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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

SPECIAL PERMIT AMENDMENT

***Second Needham DE, LLC, applicant
100-124 Second Avenue
Map 96, Parcel 25***

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts 2020)

September 17, 2020

Second Needham DE, LLC, applicant, made application to the Board of Appeals for a Special Permit Amendment under Sections 1.4.6, 3.2.4, 5.1.1.5, 5.1.2, 5.1.3, and 7.5.2 of the By-Law to waive strict adherence with the off-street parking requirements, parking plan and design requirements associated with the proposed use of a portion of the premises for dental offices. The property is located at **100-124 Second Street**, Needham, MA in the New England Center Business District. A public hearing will be held remotely on Zoom Meeting ID Number 869-6475-7241, on Thursday, September 17, 2020 at 7:45 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped August 24, 2020.
- Cover Letter from George Giunta, Jr., dated August 21, 2020
- Land Title Survey, prepared by R.E. Cameron & Associates, Inc.; stamped by Scott D. Cameron, Professional Land Surveyor, dated November 25, 2019.
- Floor Plan, undated and unattributed.
- Memorandum of Support, prepared by George Giunta, Jr., dated September 8, 2020.
- 100-124 Second Avenue, Special Permit, April 28, 2005.
- 100-124 Second Avenue, Substitution of Plan, August 12, 2006.
- Letter from Dave Roche, Building Commissioner, dated August 13, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated August 13, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, dated August 13, 2020.

The Board held this meeting virtually as allowed under “Order Suspending Certain Provisions of the Open Meeting Law G.L. c. 30A, S20.”

The Board included Jon D. Schneider, Chair; Howard Goldman, Member; and Kathy Lind Berardi, Associate Member. Also participating was Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 8:33 p.m. by reading the public notice.

George Giunta, Jr., representing the applicant, reported that property was a large parcel

consisting of 82,204 square feet with a one-story commercial building containing 28,269 square feet. The lot is conforming; however, the building is non-conforming as to rear setback. The building was built prior to zoning; and the applicant is not proposing any changes to the building.

The building is divided up into four tenant spaces - PPG Architectural Finishes occupying 6,817 square feet, Maxim Health Care 10,552 square feet and Atrius Health 7,770 square feet. The remainder of the building is currently vacant and contains 3,200 square feet. Since February, Atrius Health has been closed and no longer uses or occupies the space. It still leases the space and may use the space for flu shots on a limited basis.

Mr. Giunta provided a parking calculation which identified the following:

User	Parking Space Requirement
Atrius Health (medical office)	38.5 spaces (7,700 sq. ft/200)
Maxim Health Care (office)	35.17 spaces (10,552 sq. ft/300)
PPG Architectural Finishes (retail)	22.72 spaces (6,817 sq. ft/300)
Vacant (office)	10.67 spaces (3,200 sq. ft/300)
Total	107.06 spaces (108 rounded up)

The applicant is proposing to lease the vacant 3,200 square feet space for a dental practice. The proposed dental use will increase the parking space requirement by five spaces over the previous requirement of 108 parking spaces.

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Atrius Health (medical office)	38.5 spaces (7,700 sq. ft/200)
Maxim Health Care (office)	35.17 spaces (10,552 sq. ft/300)
PPG Architectural Finishes (retail)	22.72 spaces (6,817 sq. ft/300)
Proposed Dental office (dental office)	16 spaces (3,200 sq. ft/200)
Total	112.39 spaces (113 rounded up)

The existing parking area is divided into two areas, one on each side of the building with a total of 95 parking spaces. The dental office use of will increase the shortfall of required parking spaces by 5 spaces.

Mr. Giunta stated that PPG Architectural Finishes contains both retail and warehouse spaces, but the entirety of the space has been calculated as office space. Of the 6,817 square feet leased by PPG, 3,758 square feet is used as a warehouse. The building also includes 195 square feet of electrical and 76 square feet of vestibule space used in common, which do not drive an actual parking demand. Atrius Health has one year left on its lease, but it does not expect to occupy the space for the remainder of the lease. Accordingly, there is no current parking demand from Atrius Health. If the Atrius vacant space is excluded and the non-office portion of the PPG space were calculated as warehouse space, the requirement under the By-Law would be 98 spaces. This is a shortfall of 3 parking spaces.

Mr. Giunta noted that spaces were lost as a result of the parking lot being reconfigured to accommodate two van/handicapped designated spaces and one electric charging station space.

Mr. Schneider inquired if there was any street parking. Mr. Giunta said there are four spaces about 100 feet from the property on the opposite side of the street.

Mr. Schneider asked if a Special Permit was required for the dental office. A Special Permit would be required if there were three professionals. Mr. Giunta responded that no relief was sought for the use since only two dentists will be practicing in the space.

Dr. Ashley Ciapiak and Dr. Kendrick Brede will be leasing the space. Dr. Brede has been practicing dentistry since 1981 and has maintained a practice in Needham on Highland Avenue.

Comments were received from the following Town Departments:

- The Building Commissioner noted that if there were more than two dentists practicing at the proposed dental office, a Special Permit would be required; and if street parking is prohibited, should be installed directing patients to the parking lot. Mr. Giunta identified that the practice will be for two dentists. It was unclear what the Building Commissioner meant by the signage installation.
- The Engineering Department had no comment or objection.
- The Planning Board had not comment.
- Fire Department had no comment.

There were no comments from the public.

Mr. Schneider was sympathetic to the parking waiver. He had personal experience parking at the location and had never had a problem finding parking.

Mr. Goldman inquired if the practice would be open on Saturdays. Dr. Ciapiak responded that they plan to be open every other Saturday.

Mr. Friedenbergs was concerned about granting a parking waiver based on the temporary vacancy and wondered whether there will be sufficient parking for a future tenant. Mr. Schneider responded that a parking waiver is necessary when there is a change in tenants and the new tenant use has a higher parking requirement than the previous tenant. As a user of the parking lot when the Atrius space was active, he never experienced the lot half full. He thought the parking worked. He said that some of the By-Law parking requirements were not rational and the Board needed to weigh the real-world parking conditions when making decisions.

Ms. Berardi thought it was a timing issue and she believes the Board must make parking waiver determinations based on the prospective tenant use brought before the Board instead of trying to figure out what the next vacant space might be.

Mr. Goldman said that parking waivers are granted based on the comments received from the technical staff, neighbors' input, and the applicant's rationale on parking demand. He thought the applicant made a good case that parking was adequate.

Mr. Goldman moved to grant a Special Permit Amendment to waive strict adherence with the off-street parking requirements, parking plan and design requirements associated with the proposed use of a portion of the premises for new dental offices at 100-124 Second Avenue. Ms. Berardi seconded the motion. The motion was unanimously approved.

The meeting adjourned at 9:05 p.m.

Findings:

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

1. The applicant, Second Needham DE, LLC, owner, intends to lease the vacant office space of 3,200 square feet in the building located at 100-124 Second Street, Needham, to a dental practice for dental office use.
2. This building is an existing multi-tenant, 28,269 square foot one-story building, located in the New England Center Business District, and currently has 95 marked parking spaces.
3. The dental office proposes to have, at most, two dentists and 3 staff members. The expected hours of the dental office will be 7:00am-7:00pm Monday through Thursday, 7:00 am-5:00pm on Fridays and 7:00am-3:00pm on (some) Saturdays.
4. The applicant requests a Special Permit pursuant to Section 5.1.1.5 of the Zoning By-Law to waive strict adherence to the requirements of Section 5.1.2 (Required Parking) and 5.1.3 (Parking Plan and Design Requirements).
5. With respect to the requested waiver from the requirements of Section 5.1.2, the applicant represented to the Board that the 3,200 square feet of space that the applicant plans to lease was previously used as general office space, which resulted in 11 required parking spaces ($3,200/300 = 10.67$ spaces, rounded up to 11 spaces). The applicant's proposed change to a dental office use will result in a parking requirement of 1 parking space per 200 square feet of office space, for a total requirement of 16 parking spaces ($3,200/200 = 16$ spaces). The dental office use, therefore, increases the previous parking requirement by 5 parking spaces. The required number of parking spaces for the entire premises under the By-Law is 113 parking spaces, inclusive of the applicant's proposed dental office use. Since there are only 95 parking spaces onsite and 113 parking spaces are required, a parking waiver is required.
6. The applicant stated that sufficient special circumstances exist to support the waiver of the requirements of Sections 5.1.2. The applicant explained that one of the current tenants of the building (PPG) has both retail and warehouse space, but the entirety of the space has been calculated as office space. Of the 6,817 square feet leased by PPG, 3,758 square feet is used as a warehouse. The building also includes 195 square feet of electric/sprinkler room and 76 square feet of vestibule space used in common. None of these three areas contribute to an actual parking need. Additionally, another tenant, Atrius Health, has left its leased space and is not expected to occupy that space for the last year of its lease. Accordingly, there is no actual parking demand from Atrius Health. Excluding both the unused space by Atrius, along with the non-office portion of the space of PPG, the requirement under the By-Law including the proposed dental office use would be 98 parking spaces. This is a shortfall of only three parking spaces. The applicant noted that the site previously had 99 parking spaces, but four of those spaces were lost due to the inclusion of two electric charging spaces and re-striping to accommodate accessible parking spaces. There is no room onsite to create additional parking spots and the applicant stated that the actual parking demand is not affected by the shortfall of three parking spaces.
7. Based upon the current tenant uses of the building and the resulting actual parking

demand, the Board finds that there currently is adequate parking for the current tenants along with the proposed use by the applicant.

8. With respect to the applicant's request for waivers from Section 5.1.3, the applicant stated that it will not be making any exterior changes to the building with its proposed dental office use and that if the applicant was required to comply with the design requirements, the applicant would have to reduce the number of parking spaces.
9. Section 5.1.1.5 of the By-Law permits the Board of Appeals to grant a Special Permit to waive strict adherence to the requirements of Section 5.1.2 and/or Section 5.1.3 where the applicant demonstrates with a parking plan prepared and reviewed in accordance with the provisions of Section 5.1.3 that a particular use, structure or lot, owing to special circumstances, does not warrant the number of parking spaces required by Section 5.1.2 and/or the application of certain design requirements contained in Section 5.1.3. Based upon the evidence presented, the representations made by the applicant and the submitted Parking Evaluation, the Board finds that there are special circumstances justifying the waiver of certain design requirements and the waiver of the required number of parking spaces. The current number of parking spaces located on the premises is sufficient for the use of the applicant and its patrons.
10. The Board finds that the issuance of the Special Permit will not be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses, and is consistent with the intent of the Zoning By-Law.

Decision:

On the basis of the foregoing findings, following motion duly made and seconded, after open deliberation, the Board, by unanimous vote, grants the applicant a Special Permit pursuant to Section 5.1.1.5 of the By-Law waiving strict adherence to the requirements of Section 5.1.2 and Sections 5.1.3 of the By-Law in connection with the applicant's proposed tenancy by a dental office in the currently vacant 3,200 square feet space in the building located at 100-124 Second Avenue, Needham.

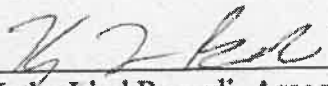
SIGNATORY PAGE – 100-124 SECOND AVENUE


Jon D. Schneider, Chair

SIGNATORY PAGE – 100-124 SECOND AVENUE


Howard S. Goldman, Member

SIGNATORY PAGE – 100-124 SECOND AVENUE



Kathy Lind Berardi, Associate Member