throughout the May 3, 2022 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 for Amendment to Major Project Site Plan Review Special Permit No. 91-7 and application under Section 6.9 of the By-Law, dated March 17, 2022.
- Exhibit 2 - Plan prepared by Scott Melching Architect, entitled "The James Pub and Revisions, Needham, MA, Exterior Seating Plan," dated December 23, 2021.
- Exhibit 3 - 5 photographs of the exterior seating presently in place at The James.
- Exhibit 4 - Second License Agreement and Memorandum of Understanding between the Town of Needham, Triantos and Dina Thomas, Henry Hospitality, and the Heffernan Associates Nominee Trust, dated March 2, 2022.
- Exhibit 5 - Major Project Site Plan Special Permit No. 2015-06, dated September 8, 2015, amended March 28, 2022, issued to the Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, for property at the location of the Existing Municipal Chapel Street Parking Lot, shown on Assessor's Map No. 51 as Parcel 8 containing .79 acres.
- Exhibit 6 - Email to Alex Clee from Stuart Henry, Petitioner, dated September 8, 2015, with two attachments: 1) site plan comprising two sheets with sketch on it showing proposed location of outdoor dining; and 2) photograph of the proposed outdoor seating installation.
- Exhibit 7 - Letter to Henry Hospitality, Inc. d/b/a, The James, from Charles Intha, Architrave Owner, dated, April 14, 2022.
- Exhibit 8 - Design Review Board approval, dated March 28, 2022.
- Exhibit 9 - Inter-Departmental Communication (IDC) to the Board from Tara Gurge, Health Division, dated March 23, 2022; IDC to the Board from Tom Ryder dated March 25, 2022; IDC to the Board from Chief Dennis Condon, Fire Department, dated March 17, 2022; and IDC from Dave Roche, Building Commissioner, dated March 17, 2022, March 22, 2022 and April 29, 2022.

Exhibits 1, 2, 3, 6 and 7 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

The findings and conclusions made in Major Project Site Plan Special Permit No. 91-7, dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, and October 10, 2017, were ratified and confirmed except as follows:

- 1.1 The Petitioner is requesting that Major Project Site Plan Special Permit No. 91-7, dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, and October 10, 2017, be amended to reduce the number of approved indoor dining seats permitted at the premises from 67 seats to 56 seats and to permit up to 69 outdoor seats by the James Pub on 5 on-site parking spaces located on the eastern

edge of the restaurant building which the Petitioner had previously made available for public use in the municipal parking lot on Chapel Street and on private property which the Petitioner controls along the southern edge of the restaurant building. The outdoor dining is proposed to be year-round, subject to approval by the Select Board. The 5 private parking spaces, which had been, by decision dated September 8, 2015, made available to the public and restricted to two-hour use, are now proposed to be used for outdoor dining purposes.

- 1.2 The parking lot (located behind Chapel Street) is the subject of a license agreement between the Town and the property owner of 1027 Great Plain Avenue to permit parking on the private spaces for municipal purposes (Exhibit 4). The Town of Needham has independently sought and received an amendment to Major Project Site Plan Special Permit No. 2015-06, dated September 8, 2015, amended March 28, 2022, to allow for outdoor dining to occur on the Chapel Street municipal parking lot which had been previously dedicated to a municipal parking purpose (Exhibit 5).
- 1.3 The Amendment to Decision of Major Project Site Plan Special Permit Decision No. 91-7, dated October 10, 2017, amended the then current Decision of October 20, 2009, to allow Gibbous Moon, Inc., d/b/a The Center Café Needham to transfer their business and licenses, to Henry Hospitality, Inc., d/b/a The James; to revise the floor plan and seating plan for the restaurant to 67 seats; to modify the dinner hours to 3:00 p.m. to Midnight, and to allow the restaurant to be open for brunch on Saturday and Sunday from 10:00 a.m. to Midnight. Currently, the James is permitted as a sixty-seven (67) seat full-service restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter restaurant and with one take-out station. The restaurant may be open for business seven (7) days a week from 3:00 p.m. to Midnight, Monday through Friday, and from 10:00 a.m. to Midnight on Saturday and Sunday. Under the By-Law, the parking requirement for a 67-seat restaurant with one take-out station is 33 parking spaces (1 parking space per 3 seats plus 10 parking spaces per take-out station). The Petitioner received a parking waiver of 33 parking spaces thereby reducing the parking required for the restaurant use from 33 spaces to 0 spaces. The Petitioner was required to dedicate 5 of its on-site parking spaces to use by the public as two-hour parking and to mark such spaces accordingly.
- 1.4 The Petitioner is now requesting at this location a one-hundred twenty-five (125) seat full-service restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter during the outdoor dining season being year round, distributed as follows: fifty-six (56) seats are to be available for indoor table dining with one take-out station and sixty-nine (69) seats are to be available for outdoor table dining.
- 1.5 The Petitioner further proposes to utilize the bathroom at the back of the building of Architrave, a property within 30 feet from the outdoor dining. This additional bathroom availability is required to meet the plumbing code. The building has two accessible bathrooms with a single fixture in each bathroom this limits the occupancy to 90 under the State Plumbing Code. The new outdoor seating plan shows 69 exterior seats and the interior seating is now 56 seats for a total of 125 seats, this puts the seating over the plumbing capacity. The Petitioner has represented his intent to enter into an agreement with the owner of the Architrave toy store Mr. Charles Intha for the use of the store's existing bathrooms (Exhibit 7). The bathrooms are located in the rear of the toy store near the rear exit door which is approximately 30 feet from the outdoor seating for the restaurant. The additional access to restrooms is required to meet the plumbing code and allow for the use of the 69 exterior seats.
- 1.6 The Petitioner secured a waiver to reduce the number of required on-site parking spaces for the 67-seat indoor restaurant use with one take-out station of 33 spaces under the Amendment to Decision of Major Project Site Plan Special Permit Decision No. 91-7, dated October 10, 2017. The Petitioner now seeks to reduce the indoor seating at the restaurant from 67 seats to 56 seats and to 4 of the 5 on-site parking spaces from a public parking use to outdoor dining and to thus revise the parking waiver

associated with this aspect of its operation. The Petitioner further proposes to provide 1 on-site handicap parking space adjacent to the outdoor seating installation. Under the By-Law, the parking requirement for a 56-seat restaurant with one take-out station is 29 parking spaces (1 parking space per 3 seats plus 10 parking spaces per take-out station). Accordingly, the Petitioner under Section 5.1.1.6 seeks a parking waiver of 28 parking spaces for this aspect of its operation thereby reducing the parking required for the indoor dining operation from 28 spaces to 1 on-site handicap parking space. This represents a decrease of 5 spaces from the parking waiver authorized under the Amendment to Decision of Major Project Site Plan Special Permit Decision No. 91-7, dated October 10, 2017.

- 1.7 The Petitioner has further requested a 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 (number of parking spaces) as relates the required parking for the year-round seating plan of fifty-six (56) indoor dining seats and sixty-nine (69) outdoor dining seats. Under the By-Law, the parking requirement for a 56-seat indoor restaurant with one take-out station is 29 (1 parking space per 3 seats, plus 10 parking spaces for one take-out station). Section 6.9 of the Zoning By-Law permits up to 30% of the approved indoor seating to be utilized outdoors without authorization from the Special Permit Granting Authority and the provision of additional parking. 30% of 56 seats is 17 seats. As the Petitioner is requesting 69 outdoor seats, the Petitioner is requesting more than 30% of the approved indoor seats and is therefore requesting approval for such, as allowed by Section 6.9, as well as an additional parking waiver under Section 5.1.1.6. Seventeen (17) seats are permitted through Section 6.9; therefore, the Petitioner is requesting a parking waiver with respect to the remaining 52 outdoor seats, which is a waiver of 18 additional parking spaces. Accordingly, a waiver of 18 additional parking spaces has been requested while the outdoor dining is being utilized (which is proposed to be year-round). One parking space is provided on-site. As the indoor parking space waiver is 28 spaces and the outdoor dining parking space waiver is for 18 spaces the total parking waiver requested is 46 parking spaces or an increase of 13 parking spaces from the current circumstance.
- 1.8 Pursuant to Section 5.1.1.1 of the By-Law no change of a structure or use from a use described in the categories described in Section 5.1.2 of the By-Law to another category that requires additional off street parking shall be made unless in accordance with Sections 5.1.2 and 5.1.3 of the By-Law for the entire structure or a waiver is granted pursuant to the provisions of Section 5.1.1.6. As one compliant handicap parking space is associated with the property, a waiver under the provisions of Section 5.1.1.6, Subsection 5.1.3 is not required.
- 1.9 The Petitioner has requested to revise the Decision transferred on October 10, 2017, which previously stated: "On the basis of the evidence presented by the transferee, the Planning Board by unanimous vote, after motion duly made and seconded, consents to the transfer by Gibbous Moon, Inc., d/b/a The Center Café Needham to Henry Hospitality, Inc., d/b/a The James of Major Project Site Plan Special Permit No. 1991-07 dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, and transferred on September 24, 1996, May 8, 2001, and October 20, 2009, to use the premises at 1027 Great Plain Avenue for a restaurant with one take-out counter with seating for up to 100, subject to the following conditions." to now say "On the basis of the evidence presented by the transferee, the Planning Board by unanimous vote, after motion duly made and seconded, consents to the transfer by Gibbous Moon, Inc., d/b/a The Center Café Needham to Henry Hospitality, Inc., d/b/a The James of Major Project Site Plan Special Permit No. 1991-07 dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, and transferred on September 24, 1996, May 8, 2001, and October 20, 2009, to use the premises at 1027 Great Plain Avenue for a restaurant with one take-out counter with seating for up to 56 indoors and 69 outdoors, subject to the following conditions."
- 1.10 No changes to the interior of the restaurant are proposed by this application except for a reduction in the total number of indoor seats from 67 seats to 52 seats.

- 1.11 The Petitioner appeared before the Design Review Board on March 28, 2022 and obtained approval for the project.
- 1.12 Under Section 7.4 of the By-Law, a Major Project Site Plan 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 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.
- 1.13 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.

DECISION

THEREFORE, the Board voted 5-0 to GRANT: (1) an amendment to a Major Site Plan Review Special Permit No. 91-7, issued by the Needham Planning Board dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, October 10, 2017, under Section 7.4 of the Needham Zoning By-Law and Special Permit 91-7, Section 4.2; and (2) 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), subject to and with the benefit of the following Plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the site, 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, 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 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 nine 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 Plan shall be modified to include the requirements and recommendations of the Board for approval and endorsement. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.
- a) A floor plan shall be submitted showing the indoor seating reduced from 67 seats to 52 seats.
 - b) The application shall be corrected to show that 4 private parking spaces will be utilized for the outdoor dining installation.

- c) The Plan shall be revised to show one handicap parking space located adjacent to the outdoor dining installation with said space designed and having signage as detailed in Condition 3.6 below.
- d) The plan shall be revised to show the installation of a railing along the ramp accessing the outdoor seating area.

CONDITIONS AND LIMITATIONS

The conditions and limitations contained in Major Project Site Plan Special Permit No. 91-7, dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, transferred on September 24, 1996, May 8, 2001, October 20, 2009, and September 8, 2015, and transferred on October 10, 2017, are ratified, and confirmed except as modified herein.

- 3.1 A total of 69 outdoor dining seats as shown in the plans as detailed in Exhibit 2 of the Decision are hereby approved for use year-round, subject to the approval of the Select Board, within the area shown on the marked-up plan in Exhibit 6.
- 3.2 The outdoor dining area shall be kept clear of trash and food scraps that might attract rodents.
- 3.3 Outdoor dining is only permitted as long as the safety measures to separate vehicles and people dining can be maintained. During the Covid-19 relief measures that permitted outdoor dining, this has consisted of “Jersey barriers” as provided by the Town. If said barriers are no longer available, the Petitioner shall return to the Planning Board to request some alternate barrier, at which time the Board will seek comment from public safety and DPW departments.
- 3.4 Exercise of the rights under this permit are subject to approval by the Select Board as the holder of the Second License Agreement and Memorandum of Understanding between the Town of Needham, Triantos and Dina Thomas, Henry Hospitality, and the Heffernan Associates Nominee Trust, dated March 2, 2022 (Exhibit 4).
- 3.5 The Petitioner shall provide for the Board’s review and approval a copy of its agreement with the owner of the Architrave toy store located at 1029 Great Plain Avenue for the use of two bathrooms located in the rear of the store and within 30 feet from the proposed outdoor dining area for use by the James restaurant patrons. Entry to the bathrooms shall be through the back door of the toy store which shall be marked clearly with signs for The James patrons. Said bathroom facilities shall be available as further described in Section 1.5 of this Decision. The Board shall be notified by the Petitioner in the event that there is a modification, waiver or amendment to the arrangements with the owner of the Architrave toy store to allow for use by the James patrons of the bathroom facilities at the Architrave toy store location. Notice required under this Section shall be sent by United States certified mail, postage prepaid, or recognized overnight courier (such as UPS or Federal Express), addressed to the Needham Planning Board, Public Services Administration Building, 500 Dedham Avenue Needham, MA, Attn. Lee Newman, Director Planning and Community Development. The relief granted by this permit and the authorization of the 69 outdoor dining seats shall automatically lapse if any of the required off-site bathroom facilities at the Architrave toy store located at 1029 Great Plain Avenue cease to be available for the stated purpose.
- 3.6 The Petitioner shall make available to the public one on-site handicap parking space immediately adjacent to the outdoor dining installation. Signage indicating the noted purpose shall be provided including an above-grade sign at the space that includes the international symbol of accessibility on a blue background with the words “Handicapped Parking Special Plate Required Unauthorized Vehicles May Be Removed At Owners Expense”. The design of the space, as well as the required signage shall comply with the M.S.B.C. 521 CMR Architectural Access Board Regulation and the Town of Needham General By-Laws, both as may be amended from time to time.

- 3.7 The “Decision” section of the October 10, 2017 transferred decision is revised to say: “On the basis of the evidence presented by the transferee, the Planning Board by unanimous vote, after motion duly made and seconded, consents to the transfer by Gibbous Moon, Inc., d/b/a The Center Café Needham to Henry Hospitality, Inc., d/b/a The James of Major Project Site Plan Special Permit No. 1991-07 dated February 4, 1992, amended March 23, 1993, November 15, 1994, and September 8, 2015, and transferred on September 24, 1996, May 8, 2001, and October 20, 2009, to use the premises at 1027 Great Plain Avenue for a restaurant with one take-out counter with seating for up to 56 indoors and 69 outdoors, subject to the following conditions.”
- 3.8 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 Select Board, Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.9 No portion of the outdoor dining area, subject to this Amendment, shall be occupied and utilized by the Petitioner until there shall be filed with the Board documentation of a satisfactory inspection by the Building Commissioner of the as-built condition and the Commissioner certification of the project’s compliance with the terms of this Decision.
- 3.10 No other changes were requested nor are permitted through this amendment.
- 3.11 This Site Plan Special Permit Amendment shall lapse on May 17, 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 May 17, 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 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.

