



RECEIVED TOWN OF
NEEDHAM, MA 02467
2021 JUL 21 AM 10:56

**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***No No Song, LLC, Applicant
68 Highland Avenue
Map 73, Parcel 22***

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

June 17, 2021

68 Highland Avenue – No No Song, LLC, applicant, made application to the Board of Appeals for a Special Permit seeking a waiver of strict adherence to the parking requirements and design requirements and the alteration of a lawfully pre-existing non-conforming parking lot pursuant to Sections 5.1.2, 5.1.3, 5.1.1.5, 1.4.6, 7.5.2 and any other applicable sections of the By-Law associated with the location of the showroom for Frank Webb Home, a bath, kitchen and lighting business. The property is located at 68 Highland Avenue, Needham, MA in the Highland Commercial-128 District. A public hearing was held at Powers Hall, Needham Town Hall, 1471 Highland Avenue, Needham, MA, on June 17, 2021 at 7:45 pm.

Documents of Record:

- Application for Hearing, Clerk stamped May 25, 2021.
- Existing Conditions and Site Plan, Merrimack Engineering Services, stamped by Stephen E. Stapinski, certified land surveyor, May 10, 2021.
- Zoning Board Plan, Merrimack Engineering Services, stamped by Stephen E. Stapinski, certified land surveyor, May 10, 2021.
- ALTA/NSPS Land Title Survey, Merrimack Engineering Services, stamped by Stephen E. Stapinski, certified land surveyor, March 29, 2021.
- Floor Plan - A5a-5b, Damon McQuaid Architect, stamped by Damon J. McQuaid, registered architect, May 19, 2021.
- Proposed Elevations – A-11a-11b, Damon McQuaid Architect, stamped by Damon J. McQuaid, registered architect, May 19, 2021.
- Email from Dave Roche, Building Commissioner, dated June 8, 2021.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated June 10, 2021.
- Email from Chief John Schlittler, Police Department, dated June 15, 2021.
- Email from Tara Gurge, Assistant Public Health Director, dated June 4, 2021
- Email from Chief Dennis Condon, Fire Department dated June 1, 2021.

- Letter from Lee Newman, Director of Planning and Community Development, dated June 14, 2021.
- Email from Ryan McKee, 18 Highview Street, June 15, 2021.

June 17, 2021

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 7:50 p.m. by reading the public notice.

Sean McCormack, attorney, representing the applicant, reported that the upcoming MassDOT Highland Avenue Reconstruction Project will widen the street, eliminating one parking space and possibly two at the location. This motivated the applicant to redesign the parking lot to accommodate the relocation of the Frank Webb Home showroom from 100 Highland Avenue to 68 Highland Avenue.

There will be no change in use, as the former tenant at the location was a tile retailer. The former tenant had a parking lot for 18 spaces with some tandem spaces. The proposal will provide for 16 parking spaces, eliminate the tandem parking spaces; reduce the number of spaces backing out onto Riverside Street; and remove parking on Highland Avenue.

Based on the volume of customer traffic at their present location, they have determined that 16 parking spaces are adequate for their use. Mr. Schneider asked what the By-Law parking requirement would be based on the square footage. Mr. McCormack responded that it was 24 spaces. That calculation is based on the retail use on the first floor of the retail space which has a requirement is 16 spaces. Adding the basement space, the requirement increases to 24 spaces.

Mr. McCormack reasoned that, since the basement will be used for staff breakroom and storage, it will not add to the retail customer parking demand.

Mr. Schneider asked how the 16 parking spaces works as a practical matter. Mr. McCormack said that at the current Frank Webb location had approximately 17 customer visits per day and that it is rare that all 4 customer groups, who come as couples, arrive at once. Generally, the customers are scheduled by appointments. Frank Webb is not a self-serve retailer and customers are attended by an employee. There are five employees per shift. The customers' purchases are placed on order and the items are delivered to the customer's home.

Steve Stapinski, project engineer, reported the following:

- all 16 spaces will comply dimensionally;
- five spaces on the drive-in parking lot on Riverside Street will be perpendicular to Highland Avenue with the required backout depth of 24';
- the Riverside Street drive-in parking lot will have a five-foot landscape buffer along the abutter side;
- four spaces, parallel to Highland Avenue, will backout onto Riverside Street, one of which is a handicapped space located closest to the entrance;
- a walkway will be provided on the Riverside Street side between the two parking sections

- and along the building towards the entrance;
- there are seven back-out spaces on to Highland Terrace;
- there are no parking spaces along Highland Avenue;
- lighting will be provided by wall packs at the two side rear exits on Highland Terrace and Riverside Street, used by employees, and the front entrance. There will be soffit lighting to illuminate the sign on the front entrance as well. There is no lighting proposed for the rear parking area.

Mr. Schneider noted that the parking plan will not meet the setback, landscaping on Highland Terrace or the bike rack requirements. Mr. Stepinski responded that DOT will be providing bike racks as part of the Highland Avenue Reconstruction.

Mr. Friedenberg inquired about loading and delivery. Jami Anderson, Construction Manager, said that the applicant expects two deliveries a week to stock the building. Deliveries to customers are shipped directly to the customer's job site from their Bridgewater location.

Mr. Schneider inquired about the dumpster. Mr. Anderson reported that the dumpster will be located at the rear of the Riverside Street lot enclosed by a PVC fence. Webb does not generate a lot of waste or noxious food wastes and it can be managed by a two-yard container.

Comments received:

- Planning Board had no comment.
- Police Department had no concerns.
- Health Department requests that a pest control service be hired if pest concerns arise due to renovations.
- Fire Department had no concerns.
- Engineering Department had no comment or objection.
- Building Department believe the proposal was an improved parking layout despite the loss of two spaces. Based on the rationale of the number of employees and customers served by appointment the reduced required parking was thought it to be adequate.
- Ryan McKee, 18 Highview Street, sent an email in support of the improvements. He requested that the dumpster be handled in an aesthetically pleasing way without disruption to the neighbors. He expressed concerns about the safety of the neighborhood residents and customers because of the traffic and parking challenges at the intersection.

John Negoshian, 101 South Street, representing residents located on Highland Terrace, objected to the dumpster being located next to the residential abutters. He suggested that it be located in the middle of the parking lot away from abutters, similar to the condition at the nearby Panera Bread. He reported that the early morning dumpster service at Frank Webb's current location is a disturbance to the neighbors.

Mr. Negoshian inquired if there were future plans for the basement space besides storage and an employee breakroom. Mr. Anderson responded that the applicant is currently leasing 100 Highland Avenue. They are purchasing the location at 68 Highland Avenue. No retail or display use or contractors or retail customer services are planned for the basement. Planned for the basement are storage, an employee breakout room, the manager's desk and a janitor's station.

Mr. Negoshian was concerned about the early 5:00 a.m. servicing of the dumpster. Mr. Schneider stated that there could be a condition to restrict the pick-up time. Mr. Negoshian was agreeable to a dumpster pick-up time after 8:00 a.m.

Elizabeth Kaponya, 27 Highland Terrace, was concerned for the residential neighbors who are only feet away from the proposed Frank Webb store. She would like no dumpster removal between 9:00 p.m. to 9:00 a.m. and no removals on holidays. She was concerned about any light spill over from LED lighting late at night. Mr. Schneider responded that the applicant's modest lighting will not spill over. Overall, she was happy about the improvements to the property and thought Frank Webb was a good fit for the site.

Janice Epstein, 75 Highland Terrace, stated that neighbors were happy about Frank Webb moving into the building and thought it was a good fit. She asked if there was coordination with MassDot regarding the Highland Avenue reconstruction and the staging of construction equipment. Mr. Anderson said there has been no direct conversation regarding the coordination of the work. He would follow-up and contact them. The Frank Webb project includes reroofing, the redesign of the front entrance, and a new roofing feature above the entry associated with branding. The plans for the façade work were reviewed and approved by the Design Review Board (DRB). There is no major structural work planned.

Mr. Stapinski added that the grading and curb work has been coordinated and matched up with MassDOT's construction drawings. Ms. Epstein noted that there will be sidewalk and bike lanes work associated with MassDOT planned for the front and side of the property and that the work should be coordinated.

Ms. Epstein asked if the current Frank Webb sign was going to be moved over to the new location. She would like any sign to coordinate with the current business signs in the neighborhood. Mr. Anderson responded that only one sign is planned at the site. The plans for a new 32 square foot sign was presented to the DRB and were approved. The dimensions meet the By-Law requirements. The current Frank Webb location has three 32' signs.

Ms. Epstein inquired about the height of the fence enclosure around the dumpster. Mr. Anderson said the dumpster will be surrounded by a six-foot-tall solid vinyl fence. Ms. Epstein inquired if the dilapidated wood fence around the parking lot would remain. Mr. Anderson said that the wood fence is located on the residential property of the abutter and will not be touched. He highlighted the arborvitae that is planned for the perimeter of the Riverside parking lot. Ms. Epstein asked if they were going to fix the wooden fence. Mr. Schneider explained that the fence did not belong to the applicant and would not be fixed by the applicant.

Ms. Epstein was not a proponent of the four-foot-tall arborvitae and questioned the height and survivability of the plants. She thought a fence was a better and longer lasting choice over plantings. Mr. Schneider responded that the applicant wants an attractive property to serve the public and will therefore likely take care of the landscaping. Ms. Epstein highlighted the need for sufficient off-street parking as there is a parking ban from 8:00 a.m. to 8:00 p.m. on Highland Terrace and it cannot accommodate any parking spill over.

Mr. Negoshian proposed that the dumpster be moved away from the abutting neighbors into a parking spot. He said there are eight families abutting the corner where the dumpster is located and they object to the dumpster being there.

Mr. Stapinski argued that there is no other location that provides the necessary geometry for a truck to service the dumpster. The proposed spot complies with health, aesthetics and access concerns. Currently the dumpster is open and not screened, which allows it to be moved easily for servicing access. If the desire is to screen the dumpster with bollards to protect it and to secure the trash, then the location is limited to one spot. He had no issue with the condition to limit the time the dumpster is serviced.

Mr. Negoshian suggested switching the dumpster to the opposite side next to the building.

Mr. Goldman thought the applicant's proposal was a good use and fit. He summarized the area of agreement:

- The neighborhood was supportive of the relocation of the business and the property improvements;
- That 16 parking spaces were adequate to serve business.
- In large part, the spaces are more conforming than currently.
- The basement will be used for storage and employee use and not for retail.
- The parking plan was adequate for the 17 customers served per day.

Mr. Goldman asked the Engineer to address the reconfiguration of the parking lot to address the remaining issue of the location of the dumpster.

Mr. Schneider asked if the dumpster could be located against the rear of the building and the parking spaces moved so that a truck could enter directly from Riverside. Mr. Stapinski responded that the parking lot could be flipped. The only downside would be that the abutters would have cars parking along their property. Ms. Berardi asked for the neighbors to weigh in on whether they preferred abutting a dumpster or cars coming in and out of parking spaces.

Mr. Negoshian preferred the dumpster to be moved away from the residential properties. He preferred a vinyl fence rather than the arborvitae. Mr. Schneider deferred the buffer option to the applicant. Mr. McCormack responded that the landscaped border was approved by the DRB. Mr. Schneider added that a landscaped area was included in the parking design requirements of the By-Law.

Mr. Goldman asked how the vegetation would be maintained. Mr. Anderson replied that there will be a drip irrigation system installed.

Ms. Berardi moved that the Board issue a Special Permit to the applicant waiving strict adherence to the parking requirements and design requirements and the alteration of a lawfully pre-existing non-conforming parking lot pursuant to Sections 5.1.2, 5.1.3, 5.1.1.5, 1.4.6, 7.5.2 and any other applicable sections of the By-Law, associated with the relocation of the showroom for Frank Webb Home, a bath, kitchen and lighting business to the property located at 68

Highland Avenue with the following conditions:

- The dumpster will only be serviced between 9:00 a.m. to 9:00 p.m. excluding holidays;
- No retail will be allowed in the basement;
- No lighting will be allowed to spill over to the adjacent property; and
- The applicant must submit a new plan reflecting the agreed changes to the Riverside parking lot. Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:40 p.m.

Findings:

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

1. The applicant, No No Song, LLC, owner, intends to relocate the Frank Webb showroom from its present location to the property located at 68 Highland Avenue, in the Highland Commercial- 128 District.
2. The property located at 68 Highland Avenue is a 12,692 square foot lot containing a retail building with approximately 4,756 square feet on the first floor and 4,631 square feet in the basement level. The current parking lot has 18 parking spaces, including 1 handicap accessible space, 6 tandem spaces and a loading zone with a dumpster. There is no change in use of the property since the former occupant of the building was also a retail use.
3. The applicant proposes to redesign the parking lot on the property in response to the upcoming MassDOT Highland Avenue Reconstruction Project, which will widen the street and eliminate at least one and possibly two parking spaces at the property.
4. The proposed redesign of the parking lot will remove the tandem parking spaces, reduce the number of spaces backing out onto Riverside Street and will eliminate the parking on the Highland Avenue side of the property. The new design includes 16 parking spaces that all comply with the required dimensions, a landscape buffer, a new handicap space close to the entrance, a walkway between the two parking sections, and new lighting near the rear exits of the building.
5. The parking requirement required by the By-Law for the retail space taking into account the total square footage is 24 spaces. However, the applicant confirmed that the basement will be used only for storage space, an employee break room, a manager's office and a janitor's station. Accordingly, only the first floor of the building will be used as retail space. The parking requirement for the first floor retail use is 16 parking spaces.
6. The applicant confirmed that 16 spaces will be adequate for the business based on his observations of the current Frank Webb location, which has approximately 17 customer visits per day. The applicant stated that it is rare that all 4 customer groups, who usually come as couples, arrive at once. Additionally, the customers are scheduled by appointments since Frank Webb is not a self-serve retailer and customers are attended by an employee. The applicant stated that there are five employees per shift. Customers purchases are placed on

order and usually the items are delivered to a customer's home, which also reduces the number of people coming and going from the location.

7. During the hearing, in response to comments from neighbors, the applicant agreed to submit a new plan that would flip the original parking plan, resulting in the dumpster being closer to the building while the parking spaces will be closer to the neighboring property line. The applicant also confirmed that they will service the dumpster only between 9:00am and 9:00pm and that they will not service the dumpster on holidays.
8. Since the applicant's proposed redesign of the parking lot will have fewer spaces than required and will not fully comply with the required design requirements, 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).
9. With respect to the applicant's request for waivers from Section 5.1.3, the applicant stated that it will only be making façade-related changes to the building with its proposed parking re-design and that if the applicant was required to comply with the parking design requirements, the applicant would have to reduce the number of parking spaces.
10. 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.
11. Based upon the evidence presented and the representations made by the applicant, 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 proposed number of parking spaces located on the premises is sufficient for the use of the applicant and its patrons.
12. 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 use of and redesign of the parking lot located at 68 Highland Avenue in the Highland Commercial- 128 District, provided that the applicant meets the following conditions:

1. The applicant submits a new plan reflecting the changes agreed upon during the hearing to flip the Riverside Street section of the parking lot so that the dumpster is located closest to the building;

2. The basement portion of the property will not be used for retail use;
3. No lighting will spill over onto any adjacent property; and
4. The dumpster on the property will only be serviced between the hours of 9:00am- 9:00pm and will not be serviced on holidays.
5. The property will be occupied by Frank Webb Home operating as described at the hearing. In the event that the property is occupied by another business or Frank Webb Home substantially changes its manner of operation so as to require more parking, this Special Permit shall expire unless extended by the Board.

SIGNATORY PAGE – 68 HIGHLAND AVENUE



Jon D. Schneider, Chair

SIGNATORY PAGE – 68 HIGHLAND AVENUE



Howard S. Goldman, Member

SIGNATORY PAGE – 68 HIGHLAND AVENUE

A handwritten signature in dark ink, appearing to read 'Kathy Lind Berardi', written over a horizontal line.

Kathy Lind Berardi, Associate Member