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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit Amendment

***Boston Swim School, LLC, (d/b/a Gold Fish Swim School), Applicant
IC 45 Fourth Ave LLC, Owner
45 Fourth Avenue
Map 300, Parcel 20***

June 20, 2024

Boston Swim School, LLC, (d/b/a Goldfish Swim School) applied to the Board of Appeals for a Special Permit Amendment under Sections 3.2.4.2, 5.1.1.5, 5.1.2., 5.1.3 and any other applicable sections of the By-Law to permit a private school to adjust hours of operation, increase limit on number of students to 50, increase limit on number of staff to 28, and allow “family swims” and birthday parties as a form of open swim without direct instruction or class, accessory to the main use; and amend the existing Special Permit pursuant to waiving strict adherence to the number of required parking and the parking plan and design requirements. The property is located at 45 Fourth Avenue, Needham, MA in the New England Business Center (NEBC) Zoning District. A public hearing was held in the Charles River Room, Public Services Administration Building, 500 Dedham Avenue, on Thursday, June 20, 2024 at 7:45 p.m. with Zoom livestream.

Documents of Record:

- Application for Hearing, Clerk stamped May 24, 2024.
- Cover Letter prepared by George Giunta, Jr., attorney, dated May 24, 2024.
- Memorandum in Support prepared by George Giunta, Jr., attorney, dated May 24, 2024
- Memorandum and Goldfish Swim School – Parking Evaluation prepared by MDM Transportation Consultants, Inc., signed by Robert J. Michaud, P.E., Managing Principal, and Daniel A. Dumais, PE, Senior Project Manager, dated May 14, 2024.
- Proposed Site, prepared by R.E. Cameron and Associates, Land Surveyors, stamped by Scott D. Cameron, Professional Land Surveyor, and dated August 25, 2014.
- Letter from Lee Newman, Director of Planning and Community Development, dated June 4, 2024.
- Email from Joseph Prondak, Building Commissioner, dated June 11, 2024.
- Email from Justin Savignano, Assistant Town Engineer, dated June 11, 2024.

- Email from Chief Tom Conroy, Fire Department, dated May 31, 2024.
- Email from Chief John Schlittler, Police Department, dated May 30, 2024.
- Email from Tara Gurge, Assistant Public Health Director, dated June 10, 2024.
- 45 Fourth Avenue – Special Permit – 9-18-2014.
- 45 Fourth Avenue – Special Permit Amendment – October 16, 2014.

June 20, 2024

The Board included Jonathan D. Tamkin, Chair, Nikolaos Ligris, Member and Peter Friedenberg, Associate Member. Mr. Tamkin opened the hearing at 7:45 p.m. by reading the public notice.

George Giunta, Jr., attorney representing the applicant, reported that the property was a 45,041 square foot lot located in the New England Business Center District occupied by a one story 13,138 square foot commercial building. The building has been occupied by the Boston Swim School, LLC d/b/a Goldfish Swim School (“Applicant”)

The Board issued a decision *45 Fourth Avenue - Special Permit – 9-18-2014* (“2014 Decision”) which limited the use of the building as a private school with conditions as to the maximum number of students and staff, limits of hours of operations, with no open swim periods; and granted a waiver for strict adherence to parking and design requirements. Since then the business has grown and a recent site inspection by the Health Department identified a discrepancy between the 2014 Decision limits and the current use.

With the identification of the increase in students a corresponding review of the parking was triggered which necessitated a parking study which led to this application for an amendment to the 2014 Decision.

Mr. Tamkin asked that Mr. Giunta identify the differences between the 2014 Decision and the current operations. Mr. Giunta identified the following differences:

2014 Decision Conditions	Current Operations/Proposed Changes
Limit of 30 students on site	50 students on site
12 staff on site	28 staff on site
Open Swim not allowed	Family Swim and Birthday Parties allowed
Hours of Operations: M-F:7:00am-9:00pm Saturday:7:00am-7:30pm Sunday:9:00am-7:30pm	Hours of Operation: 7 days a week 7:00am-8:30pm

Mr. Tamkin asked how long had the deviation been going on since the 2014 Decision. Mr. Giunta did not know. Mr. Tamkin was surprised the difference hadn’t been noticed before. Mr. Giunta believed that the changes happened gradually over time and the differences depended upon what was going on in the pool when inspections were conducted.

Mr. Tamkin asked if the school was a franchise and whether it was the same owner as at the time

of the 2014 Decision. Mr. Giunta affirmed that the school was a franchise, and the owner was the same.

According to Mr. Giunta the most substantive change to the 2014 Decision is to the Open Swim limit. Currently there is a **Family Swim** which allows current students who are members of the program to practice what they learned with their parents/guardians or to overcome a personal swim challenge. The family swim is not instruction driven. The family swims are held Tuesdays, Thursdays and Sundays for one hour, and on Fridays for two hours in the afternoons. Time wise it is a small portion of the weekly schedule.

Birthday Parties are held on Saturdays for two hours for a maximum of 24 individuals generally overseen by three staff. Birthday parties can only be booked by existing members. Birthday party guests may include members of the public.

Family Swim and **Birthday Parties** also serve as a marketing opportunity to potential members. It's an important part of the programing but accessory to the main educational swimming programing. These activities can be considered ancillary based on the limited number of participants and the number of hours involved.

There is an impact on the parking demand calculations with the increase from 30 students to 50 students. According to the 2014 Decision the parking calculations were based on 1 space per student (20) and staff (11). The student number was then doubled to cover for any overlap in classes generating a parking total demand of 51 spaces: 40 students + 11 staff = 51 parking spaces.

The program participants are small children who do not drive. Generally, program participants are siblings and may also carpool with friends in a single car which was not reflected in the calculations. Mr. Giunta posits that the ultra-conservative parking calculations may have been based on the available parking, a 52-space parking lot, not on the transportation reality. Mr. Giunta thought that the analysis was conservative as there is no clear category in the By-Law for parking for the private swim school.

Under Section 5.1.2 (12) of the By-Law, the parking requirement for colleges, vocational and high school is one space per one-half of expected enrollment. In this scenario the parking demand would be 25 spaces. Mr. Giunta considered this to be too low based on the parking study and his personal understanding.

Under Section 5.1.2 (18) of the By-Law, there are two methodologies for calculating the parking requirement for indoor athletic or exercise facilities. One, based on square footage (requiring one space for every 150 s.f.) plus one space for every three employees, would require 98 spaces (13,138 s.f. divided by 150 s.f. = 88 (rounded) plus 28 staff divided by 3 = 10 (rounded)). The other, based on peak occupancy, requires one space per employee) 28 plus one space per visitor (50 students), for a total of 78 parking spaces. Mr. Giunta felt the parking calculations of 78 parking spaces was most congruent with the parking study, which showed that at the peak demand period (Saturday morning), the maximum number of people observed on-site was 73 people. The parking study showed at that peak period a total of 67 cars were parked either on-

site or on the street.

Mr. Giunta noted that there are a total of 76 available spaces (53 on-site parking spaces with 23 on-street parking spaces) which is more than the spaces needed at an observed Saturday peak parking demand period of 67 spaces. Based on the MDM Transportation Consultants study, there is ample parking to support the current peak demand. In addition, the peak period on Saturday morning occurs when there is more on-street parking available during the surrounding office area's off-hours. Furthermore, in the ten years the swim school has been in operation there have been no parking issues or complaints.

Mr. Giunta noted that 60% of the staff arrive by alternative transportation - car pool, bike or public transportation. Staff is encouraged to find alternative transportation.

Mr. Friedenberg asked for clarification about the 67 spaces and 73 people. Mr. Giunta said the 73 people represents the peak number of staff and swimmers observed on Saturday, March 9, 2024 at 10:30 a.m.; the 67 spaces represents the observed peak parking demand at the same time. The parking ratio is about .6:1. Mr. Giunta noted that there is adequate parking to support the program at peak periods.

Mr. Tamkin asked about a mechanism to ensure the program operates within the limits of the Special Permit and not keep growing without regard to the set conditions imposed in the Special Permit. Adrian Eagles, CFO of Gold Fish Swim School, noted that safety guidelines and the size of the facility set the limits. For example, there is a safety requirement of one lifeguard per 25 students. In addition, the school only has space to safely serve the maximum student enrollment number requested. Mr. Tamkin added that monitoring would need to be in place to verify compliance.

Comments received:

- The Health Department noted per MA Pool Code regulations there needs to be one certified lifeguard per 25 patrons in the pool. If the applicant is proposing to increase the number of students to 50, and also be able to have birthday parties, etc., as part of this approval, Public Health will require documentation showing that they are able to accommodate these regulation requirements, such as, having sufficient lifeguards on site. The school's pool permit states a maximum bather load of 100 swimmers in their pool.
- The Police Department had no issue.
- The Planning Board had no comment.
- The Engineering Department had no comment or objection.
- The Building Department had no concerns.
- The Fire Department had no issues.

Randy Goldberg, principal of Intrum Corp, owner and manager of 45 Fourth Street, noted that ten years ago there was little knowledge about the program and the conservative numbers were reflected in the application for the 2014 Decision. He was in support of the program and the increased number of the swimmers requested. The school has been a good operator and there have been no complaints. He supported any imposed reporting condition imposed by the Board.

Mr. Tamkin reiterated his comments made in the 2014 Decision and thought this was a great use of the site and will be well received by the community.

Mr. Ligris had no concerns or issues regarding the parking. He was empathetic that ten years ago the relief sought and granted was issued with little real-world information or data regarding the business; and that the discrepancy identified by the Board of Health (BOH) between the programming and the 2014 Decision led to the needed amendments. He was unsure about the monitoring/reporting mechanics needed to insure this doesn't happen again.

Mr. Friedenberg agreed with Mr. Ligris. He noted that it is unusual for an applicant to come before the Board seeking an amnesty. He was frustrated that the discrepancy went unnoted for so long. He was unsure about the monitoring mechanism and imposing submission requirements that may have little compliance value. Mr. Friedenberg asked whether the applicant was interested in changing the use category. Mr. Giunta was not interested in changing the use category as the open swim (Family Swim/Birthday Parties) were an accessory use and incidental to the primary use which is instruction. Mr. Eagles added that these are part of the academic program of swim and play which is limited to members and further constrained by safety regulations and the lifeguard/swimmer ratios. These activities are limited to an infant/child with a parent/grandparent or guardian. If a non-member attends a Family Swim, it is only to check-out the facility. Mr. Giunta elaborated that no public drop-ins are allowed; interested parties need to pre-register in advance to try it out. Mr. Friedenberg was concerned about the Family Swim expanding beyond the boundaries established.

Mr. Tamkin felt the program is regulated by the Board of Health (BOH) who issues an annual pool permit regulating the use of the pool. He recommended that at the annual inspection a check-list regarding capacity, membership, staffing, and hours be provided to the BOH. He suggested that a copy be provided to the Building Department. Ms. Collins noted that it was the Building Department who noted the discrepancy when comparing the BOH pool certification with the 2014 Decision and notified the Board office of the violation of the 2014 Decision. Mr. Tamkin identified that it will be the responsibility of the Building Department to enforce any violations identified in inspection certifications by the BOH. Mr. Ligris agreed the information should be provided to the BOH. Mr. Giunta was agreeable to provide the information at the annual BOH inspections.

There was agreement that the requirement of 78 parking spaces was within the range of the parking demand supported by the evidence presented and ten years of experience.

Mr. Ligris asked how many certified lifeguards are on staff and how many are on deck at peak periods. Mr. Eagles responded that of the 28 staff members, 20 are certified lifeguards. At peak period, Saturday, March 9, 2024 at 10:30a.m., there were four lifeguards on deck, beyond the MA pool safety standard required.

Mr. Giunta noted there are no changes to the facilities or parking design waivers established in the 2014 Decision.

Mr. Ligris moved to amend the existing Special Permit dated September 18, 2014 and amended

October 16, 2014 pursuant to Sections 3.2.4.2 of the By-Law to permit the private school to adjust its hours of operation to 7:00 a.m. to 9:00 p.m. seven days a week, to increase the limit on the number of students to 50, to increase the limit on the number of staff to 28, and to allow “family swims” of no more than 50 people and birthday parties of no more than 50 people as a form of open swim without direct instruction or class and accessory to the main use; and to amend the existing Special Permit pursuant to Sections 5.1.1.5, 5.1.2., 5.1.3 waiving strict adherence to the number of required parking, all conditional on the applicant’s submission of an annual report to the BOH, the Building Inspector and the Fire Department regarding the staff, the number of lifeguards, students, and open swim/birthday party data. Mr. Friedenberg seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:35 p.m.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

- The premises is a 45,041 square foot lot improved by a one-story 13,138 square foot, one-story commercial building with 53 off-street parking spaces located in the New England Business Center Zoning District.
- The applicant Boston Swim School d/b/a Goldfish Swim School, was the subject of two prior Decisions: *45 Fourth Avenue - Special Permit – 9-18-2014* and *45 Fourth Avenue – Special Permit Amendment -10-16-2014*, and has been operating a private school specializing in individual and group swim instructions, primarily to children eight months to five years old, conditioned on hours of operations limited to Monday to Friday 7:00 a.m. to 9:00 p.m.; Saturday 7:00 a.m. to 7:30 p.m., and Sunday 9:00 a.m. to 7:30 p.m.; a limit of 30 students and 12 staff persons; swimming limited with an instructor and as part of a class, and there shall be no open swim periods.
- In 2024 during the regular course of an annual inspection by the Board of Health and the submission of their inspection report to the Building Department, the Building Department discovered inconsistencies with the operation and conditions imposed by the Special Permit and alerted the Board staff.
- Based on an analysis of its operations, the applicant submitted an amendment to the Special Permit pursuant to Section 3.2.4.2:
 - to increase the hours of operations to 7:00 a.m. to 9:00 p.m., Monday – Sunday, seven days a week;
 - to increase the maximum number of students in the pool at any one time to 50; and
 - to increase the maximum number of staff allowed on site to 28.
- The applicant also sought allowance to operate two forms of “open swim” – Family Swims and Birthday Parties. These are considered “open swim” as they lack structured instructions and may include non-members.
 - **Family Swims** – provides opportunities for member students to swim with a

parent or guardian to practice their swimming. By appointment only Family Swim is open to non-members to evaluate swimming level and ability of prospective students. Family Swim is offered three days a week for one hour each day on Tuesday, Thursday and Sunday.

- **Birthday Parties** –Bookings are restricted for members only for parties of 24 children. The parties are scheduled on Saturdays from 3:30 p.m. to 5:30 p.m. Invited guests may be non-members.

Both Family Swims and Birthday Parties were determined to be accessory to the instructional main use, based in part on the limited number of participants and the number of hours involved and as they support the main instructional use and serve as a source of prospective members.

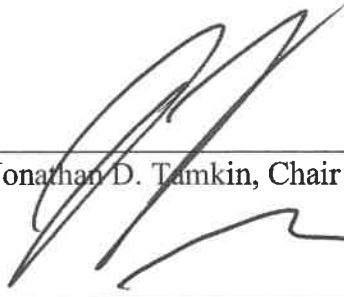
- With the increase of students and staff the applicant's traffic consultant, MDM Transportation Consultants, Inc. conducted a parking assessment. The assessment indicated that at peak period, occurring on weekend mornings/midday periods, there is a demand for 67 spaces. Pursuant to Section 5.1.2 (18) of the By-Law under *Indoor Athletic or Exercise Facility or Personal Fitness Service Establishment*, based on peak enrollment and the number of staff, the parking demand was calculated to be 78 parking spaces.
- The facility contains 53 on-site parking spaces and there are 23 on-street parking spaces located along Fourth Avenue within 200 feet of the facility entry for a total of 76 available parking spaces. During observed peak parking demand of 67 spaces there was sufficient available parking with a surplus of at least nine parking spaces.
- In the ten years of operation there have been no complaints or incidents regarding parking. Furthermore, the peak demand period occurs during off-hours for the surrounding office users. The Board finds that the parking is adequate.
- Per MA Pool Code Regulations, there needs to be one certified lifeguard per 25 patrons in the pool. Public Health will require documentation showing that the applicant has sufficient lifeguards for "open swims" of a maximum 50 individuals and for birthday parties.
- There was no opposition or objections to the proposal from the public, or from the Building, Engineering, Fire, Police and Planning Board.
- The applicant proposed no exterior changes to the existing structure or changes to the parking lot.
- All terms and conditions of the existing Special Permit, as previously amended, and not modified by this amendment, shall remain in full force and effect.
- The Board will require that the applicant annually provide data on the number of staff, lifeguards, students, open swim: family swim/birthday parties at the time of annual Board of Health and Building Department inspections and that the report shall be provided to

the Board of Health, Building Department and Fire Department.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, hereby amends the Special Permit dated September 18, 2014 as previously amended by Special Permit Amendment dated October 16, 2014 under Sections 3.2.4.2, 5.1.1.5, and 5.1.2 of the By-Law subject to the following conditions:

- a) The hours of operations of the swim school shall be from 7:00 a.m. to 9:00 p.m. seven days a week;
- b) The maximum number of students shall be 50;
- c) The maximum number of staff shall be 28;
- d) The applicant may conduct “open swims” – which are family swims and birthday parties without direct instruction accessory to the swim school’s main instructional swim use and open swims may include non-members as follows:
 - o **Family Swims** – shall be appointment only and are to provide opportunities for member students to swim with a parent or guardian to practice their swimming. Family Swim shall also be available to non-members to evaluate swimming level and ability of prospective students. Family Swim shall be offered three days a week for one hour each day on Tuesday, Thursday and Sunday.
 - o **Birthday Parties** –Bookings shall be restricted for members only for birthday parties of not more than 24 children. The parties shall be scheduled on Saturdays from 3:30 p.m. to 5:30 p.m. Invited guests may be non-members;
- e) The applicant shall file an annual report providing data on the number of staff, lifeguards, students, and family swim/birthday parties and the reports shall be submitted at the time of annual Board of Health inspections and the report shall be provided to the Board of Health, Building Department and Fire Department.
- f) The applicant shall submit documentation as may be requested by the Board of Health demonstrating that the applicant has sufficient lifeguards for “open swims” and birthday parties;
- g) All terms and conditions of the existing Special Permit, as previously amended, not modified shall remain in full force and effect; and
- h) Failure to comply with each and any of the foregoing conditions at any time may constitute cause for the revocation of the Special Permit Amendment by the Board, after hearing, with notice to the applicant, and with such other notice as the Board, in its sole and exclusive discretion shall deem due and sufficient.



Jonathan D. Tamkin, Chair



Nikolaos Ligris, Member



Peter Friedenber, Associate Member