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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit Amendment

***Allen Douglass and Christine Lachkey, Applicants
R.K. Highland Avenue, LLC, Owner
238 Highland Avenue
Map 300, Parcel 59***

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

March 18, 2021

Allen Douglass and Christine Lachkey, Applicants, applied to the Board of Appeals for a Special Permit Amendment under Sections 5.1.1.5, 5.1.2, 5.1.3(j), 5.1.3(k), 5.1.3(l), 5.1.3(n), 7.5.2 and any other applicable Sections of the Zoning By-Law to expand the Needham Montessori School to allow up to 114 children. As part of this expansion, the parking area is proposed to be redesigned to meet design criteria and improved safety. The subject property is located at **238 Highland Avenue, Needham MA** in the Highland Commercial -128 District. A public hearing was held remotely on Zoom on Thursday, March 18, 2021 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped February 22, 2021.
- Memorandum of Support prepared by Evans Huber, Esquire, dated February 22, 2021.
 - Exhibit 1- Site Plan prepared by VTP Associates, stamped by Joseph Porter, Land Surveyor, dated January 27, 2021, revised February 17, 2021.
 - Exhibit 2 – Letter from David Katz, Manager, RK Centers, dated February 11, 2021.
 - Exhibit 3 – Design Plans A-01-04 prepared by Design Group Architects, stamped, dated November 1, 2021.
 - Exhibit 4 – Parking Plan prepared by GPI dated January 25, 2021.
 - Exhibit 5 – Email from Joan Low, Mandarin Cuisine dated February 1, 2021.
 - Exhibit 6 – Letter from Joan Low, Low & Zhang, Inc., dated February 17, 2021.
 - Exhibit 7– Email from Steven Keenan, Restaurant Depot 550, dated January 8, 2021.
- Email from Chief John Schlittler dated March 9, 2021.
- Letter from Dave Roche, Building Commissioner, dated February 16, 2021.
- Email from Dave Roche, Building Commissioner, dated March 17, 2021.
- Email from Tara Gurge, Assistant Public Health Director, dated March 9, 2021.

- Email from Dennis Condon, Chief of Department, Needham Fire Department, dated March 5, 2021.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated March 10, 2021.
- Letter from Lee Newman, Director of Planning and Community Development, dated March 16, 2021.

March 18, 2021

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; Jonathan D. Tamkin, Vice-Chair and Howard S. Goldman, Member. Also participating were Kathy Lind Berardi and Peter Friedenberg, Associate Members. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice.

Evans Huber, attorney representing the Applicants, stated that the Applicants have been operating the Needham Montessori School (“School”) under a Special Permit allowing a maximum of 50 students and five staff in their current space. They are seeking to expand into the adjoining vacant space which will double their size. Once expanded, the only remaining tenant in the complex will be the Mandarin Cuisine restaurant.

There are two parking lots at the site – the larger east parking lot in front of the Mandarin Cuisine restaurant and a smaller west parking lot behind Mighty Subs that they currently use.

The proposal is to increase the School to 114 children and 15 staff members. To accommodate the expanded operation, the east parking lot needs to be redesigned which will decrease the number of available parking spaces from 55 to 50 spaces. The east parking lot will have two major improvements – a six-foot-long walkway along the eastern side of the building to the new front entrance for the School and a reconfiguration of some spaces. The current parking lot does not meet the dimensional size for spaces or maneuvering aisle required in the By-Law nor are the handicapped spaces appropriately located. The new parking lot will have appropriate size spaces and a proper location for handicapped spaces. Dave Roche, the Building Commissioner, was consulted and was satisfied with the redesign.

The schedule for drop-off and pick-up has been organized so that there is no conflict with the peak hours of the Mandarin Cuisine restaurant and to insure parents’ arrival are staggered. Children will be divided by age groups and their parents will be assigned a parking lot and time slots when they may use the parking lot. The east lot will have a drop-off between 8:00 a.m. – 8:20 a.m. for a group with approximately 38 students; and between 8:20 a.m. to 8:50 a.m. for a group with 58 students. The west lot will have a drop-off time of 8:00 a.m. to 8:30 a.m. for 20 children.

Pick-up is more spread out than the drop-off period. It begins at 11:30 a.m. and ends at 6:00 p.m. On the east lot 20 children will be picked up between 2:00 p.m. to 2:20 p.m., 30 from 2:20 p.m. to 2:50 p.m., with the remaining children being picked up between 3:00 p.m. to 6:00 p.m. The west lot will have 12 children picked-up between 2:00 p.m. to 2:30 p.m. and 8 children between

3:00 p.m. to 6:00 p.m.

None of these hours conflict with the Mandarin Cuisine restaurant's peak parking usage hours which are from 11:30 a.m. to 1:30 p.m. and 5:30 p.m. to 9:30 p.m. The pick-up and drop-off plan were designed to minimize the conflict between the tenants.

The required parking under the By-Law for the School is 26 spaces. Mr. Huber noted that 15 parking spaces for the School's staff have been secured at the nearby Restaurant Depot. Staff will not be parking in the two on-site parking lots.

A number of the children attending the School are siblings which reduces the demand for parking. The design of the walkway was a significant aspect of the parking plan. Parents will be instructed to pull-in and park in the furthest space in the lot away from Highland Avenue and walk their children safely to the front door. Staff will be available to insure proper parking and circulation. No stalling or parking will be allowed by the front door near Highland Avenue.

The owner of the Mandarin Cuisine restaurant submitted a letter stating that she is aware of the proposed parking circulation plan and is in support of the Applicants' expansion.

Mr. Huber highlighted the non-compliant parking design requiring waivers which included insufficient setback from the street and edge of the property for some of the spaces as well as landscaping and bike racks.

Mr. Schneider inquired if there will be any vacant spaces in the complex after the Applicants expand. Mr. Huber said the building will be fully occupied and there are no other vacant spaces.

Mr. Schneider asked about the status of state licensing. Mr. Douglass responded that, once the project is approved, the State is notified to conduct an inspection.

Mr. Schneider questioned if there will be interior work. David Shahin, architect, said that most of the work has been completed. Moving furniture is what remains to be done.

Mr. Goldman asked that the parking circulation plan be clarified. Mr. Huber replied that the parking plan will be explained to the parents prior to the beginning of the year. Reminders will be sent as necessary. The protocol will be to pull in to the furthest available space in the lot, park, and walk the child to the door or to the meeting staff. There will be no queueing or live parking.

Mr. Goldman questioned if there will be a formal written lease from the Restaurant Depot for staff parking. Mr. Huber said there is no lease, but there is an email agreeing and confirming the usage.

Mr. Schneider inquired if the parking plan protocol is similar to the one in place currently where parents park and the students are walked into the school by the parent or staff. Mr. Douglass and Ms. Lachkey affirmed that it was the case. Mr. Huber said that what is different from the current protocol is that parents cannot select the closest available parking spot. The new protocol will

require them to take the furthest available space from Highland Avenue. Mr. Schneider warned the school that there can be no back up of cars on Highland Avenue.

Ms. Berardi asked if the instructors would be increased over the four instructors and one administrator allowed under the current permit. Mr. Huber responded that the state requires 15 instructors for 114 students. The proposal is for 15 staff.

Mr. Friedenberg wanted to know if the queueing referred in the parking plan report was on the street or within the parking lot. John Diaz, Traffic Engineer, said that there will be no queueing on Highland Avenue. The queueing will be one or two cars exiting the parking lot. Mr. Friedenberg was puzzled over the By-Law calculations requiring nine spaces for 45 students and only eleven spaces for 114 students. Mr. Huber thought that might be because school age children are chauffeured by their parents who only need short term parking.

Comments received:

- Planning Board had no comment.
- Building Department submitted a parking determination for the proposal of 26 spaces.
- Fire Department had no issue with the changes.
- Health Department noted that the Applicants must fill out and submit an online Public Health Division Food Permit Plan if food is served or prepared; and all Covid19 spacing for seating, HVAC/ventilation, face covering, and occupancy limits must be met.
- Engineering had no comment.
- Police Chief was concerned about the number of available parking spaces, and the use of parking spaces allocated to a restaurant. He was concerned that spaces won't be available for future businesses occupants of current vacant space.

Mr. Tamkin wanted the Applicants to address the comment made by the Chief of Police.

Mr. Huber responded that the School is occupying the only available vacant space. There is no other vacant space in the building. The School has one of the lowest parking demands when compared to commercial use. Based on the one space per 300 square feet, the parking requirement for the building fully occupied by commercial use would be 38 spaces. Mr. Huber said the real concern is not available parking spaces as chauffeuring parents do not need them. The real concern is the safe drop-off and pick-up of the children and the efficient circulation within the lot without creating a back-up on Highland Avenue. He thought the Parking Circulation plan address those concerns.

Mr. Tamkin thought that the proposed parking with the School and the restaurant worked. A future use, however, with a higher parking demand may be a conflict and not such a good fit. He wanted to be sure that the Police Chief's concerns are fully vetted.

There were no comments from the public.

Mr. Goldman wondered if a more substantial agreement from Restaurant Depot for the staff parking should be submitted. Mr. Tamkin thought that the existing condition limiting staff from parking in the lot and the email agreement from the Restaurant Depot would be sufficient.

However, he was flexible if a more formal agreement was desired by the Board.

Ms. Berardi's original concerns were dispelled with the successful implementation of the pick-up and drop-up plan for the 50 students under the current enrollment. She was less concerned now that there was only one other tenant. She thought the proposal was a more efficient and safer circulation plan even considering the larger enrollment. She congratulated the School on their current success and their proposed expansion.

Mr. Goldman asked about the Covid19 protocols. Mr. Douglass said they have been open since April 2020 and have had no Covid19 incidents. He attributed the prevention success to the school's community of which 80% to 95% are from the Needham and Newton community.

Mr. Tamkin moved to grant Allen Douglass and Christine Lachkey, Applicants, a Special Permit Amendment under Sections 5.1.1.5, 5.1.2, 5.1.3(j), 5.1.3(k), 5.1.3(l), 5.1.3(n), 7.5.2 and any other applicable Sections of the Zoning By-Law to expand the Needham Montessori School to allow up to 114 children and 15 staff; and to approve the parking redesign and circulation plan and to waive the parking design restrictions as shown in the plans submitted with the same staff parking restriction as conditioned in all previous decisions. Mr. Goldman seconded the motion.

The meeting adjourned at 8:08 p.m.

Findings:

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

1. The Property is located at the intersection of Highland Avenue and First Avenue, in the Highland Commercial-128 District. The size of the property is approximately 45,800 s.f., and it contains a single-story building of approximately 15,400 s.f.
2. The Applicants presently operate a Montessori school in a portion of the building occupying approximately 4,155 s.f. and proposes an expansion of the operation of the School by amending a Special Permit first issued by the Board on July 21, 2016, as previously amended by two Amendments to the Special Permit dated September 19, 2017 and April 26, 2018.
3. At present, slightly less than half of the building, 7,265 s.f., is vacant and the Applicants proposes to occupy all the vacant space. After the expansion, there will be only two tenants, the Mandarin Cuisine restaurant and the School.
4. There are two parking lots on the site with a total of 55 parking spaces, the larger east parking lot in front of the Mandarin Cuisine restaurant and a smaller west parking lot behind Mighty Subs that the Applicants currently use.
5. Presently the School's hours of operation are from 7:00 a.m. to 6:00 a.m. weekdays and they serve up to 50 children and have 5 staff members.

1. The Applicants propose that the School expand into the 7,265 s.f. vacant space to occupy a total of 11,400 s.f. of the building and to increase the capacity of the School to 114 children with 15 staff members.
2. The required parking under the By-Law for the School is 26 spaces and 45 for the restaurant. resulting in a total requirement of 71 spaces.
3. Under the Applicants' plan, the east parking lot will need to be redesigned which will decrease the number of available parking spaces on site from 55 to 50 spaces, 37 in the east parking lot, and 13 spaces in the west parking lot.
4. No employee or staff parking shall be permitted on site and the Applicants has arranged for parking for all 15 employees and staff off site at the nearby Restaurant Depot building. In effect, the Applicants have 65 available parking spaces against a By-law requirement of 71 spaces. The peak periods for the restaurant parking are 11:30 am to 1:30 pm when there will be no drop off or pick up for the school and 5:30 pm to 9:30 pm when there is minimal pick up at the school. With the off- site parking for employees and staggered parking demand, the 50 on-site spaces provide adequate parking.
5. The parking lot and traffic flow improvements planned for the property, as presented by the Applicants at the hearing, will aid in the continued safe drop off and pick up of children at the school.
6. The Applicants propose to redesign the main (east) parking area and restripe the smaller (west) parking area. A portion of the west parking lot will be used as a play area.
7. As proposed, the main entrance to the School will face the main (east) parking area and is close to Highland Avenue. The Applicants intend to require parents or caregivers to pull as far into the parking lots as possible, park, and walk their children to and from the School's entrance.
8. At present, there is limited space between the parking spaces adjacent to the east side of the building and the building itself, which would require that parents and children on that side of the building walk through the parking lot to get to the main entrance. The proposed redesign of this parking lot will create a six-foot wide sidewalk along the edge of the eastern side of the building. This will allow pedestrians who have parked in the east parking lot to safely walk to the front entrance on that side of the building.
9. As shown on the plan of existing conditions filed with the Application, the east parking lot presently does not meet By-Law requirements as to setback from building, length of spaces, width of maneuvering aisles, landscaping, lighting, bike racks and location of handicapped spaces. The proposed redesign of the east parking area will eliminate some of these nonconformities although the other existing non-conformities will remain.

10. The portion of the building in which Mighty Subs is located is on a separately owned, lot, with an address of 250 Highland Avenue. The parking spaces associated with that lot are shown on the plans as striped with dotted lines, and are not part of the parking supply for 238 Highland Ave, and are not counted in the parking supply in connection with the waiver the Applicants has requested. As part of the redesign, the parking spaces in the west lot will be restriped as perpendicular spaces.
11. The operation of the School at this location has worked well for parents, students and the community over the past five years, and also with the other remaining tenant.
12. The restaurant's hours of operation will not conflict with those of the School and as there will now only be two tenants on the site, the proposed new parking plan is an improvement
13. Special circumstances exist for waiving of the design requirements and the number of parking spaces under the requirements set forth in the By-Law.
14. The issuance of a Special Permit for the expanded operation of a Montessori school on the property, and as proposed by the Applicants, is consistent with the allowed uses in the District and the criteria of Section 7.5.2.1 of the By-Law.

DECISION

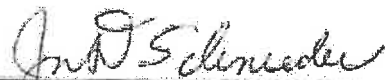
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the Applicants an amendment to the Special Permit issued by the Board on July 21, 2016, as amended by two previous amendments to the Special Permit dated September 19, 2017 and in on April 26, 2018, and pursuant to Section 3.2.5.2 to permit: a) the expansion of the Applicants' private Montessori school into vacant space in the building; and b) pursuant to Section 5.1.1.5, a waiver of the design requirements for parking and the required number of parking spaces on the site, provided that the School's parking plan, parking lots, new walk way, and student drop off and pick up operations are modified pursuant to the plans submitted with the Application, and subject to the following additional conditions:

1. Hours of operation of the School will be limited to 7:00 am to 6:00 pm Monday through Friday. No school operations will be allowed on Saturday or Sunday.
2. The number of students at the School shall be limited to 114.
3. The number of employees and staff of the School shall be limited to 15 employees or staff inclusive of teachers, instructors and administrative staff.
4. The Applicants will manage parking and traffic flow as presented with the application, and shown on the plans, so that there is no back up of cars on Highland Avenue waiting to enter the parking lots used by the Applicants. If back up is a problem, the Applicants

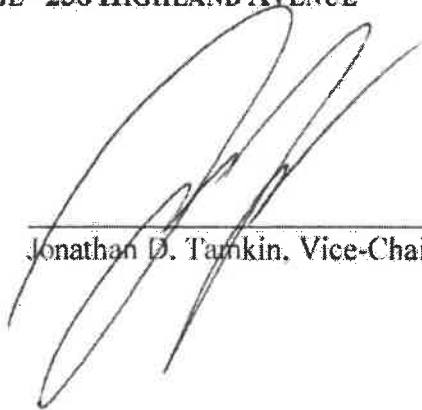
will take measures to eliminate any backup, such as to assign employees or staff to monitor traffic flow student drop off or pick up or adjustment of the periods of drop off/pick up.

5. The Applicants will obtain all licenses required for its operation of the School.
6. No employee or staff parking shall be permitted on site and all employee and staff parking will be off site at the Restaurant Depot.
7. As provided in the Board's decision of August 17, 2011 and again in the Special Permit dated July 21, 2016, the owner of the property shall be required to appear before the Board to apply for a Special Permit relating to any new or additional tenant operating thereon, and any change in the number and design of parking spaces and before any future vacancy in the building or on the property can be filled.

SIGNATORY PAGE - 238 HIGHLAND AVENUE


Jon D. Schneider, Chair

SIGNATORY PAGE -238 HIGHLAND AVENUE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 238 HIGHLAND AVENUE



Howard S. Goldman, Member