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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Zdorovie ADH Needham, Applicant
35 Highland Circle
Map 74, Parcel 14***

June 16, 2022

Zdorovie ADH Needham made application to the Board of Appeals for a Special Permit under Sections 3.2.5.2 (b), 5.1.2, 5.13 and any other applicable Sections of the By-Law to allow the use of an adult day care facility and to waive strict adherence to parking and parking design requirements associated with the conversion of the ground level garage of a three-floor office building to house an adult day care program with capacity of 80 clients and 13 staff members. The property is located at 35 Highland Circle, Needham, MA in the Mixed-Use 128 (MU-128) District. A public hearing was held remotely on Zoom, on Thursday, June 16, 2022 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped May 23, 2022.
- Amended Application, Clerk stamped May 24, 2022.
- Revised Page 2 of the Application.
- Letter from Maria Iriti, Trustee, dated May 23, 2022.
- Plans, S-1, A-1-A-2, prepared by RAV and Assoc., Inc., stamped by Richard Volkin, Professional Engineer, dated April 20, 2022.
- Plot Plan, prepared by Precision Land Surveying, stamped by Michael Pustizzi, Land Surveyor, dated April 12, 2022
- Memo from Dave Roche, Building Commissioner, dated June 6, 2022.
- Email from John Schlittler, Chief of Police.
- Letter from Lee Newman, Director of Planning and Community Development, dated June 8, 2022.
- Email from Tara Gurge, Assistant Public Health Director, June 7, 2022.
- Email from Dennis Condon, Chief of Department, Fire Department, June 8, 2022.

June 16, 2021

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair, and Howard S. Goldman, Member. Also participating were Peter Friedenberg and Nik Ligris, Associate Members. Mr. Schneider opened the hearing at 7:45 p.m. by reading the public notice.

Robert Orsi, attorney representing the applicant, reported that the applicant was seeking a Special Permit for an adult day care facility and parking number and design waivers. The applicants, Max Mazaev and Anna Nikaeva, currently operate a facility at 185 Second Avenue. There is very little parking on site from the applicant's operation as nearly all the clients arrive by vans. The vans have drop-off and pick-off for intervals of 15 minutes from 8:30 a.m. to 9:30 a.m. and 2:30 p.m. to 3:30 p.m. Most employees use public transportation. Based on employee use at other facilities, the employee parking is minimal. The Building Inspector determined the parking requirement for the program is 23 parking spaces.

There are currently eight tenants at the building. Each tenant has a limit on the number of parking spaces it may use under its leases. The tenants utilize 27 of the available spaces. There are 65 parking spaces at the site. There are approximately 38 available parking spaces.

The proposed adult day care facility will utilize two floors - the first floor and second floor of the building. The second floor will be used for meetings, office storage space, activities, and file storage. The first floor is where the clients will be located, and where program activities will occur with a parking requirement of 23 spaces. At the 185 Second Avenue location there are 132 clients and 22 staff; they use approximately 16 parking spaces. The program will have 80 clients and 13 staff. Mr. Orsi calculated that the applicant will use only ten-spaces at this location.

Mr. Orsi said there is no one using the parking overnight.

Richard Volkin, architect for the applicant, noted there are currently 17 parking spaces in the first floor which will be eliminated. The building's history shows no more than 50% of the parking spaces have been used. The parking spaces required by the By-Law far exceeds the actual demand.

Mr. Mazaev and Ms. Nikaeva reported that they have operate various adult day health ("ADH") care programs since 2006. This site will be open seven days a week from 8:00 a.m. to 4:00 p.m. Clients leave between 2:00 p.m. to 3:30 p.m. Transportation is provided to and from the ADH center by four to five vans owned by the program. They provide health services, meals, program activities and coordinate clients with medical services. The goal is to maintain elders in their homes and out of nursing homes. The population served is the low- and no-income demographic. The service area is Needham and surrounding communities. They are downsizing by moving their 185 Second Avenue location to 35 Highland Circle

Mr. Tamkin asked when the Special Permit was issued for 185 Second Avenue. Mr. Mazaev responded that it was issued in 2006. They became the owners of the facility in 2019. They have similar operations in Newton and Natick.

Mr. Goldman asked for the name of the ADH. Ms. Mazaev responded that it is called Zdorovie ADH Center. Zdorovie means health in Russian.

Mr. Schneider was concerned about expanding a building which currently complies with the Needham parking By-Law requirements to one that no longer complies by expanding the useable space and eliminating 17 parking spaces. He was concerned about future tenants who may have a larger parking use than the ADH program.

Mr. Orsi suggested that a condition could be included that future tenants must have a lower parking requirement.

Mr. Ligris inquired if the *For Lease* sign on the building was for the space being discussed or was there other vacant space in the building. Mr. Orsi said that the sign was placed by the current owner. The applicants will be purchasing the property. Ms. Nikaeva noted that they are purchasing the property because it is challenging to lease properties for this use. They envision this location for the long-term.

Mr. Ligris inquired about the program downsizing the number of participants Ms. Nikaeva responded there will be fewer clients, but they are more severe cases. However, she noted there is a high demand for these services.

According to the Building Commissioner, the applicant will be 23 spaces short from the By-Law requirement. Mr. Goldman was concerned about the impact of future tenants with a higher parking use. Mr. Goldman and Mr. Schneider thought it would be cumbersome for the Board to monitor future parking use.

Mr. Tamkin suggested conditioning any change in use to require Board approval. He did not want to prescribe the uses that would be subject to review. Mr. Schneider inquired if the condition applied to the two ADH floors or to any space in the building. Mr. Tamkin responded it would be for the entire building. Mr. Tamkin agreed that eliminating parking was troubling, but he thought the proposal to be a good use and should be supported. He thought the decision would limit the marketability of the property. Mr. Orsi explained the concerns highlighted by the Board to the applicants. Mr. Mazaev and Ms. Nikaeva confirmed they understood the limit on the property and the impact it would have on the selling the property in the future. They accepted the limitation.

Mr. Goldman asked about any spaces leased for nighttime parking. Mr. Orsi responded that there was no leased nighttime parking. Mr. Orsi noted that the current owner owns 21 Highland Circle that does lease out nighttime parking spaces at 21 Highland Circle.

Mr. Goldman inquired how employees arrive at work. Ms. Nikaeva responded that some employees live nearby and walk to work, some carpool and others take public transportation.

Mr. Tamkin asked how many parking spaces will be available. Mr. Volkin responded that there will be 65 spaces. The Board concurred that there are adequate parking spaces for the proposed use.

Mr. Schneider suggested that the applicant only come back for Board review if the ADH space use is changed. Mr. Goldman thought a change in office use with one that has a higher parking use should come before the Board also. Mr. Schneider responded that he thinks the By-Law requires a new tenant with higher parking use to come before the Board, but it could be made explicit in a condition.

Mr. Tamkin suggested that any change to the ADH use and any change in use in the building that has a higher parking requirement than office use would require Board review. Mr. Orsi suggested that the Building Commissioner's conditions also be included: that there be no parking of ADH vans on Highland Circle, and if there are any changes on the second floor use that the applicant be required to seek additional parking waivers from the Board.

Maria Irriti, owner of 18, 21 and 35 Highland Circle, noted that Spiga Restaurant had asked to lease nighttime parking spaces as part of their expansion. Ms. Irriti said that Spiga Restaurant did not expand, and the spaces were not leased. Ms. Irriti assured there was plenty available parking in Highland Circle. She was supportive of the applicant's proposal.

Mr. Ligris asked if the top two floors were leased. Ms. Irriti responded that 1300 square feet on the third floor was vacant.

Comments received:

- Planning Board had no comment.
- Building Department request that a condition be included that the ADH vans not park on Highland Circle and the any use changes on the second floor require additional parking waivers from the Board.
- Fire Department had no objections.
- Police Department had no issues.
- Health Department requires that a food permit plan be sought and that there be sufficient parking lot spaces available to allow for separate trash and recycling dumpsters with sufficient scheduled service to prevent pests, and a grease barrel may be required.

Mr. Tamkin moved to approve a Special Permit for the Zdorovie ADH center for adult day care use; to waive strict adherence to the parking numbers and parking design requirements as outlined in the application for 80 clients and 13 staff with the following conditions:

- any change in use that has a greater requirement than office use will require an application and Board review;
- any change or modification in the adult day care use will require an application and Board review; and
- no ADH vans will be allowed to park on Highland Circle.

Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:37 p.m.

Findings:

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

1. The premises is located 35 Highland Circle, Needham, MA in the Mixed-Use 128 (MU-128) District. The premises is a three-floor office building with a ground level garage and 65 outdoor parking spaces on site.
2. The applicant currently operates an adult day care facility at 185 Second Avenue which use was approved by the Board by Special Permit in 2005. The applicant acquired the Second Avenue facility in 2019 and now intends to close that facility and relocate to the premises in a smaller operation.
3. The proposed adult day care facility at the premises is permitted in the district upon issuance of a special permit. The operation, as proposed, will utilize 8,840 sq. ft. of space on two floors - the first floor currently used as a garage, and the second floor of the building. The second floor will be used for meetings, office storage space, activities, and file storage. The applicant proposes to eliminate the ground level garage and 17 parking spaces.
4. The applicant's operations at the building will have 80 clients and 13 staff. Operations will be 8:00 AM to 4:00 PM Monday through Sunday.
5. According to the Building Commissioner, the applicant's use of the second floor of the building has a parking requirement of 17 spaces predicated on half of the floor being used by the applicant for storage. The new ground floor, where applicant's clients will be located, and where program activities will be provided, has a parking requirement of 23 spaces,
6. There are currently eight tenants in the building. Each tenant has a limit on the number of parking spaces it may use under their leases and combined, the current tenants utilize 27 of the available spaces. The premises will have 65 outdoor parking spaces after elimination of the 17 spaces currently under the building. The total parking requirement of the building, with this use, is 88 parking spaces leaving a deficit of 23 parking spaces.
7. Clients will be transported to and from the premises by van and be dropped off at the building. The arrival of the vans is expected to be coordinated by radio communication, so that only one van is unloading clients at a time. Many of the clients need assistance on exiting the vans and entering the facility.
8. The proposed use is consistent with the objectives of the Zoning By-law and will not have any demonstrable adverse impact on the surrounding area.
9. The 65 outdoor parking spaces will be adequate with the first and second floor occupied by the applicant and the third and fourth floor used as offices.

10. The existing outdoor spaces have been used for many years in their current configuration. Compliance with design requirements would cause the elimination of a large number of spaces. Special circumstances exist for waiver of design requirements.

Decision:

On the basis of the foregoing findings, following due and open deliberation, the Board by unanimous vote grants the Applicant 1) a special permit under Section 3.2.5.2(b) to operate an adult day care facility and 2) a waiver of the required number of parking spaces under Section 5.1.2, and 3) waiver of the design requirements for parking spaces under Section 5.1.3, subject to the following conditions:

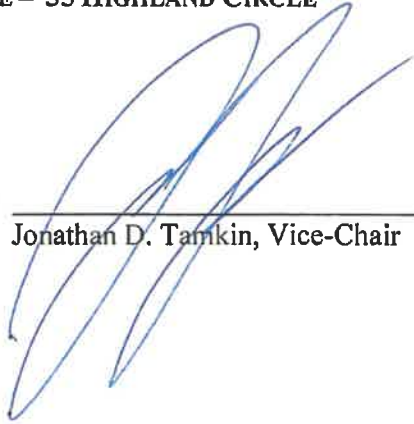
1. The applicant's operations at the building may have no more than 80 clients and 13 staff during operating hours;
2. Operations shall be from 8:00 AM and 4:00 PM. Monday through Sunday;
3. Any change in the occupancy of the third or fourth floor to a use that has a greater parking requirement than an office use will require an application and approval of the Board;
4. Any change in the use of the first and second floor from the use by the applicant as described at the hearing (including use by someone other than the applicant) will require an application and Board review and approval; and
5. No transport vans or vehicles associated with the applicant's use will park on Highland Circle.

Failure to comply with any of the foregoing conditions may constitute grounds for revocation by the Board of this special permit and the parking waivers, after hearing upon notice to the applicant, and with such other notice of the Board and in its sole discretion shall deem appropriate.

SIGNATORY PAGE –35 HIGHLAND CIRCLE


Jon D. Schneider, Chair

SIGNATORY PAGE – 35 HIGHLAND CIRCLE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 35 HIGHLAND CIRCLE



Howard S. Goldman, Member