NEEDHAM PLANNING BOARD
Tuesday, May 18, 2021
7:15 p.m.

Virtual Meeting using Zoom
Meeting ID: **826-5899-3198**
(Instructions for accessing below)

To view and participate in this virtual meeting on your phone, download the "Zoom Cloud Meetings" app in any app store or at www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following Meeting ID: 826-5899-3198

To view and participate in this virtual meeting on your computer, at the above date and time, go to www.zoom.us click "Join a Meeting" and enter the following ID: 826-5899-3198

Or to Listen by Telephone: Dial (for higher quality, dial a number based on your current location): US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 Then enter ID: 826-5899-3198

Direct Link to meeting: https://us02web.zoom.us/s/82658993198

1. ANR Plan – Robert Roach, Oakcrest Builders, Petitioner, (Property located at 71 Pilgrim Road, Needham, MA).

2. Public Hearing:

   7:20 p.m. Major Project Site Plan Special Permit No. 2021-02: Katherine Pennington Klein, 40 Eaton Road, Needham, MA, Petitioner. (Property located at 32 Chestnut Street, Needham, MA). Regarding proposed renovation of approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice.

3. Decision: Major Project Site Plan Special Permit No. 2021-01: WELL LCB Needham Landlord LLC, c/o LCB Senior Living, 3 Edgewater Drive, Suite 101, Norwood, MA, 02062, Petitioner. (Property located at 100-110 West Street, Needham, MA). Regarding redevelopment of the property to include an 83 unit Assisted Living and Alzheimer's/Memory Care facility and 72 Independent Living Apartments.

4. Appointment:

   7:50 p.m. Minor Project Review: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, Massachusetts, Petitioner (Property located at 1688 Central Avenue, Needham, MA).

5. Board of Appeals – May 20, 2021.

6. Minutes.

7. Correspondence.

8. Report from Planning Director and Board members.

(Items for which a specific time has not been assigned may be taken out of order.)

TOWN OF NEEDHAM
MASSACHUSETTS

2021 MAY 10 PM 2:42

PLANNING BOARD

500 Dedham Avenue
Needham, MA 02492
781-455-7550

APPLICATION FOR ENDORSEMENT OF PLAN
BELIEVED NOT TO REQUIRE APPROVAL

Submit three (3) copies. One copy to be filed with the Planning Board and one with the Town Clerk as required by Section 81-P, Chapter 41 of the General Laws. This application must be accompanied by the **Original Tracing** and **three (3) copies of the plan**.

To the Planning Board:

The undersigned, believing that the accompanying plan of land in the Town of Needham does not constitute a subdivision within the meaning of the Subdivision Control Law, for the reasons outlined below, herewith submits said plan for a determination and endorsement that Planning Board approval under the Subdivision Control Law is not required.

1. Name of Applicant Robert Roach / Oakcrest Bldrs
   Address 4 Hopedale st. Mendon Ma 01756
2. Name of Engineer or Surveyor Field Resources
   Address 281 Chestnut st. Needham Ma 02492
3. Deed of property recorded in Norfolk County Registry,
   Book 38536(71) (65)39090, Page 552(71) 342(65)
4. Location and description of property
   65, 71 Pilgrim Rd Needham
5. Reasons approval is not required (check as applicable):

   a) Every lot shown has the area and frontage required by the Zoning By-Law on a way, as defined by Section 81-L, Chapter 41 of the General Laws.

   b) Land designated _____ shall not be used as separate building lot(s) but only together with adjacent lots having the required area and frontage.

   c) Lot(s) having less than required frontage or area resulted from a taking for public purpose or have been recorded prior to 3/26/1925, no land is available to make up the deficiency and the frontage and land area of such lots are not being reduced by the plan.

   d) _____

(If the applicant is not the owner, written authorization to act as agent must be attached)

Signature of Applicant Robert Roach

Address 4 Hopedale st. Mendon Ma 01756

By _____ (agent)

Application accepted this 10 *day of* May 20 21
as duly submitted under the rules and regulations of the Planning Board.

By _____

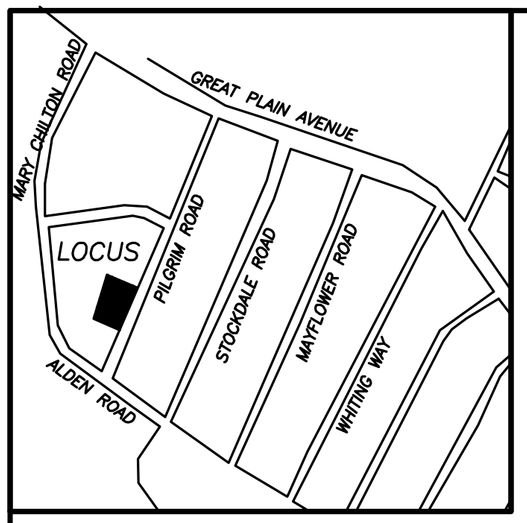


TABLE OF REGULATIONS (ZONING BYLAW SECTION 4.2.2)**
SINGLE RESIDENCE B (SRB)

	REQUIRED	LOT 17A	LOT 18A
MINIMUM LOT AREA	10,000 SF	10,189 SF	10,762 SF
MINIMUM LOT FRONTAGE	80 FEET	81.0 FEET	81.0 FEET
MINIMUM FRONT SETBACK	20 FEET(H)(J)	-----	33.7 FEET
MINIMUM SIDE YARD	14 FEET	-----	7.2 FEET
		-----	22.8 FEET
MINIMUM REAR YARD	10 FEET	-----	42.5 FEET
MAXIMUM BUILDING COVERAGE	25%	-----	17.8%
MAXIMUM F.A.R	0.38	-----	0.18
MAXIMUM BUILDING HEIGHT	35 FEET	-----	<35 FEET
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES	-----	2 1/2 STORIES

**ZONING REQUIREMENTS IN FORCE AT THE DATE OF THIS PLAN.

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
NEEDHAM PLANNING BOARD

_____

_____

_____

_____

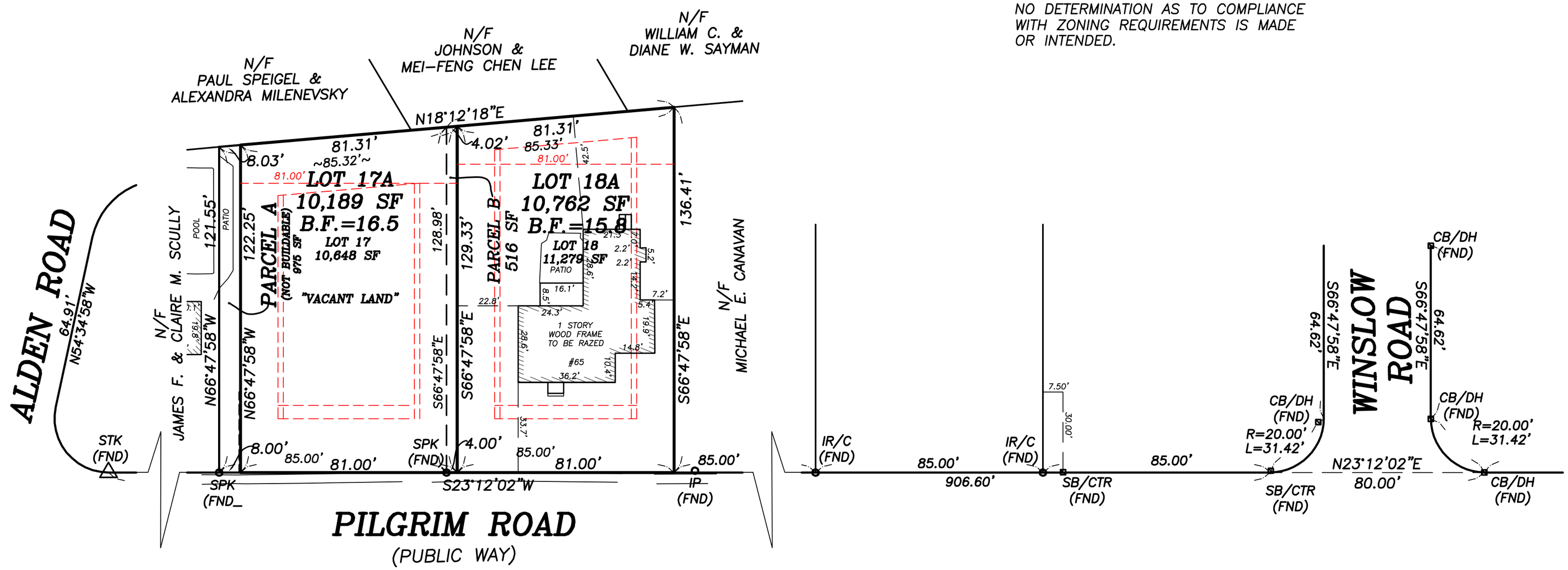
_____

_____

DATE: _____

NO DETERMINATION AS TO COMPLIANCE WITH ZONING REQUIREMENTS IS MADE OR INTENDED.

FOR REGISTRY USE ONLY



THE PURPOSE OF THIS PLAN IS TO DIVDE PARCEL A (A NON BUILDABLE LOT) FROM LOT 17 THEN TO DIVIDE PARCEL B FROM LOT 18 CREATING LOT 18A. PARCEL B IS TO BE COMBINED WITH THE REMAINDER OF LOT 17 TO CREATE LOT 17A. PARCEL A IS TO REMAIN FOR FUTURE GRANT TO AN ADJACENT PARCEL.

APPROVAL NOT REQUIRED
PLAN OF LAND
71 PILGRIM ROAD
NEEDHAM, MASS.

REFERENCES:

DEEDS:
- BOOK 39090 PAGE 341 (LOCUS)
- BOOK 38536 PAGE 552 (LOCUS)
- BOOK 10478 PAGE 161 (ABUTTER)
- BOOK 10891 PAGE 368 (ABUTTER)

PLANS:
- PLAN 216 OF 1933, DEED BOOK 1990 PAGE 479
- PLAN 127 OF 1982, PLAN BOOK 294
- PLAN 717 OF 1988, PLAN BOOK 369
- PLAN 252 OF 1946, PLAN BOOK 137
- PLAN 1186 OF 1987, DEED BOOK 7753 PAGE 745
- PLAN 509 OF 1931, DEED BOOK 1935 PAGE 106

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

I CERTIFY THAT THIS PLAN IS BASED UPON AN ACTUAL FIELD SURVEY, AND THE LATEST PLANS AND DEEDS OF RECORD.

COMMONWEALTH OF MASSACHUSETTS
BRADLEY J. SIMONELLI #47581
PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE
30 0 15 30 60

OWNER/APPLICANT:
ROBERT ROACH
OAKCREST BUILDERS INC
4 HOPEDALE STREET
MENDON MA

JOB NO. 111-20

REVISED: MAY 10, 2021
REVISED: MAY 6, 2021

Field Resources, Inc.
LAND SURVEYORS

MARCH 30, 2021 SCALE 1"=30'

P.O. BOX 324
AUBURN, MA
508 832 4332

281 CHESTNUT ST.
NEEDHAM, MA.
781 444 5936

fieldresources@hotmail.com

111-20

ZONING INFORMATION: SINGLE RESIDENCE B

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PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

LEGAL NOTICE
Planning Board
TOWN OF NEEDHAM
NOTICE OF HEARING

In accordance with the provisions of M.G.L., Chapter 40A, S.11; the Needham Zoning By-Laws, Sections 7.4, 5.1.1.6, 5.1.2, the Needham Planning Board will hold a public hearing on Tuesday, May 18, 2021 at 7:20 p.m. by Zoom Web ID Number 826-5899-3198 (further instructions for accessing are below), regarding the application of Katherine Pennington Klein, 40 Eaton Road, Needham, MA, for a Special Permit under Site Plan Review, Section 7.4 of the Needham Zoning By-Law.

The subject property is located at 32 Chestnut Street, Needham, MA, located in the Center Business Zoning District. The property is shown on Assessors Plan No. 47 as Parcel 59 containing a total of 12,340. The requested Major Project Site Plan Special Permit, would, if granted, permit the Petitioner to renovate approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice.

In accordance with the Zoning By-Law, Section 7.4, a Site Plan Special Permit Amendment is required. In accordance with the Zoning By-Law, Section 5.1.1.6, a Special Permit to waive strict adherence to the requirements of Section 5.1.2, Required Parking is required.

To view and participate in this virtual meeting on your phone, download the "Zoom Cloud Meetings" app in any app store or at www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following Meeting ID: 826-5899-3198

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US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 Then enter ID: 826-5899-3198

Direct Link to meeting: https://us02web.zoom.us/s/82658993198

The application may be viewed at this link: https://www.needhamma.gov/Archive.aspx?AMID=146&Type=&ADID= . Interested persons are encouraged to attend the public hearing and make their views known to the Planning Board. This legal notice is also posted on the Massachusetts Newspaper Publishers Association's (MNPA) website at (http://masspublicnotices.org/).

NEEDHAM PLANNING BOARD

Needham Times, April 29, 2021 and May 6, 2021.

TOWN OF NEEDHAM
MASSACHUSETTS

Room 20, Town Hall
Needham, MA 02492
781-455-7526

PLANNING BOARD

APPLICATION FOR SITE PLAN REVIEW

Project Determination: (circle one) (Major Project) Minor Project

This application must be completed, signed, and submitted with the filing fee by the applicant or his representative in accordance with the Planning Board's Rules as adopted under its jurisdiction as a Special Permit Granting Authority. Section 7.4 of the By-Laws.

Location of Property 32 Chestnut Street, Needham, MA
Name of Applicant Katherine Pennington Klein, DMD
Applicant's Address 40 Eaton Road, Needham, MA 02492
Phone Number 215-901-1119

Applicant is: Owner _____ Propsective Tenant X
Agent/Attorney _____ Purchaser _____

Property Owner's Name Alfred W. Greymont, Trustee, Alfred W, Greymont Revocable Trust
Property Owner's Address P.O. Box 149, Tuftonboro, NH 03816
Telephone Number 617-201-1846

Characteristics of Property: Lot Area 12,340 Present Use Mixed
Map # 47 Parcel # 59 Zoning District Center Business (CB)

Description of Project for Site Plan Review under Section 7.4 of the Zoning By-Law:

Renovation and conversion of approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice, as further described in the materials submitted herewith. See Addendum A for a list of zoning relief that is, or may be, required.

Signature of Applicant (or representative) _____
George Giunta, Jr., Esq., duly authorized
Address if not applicant _____
Telephone #
Owner's permission if other than applicant See Authorization Letter Provided Herewith

---

SUMMARY OF PLANNING BOARD ACTION

Received by Planning Board _____ Date _____
Hearing Date _____ Parties of Interest Notified of Public Hearing _____
Decision Required by _____ Decision/Notices of Decision sent _____
Granted _____
Denied _____ Fee Paid _____ Fee Waived _____
Withdrawn _____
NOTE: Reports on Minor Projects must be issues within 35 days of filing date.

ADDENDUM A
TO
APPLICATION FOR SITE PLAN REVIEW
OF
Katherine Pennington Klein, DMD
32 Chestnut Street
Needham, Massachusetts

The following relief is or may be required, and is hereby requested:

1. Pursuant to the original Decision, as amended, further Major Project Site Plan Review is required.

2. In addition, the following relief is, or may be required:

a. A Special Permit pursuant to Section 5.1.1.6 further waving strict adherence with the off-street parking requirements of Section 5.1.2 of the Zoning By-law;

d. Waiver of strict compliance with the requirements of Section 7.4.4, as applicable; and

e. Any and all additional relief required or appropriate for the use and occupation of a portion of the existing building by an orthodontic practice.

3. The Applicant requests that any and all relief granted by the Board in connection with the within application shall run with the land and that the movement of interior walls and interior fixtures not require further review, provided the total useable square footage remains fixed.

Katherine Pennington Klein
40 Eaton Road
Needham, MA 02492

April 15, 2021

Lee Newman
Planning Director
Town of Needham
Planning Board
Town Hall
Needham, Massachusetts 02492

Re: Site Plan Application
32 Chestnut Street, Needham, MA

Dear Mrs. Newman,

Please accept this letter as confirmation that George Giunta, Jr., Esquire, is authorized to make application for Site Plan Review and any and all other zoning, planning, general by-law and other relief that may be required or appropriate in connection with the renovation and redevelopment of the commercial space at 32 Chestnut Street for use as a dental practice. In connection therewith, Attorney Giunta is hereby authorized, to execute, sign, deliver and receive all necessary documentation related thereto, including, without limitation, Application for Site Plan Review.

Sincerely,

Katherine P. Klein

Katherine Pennington Klein

Alfred W. Greymont, Trustee
Alfred W. Greymont Revocable Trust
P.O. Box 149
Tuftonboro, NH 03816

April 15, 2021

Lee Newman
Planning Director
Town of Needham
Planning Board
Town Hall
Needham, Massachusetts 02492

Re: Site Plan Application
32 Chestnut Street, Needham, MA

Dear Mrs. Newman,

I am the owner of the property known and numbered 30-50 Chestnut Street, Needham, MA. In connection therewith, please accept this letter as confirmation that George Giunta, Jr., Esquire, attorney for Katherine Pennington Klein, is authorized to make application for Site Plan Review and any and all other zoning, planning, general by-law and other relief that may be required or appropriate in connection with the renovation and redevelopment of the commercial space at 32 Chestnut Street for use as a dental practice. In connection therewith, Attorney Giunta is hereby authorized, to execute, sign, deliver and receive all necessary documentation related thereto, including, without limitation, Application for Site Plan Review.

Sincerely,

Alfred W. Greymont

Alfred W. Greymont, Trustee
Alfred W. Greymont Revocable Trust

George Giunta, Jr.
ATTORNEY AT LAW*
281 Chestnut Street
Needham, MASSACHUSETTS 02492
*Also admitted in Maryland
TELEPHONE (781) 449-4520 FAX (781) 449-8475

April 16, 2021

Lee Newman
Planning Director
Town of Needham
1471 Highland Avenue
Needham, MA 02492

VIA EMAIL: LNewman@needhamma.gov

Re: Major Project Site Plan
Amendment
Katherine Pennington Klein, DMD
32 Chestnut Street, Needham, MA

Dear Lee,

Please be advised that this office represents Katherine Pennington Klein, DMD (hereinafter, and in the materials submitted herewith, the "Applicant" and "Dr. Klein") relative to the proposed renovation and redevelopment of approximately 1,751 square feet of existing first floor commercial space within the building known and numbered 30-50 Chestnut Street (the "Premises"). In connection therewith, submitted herewith pursuant to M.G.L. Chapter 40A and the Town of Needham Zoning By-Law (the "By-Law"), please find the following materials. Same are submitted electronically, pursuant to the procedures adopted by the Planning Board for filing during the Covid-19 state of emergency, and two hard copies of the materials will be provided by mail.

1. Completed Application for further Site Plan Review with Addendum A;

2. Architectural plans titled "Katie Klein Orthdontics, 32 Chestnut Street, Needham, MA, Tenant Fit-Up", prepared by Lagrasse, Yanowitz & Feyl, dated April 15, 2021, consisting of four (4) sheets, as follows: 1. Sheet labelled "Existing Conditions"; 2. Sheet labelled "Proposed Floor Plan"; 3. Sheet labelled "Existing Front Façade" and "Proposed (Option 2)"; and 4. Sheet labelled "Existing Rear Façade" and "Proposed".

3. Renderings prepared by Integrated Design Studio, Henry Schein, Dental, undated, consisting of four (4) sheets.

4. Authorization Letter of Katherine Pennington Klein, dated April 15, 2021;

5. Authorization Letter of Alfred W. Greymont, Trustee, Alfred W. Greymont Revocable Trust, dated April 15, 2021; and

6. Check No. 2642 in the amount of $1,000 for the requisite filing fee.

The Premises is one of several tenant bays in an existing commercial building in the Center Business District. The Building consist of two parts: a one-story, older portion, previously known as the "Jacobs Block" and a two-story, newer portion. According to the records of the Assessor's Department, the older portion appears to have been built in 1926. The newer portion was built in or around 2001 pursuant to Major Project Site Plan Special Permit, Application 98-10, filed with the Town Clerk on September 8, 1998 (the "Decision"), as affected by Amendment, filed with the Town Clerk on August 15, 2002 (the "Amendment").

The Premises is located at the northerly end of the old portion of the Building and consists of approximately 1,751 square feet of floor space. It was last used for retail purposes by the Art Emporium as an art and framing store. The rest of the older portion of the Building is currently occupied by a tailor, a television sales and service store, a nail salon, and a vacant storefront. The newer portion of the Building is currently occupied by a bank on the first floor and offices on the second floor.

Dr. Klein is a board-certified specialist in orthodontics. She received her Master of Science degree in Oral Biology and a Certificate of Advanced Graduate Study in Orthodontics from the University of North Carolina at Chapel Hill. While there, she was selected as the Andrew M. Brooks Fellow. Dr. Klein graduated from the 7-year B.S./D.M.D. program at Villanova University and the University of Pennsylvania School of Dental Medicine. As a recipient of an Air Force Health Professions Scholarship, she completed an Advanced Education in General Dentistry Residency at Travis Air Force Base (AFB) in California where she continued to serve as a general dentist upon graduation. In addition to practicing clinical dentistry at Travis AFB, Dr. Klein served as the Dental Public Health Officer, and in 2007 was recognized as the Junior Clinical Dentist of the Year. Dr. Klein is currently a faculty member in the Oral and Maxillofacial Surgery Department at the Harvard Dental School, Massachusetts General Hospital. She is also the co-director of the Orthognathic Surgical Team at Mass General and a member of the Cleft Lip and Palate Team at both Mass General and Shriners Hospital for Children in Boston.

Dr. Klein intends to renovate the Premises for use as an orthodontics office. Examples of some of the work she will perform include braces, Invisalign, making retainers, and tooth bleaching. Because individuals of all ages seek corrective tooth changes with orthodontics, patients are expected to range from as young as 7 years old up to 80 years old. However, it is expected that the majority of patients will be between 10-12 years of age. The office is expected to operate 7 AM to 7 PM, Monday through Friday, as well as some Saturdays. There is expected to be a total of three staff on site at any given time; one dentist, one administrative person and one clinical assistant.

Analysis

I. Use

It is the Applicant's position that the proposed orthodontic office constitutes a "Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section" in Section 3.2.2 of the Zoning By-Law. As such, the use is permitted as of right. This position is based on the plain language of the Zoning By-Law, as well as current and prior interpretations of the Building Commissioner's and the Zoning Board of Appeals.[1]

The Building in which the Premises is located is the subject of a prior Site Plan Special Permit approval. Pursuant to that permit, the Building (including both the older and newer portions) was to contain retail, banking, office and support services, and Condition 2.2 of the Decision, as modified by the Amendment, requires:

> That the proposed retail, banking and office building uses and support services shall contain the dimensions and be located on that portion of the locus exactly as shown on the Plan and in accordance with applicable dimensional requirements of the By-Law. That the Petitioner shall be permitted to erect partition walls within the building at his discretion provided the use allocation as shown on the Plan is maintained (emphasis added).

In addition, section 3.2 of the Decision imposes a limitation that:

> There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this decision and to take other action necessary to determine and ensure compliance with this decision.

As a result, even though the use is allowed as of right, the proposed dental practice requires further site plan review and an amendment to the existing site plan special permit. Provided such amendment is granted, the use will comply with the By-Law and the Decision as affected by the Amendment.

II. Parking

Section 5.1.2 of the Bylaw (Required Parking) does not include a category for dental practice. However, it does include a category for "Medical, dental and related health service structures or clinics". In as much as the structure in which the Premises is located is not exclusively medical, dental or related health services, and whereas neither the proposed dental practice nor the Building constitute a clinic, as that term is defined in the By-Law, such category does not appear to apply. Nevertheless, it is the closest category in Section 5.1.2 and the Applicant is also mindful of apparent standing practice to apply such category to all medical, dental and related health service uses. Therefore, such category has been used to analyze the parking impact of the proposed use.

---

[1] See Decision of the Zoning Board of Appeals, dated November 19, 2015, issued to Salib Fanikos Dental Care, LLC concerning property in the Center Business District known and numbered 905-915 Great Plain Avenue.

As set forth above, the Premises contains approximately 1,751 square feet of area. Applying the aforementioned parking requirement of one car for every 200 square feet of area, the resulting parking demand will be 9 spaces, calculated as follows:

1,751 ÷ 200 = 8.75 spaces, rounded up = 9 spaces required

Compare this to the parking demand for the prior retail use (at a demand of 1 space for every 200 square feet, pursuant to Section 5.1.2), and the increase in demand is only 3 spaces:

1,751 ÷ 300 = 5.84 spaces, rounded up = 6 spaces required
9 – 6 = increase of 3 spaces

Because there is no off-street parking available on the Property, such increase will require an amendment and increase to the existing special permit parking waiver, from 46 spaces to 49 Spaces.[2] Provided such amendment and increase is granted, the parking will comply with the By-Law and the Decision, as affected by the Amendment.

III. Site Plan Analysis

(a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air.

Dr. Kein asserts that the use of the Premises for an orthodontics practice will not constitute a "seriously detrimental use" within the terms of the By-Law. Moreover, the Property and the Building are already fully developed and the only renovations proposed are limited to interior changes and cosmetic exterior changes. Therefore, no material additional impact is anticipated to surface water drainage, sound and sight, views, light and air.

(b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly.

The Building and Property are currently fully developed and bounded by existing established ways. Furthermore, whereas only interior modifications and cosmetic exterior changes are proposed, existing traffic patterns are not expected to be affected in a material way, and, based on its observations and familiarity with the site, the Applicant is neither aware of nor anticipates any problems with vehicular and pedestrian movement within the site or on adjacent streets.

[2] See paragraphs 1.6 and 1.7 of the Decision and paragraph 1.6 of the Amendment. Note that the lack of land available to provide off-street parking was caused in substantial part by a land swap between the Town of Needham and the owner of the Property, pursuant to which the total number of parking spaces in the municipal parking lot was substantially increased.

(c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises.

The Property does not contain any parking or loading spaces, but instead relies upon the adjacent municipal parking lot. Whereas the proposed orthodontics practice will only result in a net parking demand increase of three spaces, Dr. Klein does not anticipate any significant or material additional impacts to off-site parking and loading spaces. Therefore, the arrangement should be adequate.

(d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site.

The Property and Building are already developed with infrastructure in place. Moreover, the nature of the proposed use is such that the amount of waste expected to be generated is no greater than the retail use that previously occupied the Premises. As a result, the existing methods of waste disposal are expected to remain adequate.

(e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of the By-Law.

The Property and the Building are situated in a highly developed, commercial area. The Applicant is not aware of any significant community assets in the area immediately adjoining the Premises, other than the new fire station. However, whereas the Property and Building are fully developed and no material expansion or fundamental changes are proposed, the Applicant does not anticipate any significant or material impact from the proposed use. Therefore, the proposed redevelopment, renovation and reuse of the Premises is not anticipated to significantly affect the relationship of the Premises to any community assets or any adjacent landscape, buildings and structures.

(f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets.

The Property and Building are presently fully developed and fully connected to Town infrastructure. Moreover, only interior modifications and cosmetic exterior changes are being proposed. Therefore, the Applicant does not anticipate any significant or material change, or any adverse impacts to any Town resource.

Conclusion

Based on the foregoing, Dr. Klein asserts that the proposed renovation and re-use of the Premises for use as an orthodontic practice, as set forth above and in the materials submitted herewith, is both proper and appropriate. The proposed use will provide a necessary and important service to the residents and workers in the Town, with minimal, if any, expected impact. While perhaps not the use of choice for a former retail space, nevertheless the proposed use still provides a retial service. Therefore, Dr. Klein requests that her application be approved and the relief required be granted.

Please schedule this matter for the next available meeting of the Board, whether via Zoom or other electronic format or otherwise. If you have any questions, comments or concerns relative to the foregoing, please do not hesitate to contact me so that I may be of assistance.

Your courtesy and attention are appreciated.

Sincerely,

George Giunta, Jr

LAGRASSE YANOWITZ & FEYL
ARCHITECTURE + LAND PLANNING + CONSTRUCTION MANAGEMENT

KATIE KLEIN ORTHODONTICS

32 CHESTNUT ST, NEEDHAM, MA
TENANT FIT-UP
AREA: ±1,751 SF

APRIL 15, 2021









EXISTING CONDITIONS

LAGRASSE YANOWITZ & FEYL
ARCHITECTURE + LAND PLANNING + CONSTRUCTION MANAGEMENT

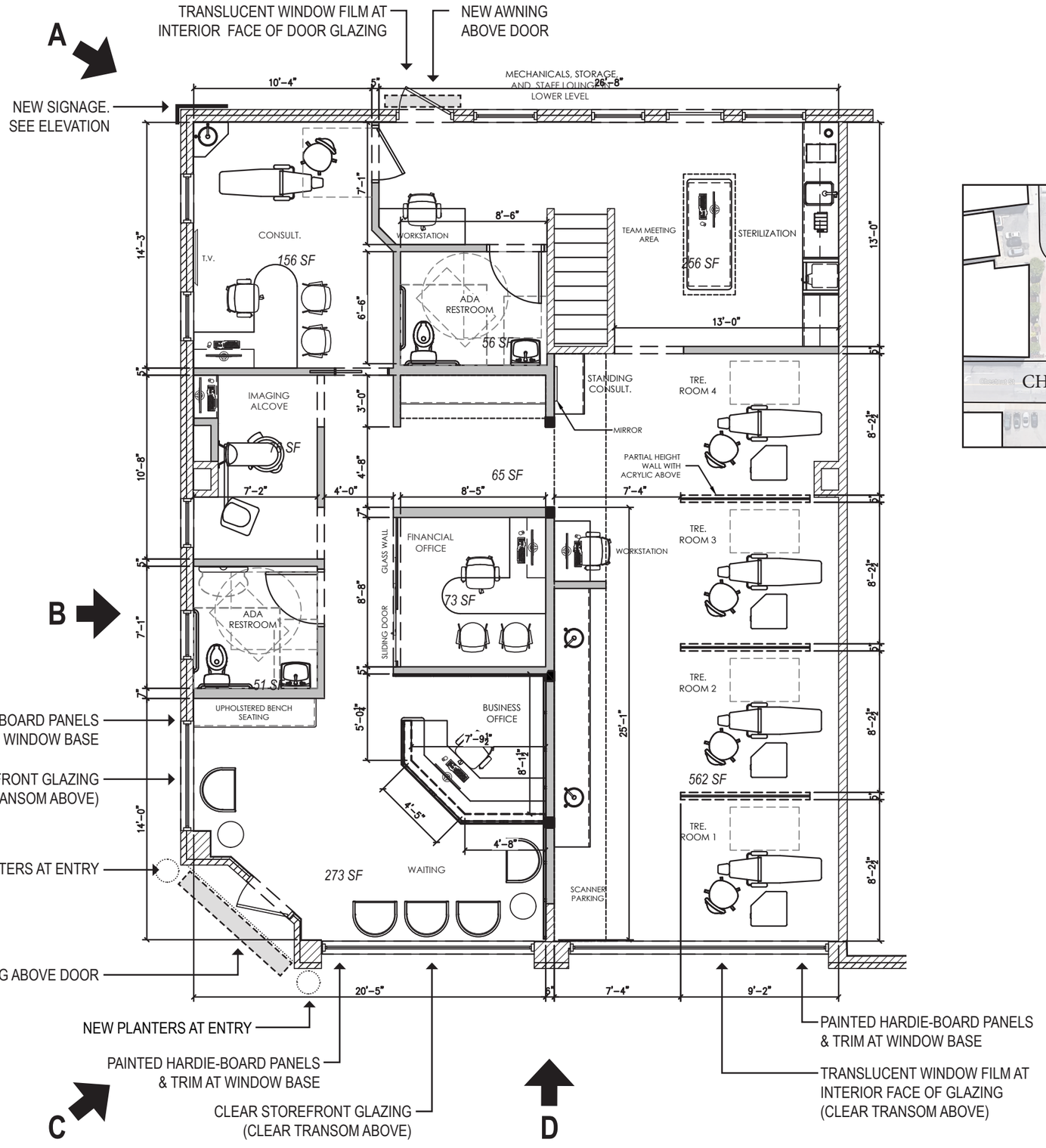
KATIE KLEIN ORTHODONTICS

32 CHESTNUT ST, NEEDHAM, MA
TENANT FIT-UP
AREA: ±1,751 SF

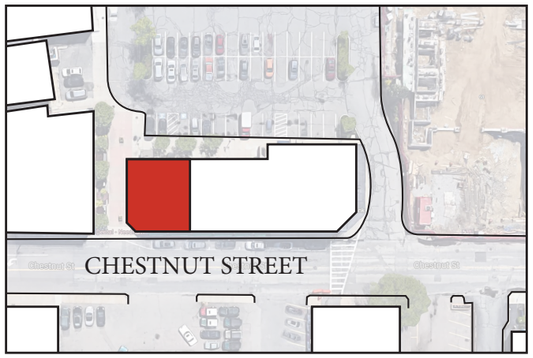
APRIL 15, 2021



NOT FOR CONSTRUCTION



EXISTING WALLS
NEW WALLS



LOCUS MAP



PROPOSED FLOOR PLAN

LAGRASSE YANOWITZ & FEYL
ARCHITECTURE + LAND PLANNING + CONSTRUCTION MANAGEMENT

KATIE KLEIN ORTHODONTICS

32 CHESTNUT ST, NEEDHAM, MA
TENANT FIT-UP
AREA: ±1,751 SF

APRIL 15, 2021

EXISTING FRONT FACADE



PROPOSED FRONT FACADE



LAGRASSE YANOWITZ & FEYL
ARCHITECTURE + LAND PLANNING + CONSTRUCTION MANAGEMENT

KATIE KLEIN ORTHODONTICS

32 CHESTNUT ST, NEEDHAM, MA
TENANT FIT-UP
AREA: ±1,751 SF

APRIL 15, 2021

PROPOSED



EXISTING REAR FACADE





HENRY SCHEIN® DENTAL

3D RENDERING
FOR PRESENTATION PURPOSES ONLY

INTEGRATED DESIGN STUDIO™



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HENRY SCHEIN® DENTAL

3D RENDERING
FOR PRESENTATION PURPOSES ONLY

INTEGRATED DESIGN STUDIO™

From:	Dennis Condon
To:	Alexandra Clee
Subject:	RE: Request for comment - 32 Chestnut Street
Date:	Thursday, April 22, 2021 12:37:55 PM
Attachments:	image001.png image002.png

Hi Alex,
The Fire Dept. is okay with the change of use plan.

Thanks,
Dennis

Dennis Condon
Chief of Department
Needham Fire Department
Town of Needham
(W) 781-455-7580
(C) 508-813-5107
Dcondon@needhamma.gov

Follow on Twitter: Chief Condon@NeedhamFire

Watch Needham Fire Related Videos on YouTube @ Chief Condon

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Tuesday, April 20, 2021 1:07 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
Subject: Request for comment - 32 Chestnut Street

Dear all,

The Planning Board will be hearing about a proposal for a new orthodontists office at 32 Chestnut Street on May 18 2021. More information is included in the submitted documents, detailed below, which can be attached to this email and can also be found at this K:\Planning Board Applications\Planning_32Chestnut. (some of you will receive a hard copy in the inter-office mail as well).

The documents attached for your review are:

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2. Addendum A to Application. *Attached*

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4. Alfred W. Greymont Authorization Letter, dated April 15, 2021. *attached*

5. Letter from Attorney George Giunta Jr., dated April 16, 2021. *Attached.*

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The Planning Board has scheduled this hearing for May 18, 2021. If you wish to comment, please submit your comment by Wednesday May 12, 2021, so that the Petitioner has time to address any concerns or questions in advance of the hearing.

Thanks, alex.

_____
Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

From: John Schlittler
To: Alexandra Clee
Subject: RE: Request for comment - 32 Chestnut Street
Date: Monday, April 26, 2021 2:15:19 PM

The Needham Police department has no issues

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Tuesday, April 20, 2021 1:07 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
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Thanks, alex.

_____

Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

From:	Tara Gurge
To:	Alexandra Clee
Subject:	RE: Public Health"s comments RE: 32 Chestnut Street
Date:	Thursday, April 22, 2021 11:59:59 AM
Attachments:	Board of Reg COVID-19 Guidance Doc.doc image002.png image003.png
Importance:	High

Alex –

Here are the Public Health Division comments for the **Project Site Plan proposal located at 32 Chestnut Street**, below:

- Applicant must follow all up to date state and local COVID-19 protocols. See link to CDC guidelines - https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html.
- Applicant must also follow the attached guidance from the Massachusetts Department of Public Health (DPH) and the Board of Registration in Dentistry (BORID) in response to the Massachusetts COVID-19 State of Emergency. (See attached Guidance Document for your reference.)
- Local Board of Health Face Covering Ordinance must be followed (See link to revised order - http://www.needhamma.gov/DocumentCenter/View/23257/Public-Health-Emergency-Order-re-Face-Coverings_Final-32421-002?bidId=.) Signage can also be provided if requested.
- The applicant must meet current interior/exterior COVID-19 Federal, state and local requirements for spacing of seating, HVAC/ventilation, face covering requirements, sanitation requirements and occupancy limit requirements, etc. Please ensure that proper occupancy limits are met in order to accommodate the most updated state COVID-19 requirements for this proposed facility to ensure the health and safety for the number of proposed patients and staff on site.
- Seating in the waiting room will need to be spaced out and separated so that the seats are at least 6 ft. apart from each other. Time in waiting room must be limited to ensure proper social distancing can be maintained and exposure limited.
- HVAC/ventilation system must be set to max. outdoor air flow setting for this space if possible, and have an increase in number of air exchanges on site for this space, in order to lower the risk of COVID-19 spread for this indoor space. Supplemental HVAC systems, along with installation of additional filtration for this space, must be investigated prior to approval.
- Proper storage and disposal of any biohazard waste must be conducted on site. A licensed medical waste hauler, permitted by the Public Health Division, must be contracted for this medical waste disposal. (We can provide you with a list of current permitted medical waste haulers if needed.)

Please let us know if you need additional information or have any follow-up questions on those requirements.

Thanks,



TARA E. GURGE, R.S., C.E.H.T., M.S.
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
Mobile- (781) 883-0127
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Follow Needham Public Health on Twitter!

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Sent: Tuesday, April 20, 2021 1:07 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
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Thanks, alex.

_____

Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Dentistry
239 Causeway Street, Suite 500, Boston, MA 02114

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-973-0971
Fax : 617-973-0980
TTY : 617-973-0988
www.mass.gov/dph/dentalboard

The Massachusetts Department of Public Health (DPH) and the Board of Registration in Dentistry (BORID) endorse the recent recommendation released by the Massachusetts Dental Society (MDS) in conjunction with the American Dental Association. That recommendation states,

"(a)s the facts and situation around COVID-19 (Coronavirus) continue to evolve, and in step with Governor Baker's recent Declaration of a State of Emergency, the Massachusetts Dental Society Executive Committee and Board of Trustees is issuing the following guidance for dentists in Massachusetts. The MDS strongly recommends that dentists practicing in the Commonwealth close their offices from March 17 to April 6 to patients seeking elective and non-urgent care. As always, it is expected that dentists will continue to be available as needed for emergency management. This is not guidance we are issuing lightly, and it is being done out of an abundance of caution during these turbulent times. As healthcare professionals, we all have a role to play in slowing the spread of the coronavirus and "flattening the curve" in order to follow sound scientific, public health advice, to help limit infections and slow the spread of the virus. The spread of COVID-19 will be determined by our collective actions now and this recommendation is being made out of an abundance of caution. We believe by taking these extraordinary precautions, dentists can make a difference in helping to preserve the limited supply of personal protection equipment critical for emergency dental care and frontline healthcare personnel responding to the pandemic."

Dentists who keep their dental practices open to see emergency patients are reminded that all licensed dental professionals are required to practice in compliance with the *CDC Guidelines for Infection Control in the Dental Healthcare Setting* per the Board's regulations at 234 CMR. If a dentist is treating a patient diagnosed with COVID-19 or suspected of having been exposed to this virus, then the treating dentist and any auxiliary staff involved in that treatment should utilize N95 respirators and surgical face masks/gowns per the recommendations of the Food and Drug Administration (FDA), the CDC, the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA).

The below link to CDC Guidance, discusses *Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings*, as well as alternatives to N95s and other personal protective equipment in the event of shortages or unavailability. See also, link to *CMS Adult Elective Surgery and Procedures Recommendations (including dental)* below.

https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Finfection-control.html

https://www.cms.gov/files/document/31820-cms-adult-elective-surgery-and-procedures-recommendations.pdf

Finally, per the March 15th emergency order from Governor Charlie Baker limiting public gatherings to 25 individuals, all dentists who stay open to see emergency patients must limit the number of dental staff and patients present in their offices at any given time to no more than 25 persons to prevent the spread of COVID-19 and must ensure social distancing.

TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC WORKS DEPARTMENT
500 Dedham Avenue, Needham, MA 02492
Telephone (781) 455-7550 FAX (781) 449-9023

May 14, 2021

Needham Planning Board
Public Service Administration Building
Needham, MA 02492

RE: Major Project Site Plan Special Permit Amendment No. 98-10
32-50 Chestnut Street-Proposed Orthodontic Practice

Dear Members of the Board,

The Department of Public Works has completed its review of the above referenced application to modify an existing Major Project Site Plan Special Permit. The proposed plans show the redevelopment of approximately 1,751 square feet of commercial floor at 30-50 Chestnut Street to provide Orthodontic office.

The review was conducted in accordance with the Planning Board's regulations and standard engineering practice. The documents submitted for review are as follows:

1. Application submitted by Katherine Pennington Klein, DMD.
2. Addendum A to Application.
3. Katherine Pennington Klein Authorization Letter, dated April 15, 2021.
4. Alfred W. Greymont Authorization Letter, dated April 15, 2021.
5. Letter from Attorney George Giunta Jr., dated April 16, 2021.
6. Architectural plan set prepared by Lagrasse Yanowitz & Feyl, consisting of 8 sheets: Sheet 1, entitled "Existing Conditions," dated April 15, 2021; Sheet 2, entitled "Proposed Floor Plan," dated April 15, 2021; Sheet 3, showing "Existing Front Façade" and "Proposed Front Façade," dated April 15, 2021; Sheet 4, showing "Existing Rear Façade," and "Proposed," dated April 15, 2021; Sheet 5, entitled "3D Rendering," undated; Sheet 6, entitled "3D Rendering," undated; Sheet 7, entitled "3D Rendering," undated; Sheet 8, entitled "3D Rendering," undated.

Our comments and recommendations are as follows:

- We have no comment or objection to the proposed modifications to the office

If you have any questions regarding the above, please contact our office at 781-455-7538.

Truly yours,

Thomas Ryder
Assistant Town Engineer

TOWN OF NEEDHAM
TOWN HALL
1471 Highland Avenue
Needham, MA 02492-2669

Design Review Board

May 10, 2021

Memo: Major Project Site Plan Review, 32 Chestnut Street

The Board reviewed the design drawings for the façade renovations for this site.

The proposed changes remove existing awnings and install new aluminum storefront window system. Small accent awnings are proposed for the front and rear entrance. They also propose painting the architectural recesses in the sign band an accent color. There is signage shown in the information package but was not reviewed at this time. They will need to return with a full signage package in the future.

The Board generally think that the proposed renovations are well designed, and that the changes will make an attractive storefront for the tenant.

There was some discussion of the acute angle of the front entry awning. The applicant stated the entrance is actually recessed so has some weather protection, it is difficult to see that in the images in the package. The awning purpose is to help identify the entrance location. It was suggested the applicant consider a slight increase, but overall, the Board found it acceptable.

The rear awning is over an employee entrance only. Signage is indicated on the awning. The Board asked about the need for the accent to identify an entrance that is not public. The same awning angle suggestion was made as to the front entrance awning.

The grid pattern in the transom changes at the entrance section. The applicant stated the change was made so that the transom grid started at the top of the 7' door, rather than have an odd panel above the door and the adjacent windows matching the other window openings. The Board acknowledged there are other ways to deal with that problem, but that the design presented was acceptable.

The coping at the top of the wall will be repainted. The Board asked whether the remainder of the building coping would also be repainted. The Board recognized that it is beyond the scope of the applicants' renovations and this review. However, the building owner was attending the meeting, and he stated that he would consider repainting the remainder of the building coping over the other tenant spaces.

The Board also gave some additional guidance regarding the future signage application.

The Board presents these comments for the Planning Boards consideration.
End of Notes

DECISION
May 18, 2021

Major Project Site Plan Review Special Permit
WELL LCB Needham Landlord LLC, c/o LCB Senior Living
SPMP No. 2021-01

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

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of WELL LCB Needham Landlord LLC, c/o LCB Senior Living, 3 Edgewater Drive, Suite 101, Norwood, MA, 02062 (hereinafter the Petitioner), for property located at 100-110 West Street, Needham, MA. WELL LCB Needham Landlord LLC, the developer and operator of the property at 100 West Street, is a joint venture between LCB Senior Living, LLC and Welltower, Inc., which owns the property through HCRI Massachusetts Properties Trust II. The property is shown on Assessor's Map No. 63 as Parcel 37 containing a total of 4.298 acres in the Avery Square Business, Single Residence B and Avery Square Overlay Zoning Districts.

This Decision is in response to an application submitted to the Board on March 11, 2021 by the Petitioner for a Major Project Site Plan Review Special Permit under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law) and associated special permits.

The requested Major Project Site Plan Review Special Permit would, if granted, permit the Petitioner to redevelop the property to include an 83 unit assisted living and Alzheimer's/memory care facility and 72 independent living apartment units (9 affordable). The existing 3 story brick building is proposed to remain. The existing footprint of the building is not proposed to change and a partial fourth story will be added to create 10 of the proposed 72 independent living apartments. The parking lot to the south of the building will remain unchanged except for selected new landscaping and the parking lot west of the building and adjacent to the railroad right of way will be modified slightly, including selected new landscaping.

In accordance with the By-Law, Section 7.4, a Site Plan Review Special Permit is required. In accordance with the By-Law, Section 1.4.6, a Special Permit is required, if applicable, for the alteration of a non-conforming structure. The structure is a legally pre-existing non-conforming structure as to the requirements of Sections 4.4.8.4 and 4.4.9. In accordance with the By-Law, Section 3.15.3.2 (b), (c), and (d), a Special Permit is required to allow the following uses allowed in the Avery Square Overlay Zoning District by Special Permit: (b) Assisted Living and/or Alzheimer's/Memory Loss Facilities; (c) Independent Living Apartments; and (d) Buildings with multiple uses containing, as a primary use, such uses as are allowed by special permit or by right in the Avery Square Overlay District or the Avery Square Business District, as well as accessory uses subordinate to and customarily incidental to the primary uses. In accordance with the By-Law, Sections 5.1.1.5 and 5.1.1.7, a Special Permit is required to waive strict adherence to the off-street parking requirements of Section 5.1.3 of the By-Law, with respect to subsections (h) (parking space layout) and (i) (width of maneuvering aisle).

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required

by law, the hearing was called to order by the Chairperson, Jeanne S. McKnight on Tuesday, April 20, 2021 at 7:20 p.m. via remote meeting using Zoom ID 826-5899-3198. Board members Jeanne S. McKnight, Martin Jacobs, Paul S. Alpert and Adam Block were present throughout the April 20, 2021 proceedings. The record of the proceedings and the submission upon which this Decision is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation prior to the close of the public hearing were the following exhibits:

Exhibit 1 - Application Form for Site Plan Review completed by the applicant dated March 11, 2021.

Exhibit 2 - Secretary's Certificate.

Exhibit 3 - Two letters from Evans Huber Attorney, dated March 3, 2021 and March 4, 2021.

Exhibit 4 - Traffic Impact Study entitled "The Residence at Carter Mill, 100-110 West Street, Needham, MA, prepared by McMahon Associates, Inc., 120 Water Street, 4th Floor, Boston, MA, dated February, 2021.

Exhibit 5 - Appendix for Traffic Impact Study, entitled "The Residence at Carter Mill, 100-110 West Street, Needham, MA, prepared by McMahon Associates, Inc., 120 Water Street, 4th Floor, Boston, MA, dated February, 2021.

Exhibit 6 - Plan set entitled "Site Development Plan for The Residence at Carter Mill," prepared by Kelley Engineering Group, 0 Campanelli Drive, Braintree, MA, consisting of 6 sheets: Sheet 1, Cover Sheet, dated January 29, 2021; Sheet 2, entitled "Existing Conditions Plan," dated January 29, 2021; Sheet 3, entitled "Layout and Zoning Plan," dated January 29, 2021; Sheet 4, entitled "Grading Plan," dated January 29, 2021; Sheet 5, entitled "Detail Sheet," dated January 29, 2021; Sheet 6, no title, showing photometrics, dated January 29, 2021.

Exhibit 7 - Plan set entitled "The Residence at Carter Mill," prepared by The Architectural Team, consisting of 11 sheets: Sheet 1, entitled "Proposed Aerial View," dated January 29, 2021; Sheet 2, entitled "First Floor Plan," dated January 29, 2021; Sheet 3, entitled "Second Floor Plan," dated January 29, 2021; Sheet 4, entitled "Third Floor Plan," dated January 29, 2021; Sheet 5, entitled "Fourth Floor Plan," dated January 29, 2021; Sheet 6, entitled "East Elevation (Highland Ave)," dated January 29, 2021; Sheet 7, entitled "North Elevation A & B (West Street and from West Street Parking Lot)," dated January 29, 2021; Sheet 8, entitled "West Elevation," dated January 29, 2021; Sheet 9, entitled "South Elevation," dated January 29, 2021; Sheet 10, entitled "Building Sections," dated January 29, 2021; Sheet 11, entitled "Proposed Elevation Materials," dated January 29, 2021.

Exhibit 8 - Plan set entitled "The Residence at Carter Mill," prepared by The Architectural Team, consisting of 11 sheets: Sheet 1, entitled "Proposed Aerial View," dated January 29, 2021; Sheet 2, entitled "First Floor Plan," dated January 29, 2021, revised May 21, 2021; Sheet 3, entitled "Second Floor Plan," dated January 29, 2021, revised May 21, 2021; Sheet 4, entitled "Third Floor Plan," dated January 29, 2021, revised May 21, 2021; Sheet 5, entitled "Fourth Floor Plan," dated January 29, 2021, revised May 21, 2021; Sheet 6, entitled "East Elevation (Highland Ave)," dated January 29, 2021; Sheet 7, entitled "North Elevation A & B (West Street and from West Street Parking Lot)," dated January 29, 2021; Sheet

8, entitled "West Elevation," dated January 29, 2021; Sheet 9, entitled "South Elevation," dated January 29, 2021; Sheet 10, entitled "Building Sections," dated January 29, 2021; Sheet 11, entitled "Proposed Elevation Materials," dated January 29, 2021.

Exhibit 9 - Plan set entitled "The Residence at Carter Mill, Landscape Permit Plans," prepared by the Hawk Design Inc., Sagamore, MA, consisting of 12 sheets: Sheet 1, Cover Sheet; Sheet 2, Sheet L1.0, entitled "Landscape Master Plan," dated January 29, 2021, revised February 24, 2021; Sheet 3, Sheet L2.1, entitled "North Planting Plan," dated January 29, 2021, revised February 24, 2021; Sheet 4, Sheet L2.2, entitled "Central Planting Plan," dated January 29, 2021, revised February 24, 2021; Sheet 5, Sheet L2.3, entitled "South Planting Plan," dated January 29, 2021, revised February 24, 2021; Sheet 6, Sheet L2.4, entitled "West Buffer Planting Plans," dated January 29, 2021, revised February 24, 2021; Sheet 7, Sheet L3.1, entitled "North Materials Plan," dated January 29, 2021, revised February 24, 2021; Sheet 8, Sheet L3.2, entitled "Building Arrival & Resident Courtyard Materials Plan," dated January 29, 2021, revised February 24, 2021; Sheet 9, Sheet L3.3, entitled "Assisted Living Entrance Materials Plan," dated January 29, 2021, revised February 24, 2021; Sheet 10, Sheet LD 1, entitled "Plan Schedule and Planting Details," dated January 29, 2021, revised February 24, 2021; Sheet 11, Sheet LD 2, entitled "Planting Notes," dated January 29, 2021, revised February 24, 2021; Sheet 12, Sheet LD 3, entitled "Construction Details," dated January 29, 2021, revised February 24, 2021.

Exhibit 10 - Stormwater Management Report, entitled "The Residence at Carter Mill, 100-110 West Street, Needham, MA, prepared by Kelley Engineering Group, 0 Campanelli Drive, Braintree, MA, dated February 25, 2021.

Exhibit 11- Plans stamped approved by Design Review Board dated February 22, 2021.

Exhibit 12 - Email from the Village Club, Board of Directors, dated April 15, 2021.

Exhibit 13 - Interdepartmental Communication (IDC) to the Board from Chief Dennis Condon, Needham Fire Department, dated March 10, 2021; IDC to the Board from Chief John Schlittler, Needham Police Department, dated April 14, 2021; IDC from Thomas Ryder, Assistant Town Engineer, dated April 14, 2021; IDC to the Planning Department from Tara Gurge, Needham Health Department, dated March 22, 2021.

Exhibits 1,2, 3, 4, 5, 6, 8, 9, and 10 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board found and concluded that:

1.1 The subject property is located 100-110 West Street, Needham, MA, at the corner of Highland Avenue and West Street in the Avery Square Business District and the Avery Square Overlay District, with a portion of the property located in the Single Residence B Zoning District. The property is shown on Assessor's Map No. 63 as Parcel 37 containing a total of 4.298 acres. The property is presently owned by the HCRI Massachusetts Properties Trust II.

1.2 The property is currently vacant and is improved by a three-story brick building of approximately 186,000 square feet, outdoor parking areas to the south and west of the building and an indoor parking area. Most recently, until 2017, the site was occupied by Avery Crossing, a 60 unit assisted living/memory care facility, Avery Manor, a 142-bed skilled nursing facility, and medical offices comprising approximately 8,308 square feet.

1.3 The Petitioner proposes to redevelop the property for a 155-unit facility comprised of 72 independent living apartment units (96 bedrooms), 55 regular assisted-living units (66 beds) and 28 assisted-living units (30 beds) specializing in Alzheimer's and other memory loss related conditions. 9 of the 72 independent living apartment units will be affordable units as defined in Section 1.3 of the By-Law. 13 of the 83 assisted living units will have two beds in them, for a total of 96 assisted living unit beds.

1.4 The existing 3 story brick building will remain. The existing footprint of the building will not change and a partial fourth story will be added to create 10 of the proposed 72 independent living apartments. The building will contain approximately 203,120 square feet including the parking garage which comprises 13,900 square feet at completion.

1.5 The project will include 149 on-site parking spaces including 34 interior garage spaces and 115 exterior spaces together with associated landscaping, driveways and other improvements. Access to and from the site will continue to be provided via two existing full-access driveways, one on West Street and one on Highland Avenue. The parking lot to the south of the building will remain unchanged except for selected new landscaping and the parking lot west of the building and adjacent to the railroad right of way will be modified slightly, including selected new landscaping.

1.6 As indicated in the Zoning Table shown on the Plan, the lot conforms to zoning requirements as to area and frontage. As indicated in the Zoning Table shown on the Plan, the proposed building will comply with all applicable dimensional and density requirements of the Avery Square Business District and the Avery Square Overlay District namely, front, side and rear setback, maximum building height, maximum number of stories, and floor area ratio with one noted exception. By-law Section 4.4.8.4 requires a 50-foot building setback from a residential district boundary. The existing structures is set 33 feet from the noted residential district and is a legal pre-existing non-conforming structure as to the requirements of Section 4.4.8.4.

1.7 The project is comprised of the following: 72 independent living apartment units (96 bedrooms) and 83 assisted living units (total of 96 beds). Twenty-eight of the assisted living units will specialize in Alzheimer's and other memory loss related conditions. The maximum number of employees at the site on the largest shift will be 58.

1.8 Under the By-Law, Section 5.1.2, the parking requirement for the project is 149, calculated as follows: a) 72 independent living units x 1.0 spaces per unit equals 72 spaces, plus b) 96 assisted-living beds x 0.5 spaces equals 48 spaces, plus c) 58 employees at the largest shift at 1 space per two employees equals 29 parking spaces. A total of 149 spaces are provided on site (115 exterior parking spaces and 34 garage parking spaces). Further 28 parallel parking spaces are available along Highland Avenue adjacent to the property that can be counted as off-street parking pursuant to By-Law Section 5.1.1.7 for a total parking supply of 177 spaces.

1.9 The project complies with all the parking area design criteria set forth in Section 5.1.3 except that the Petitioner is seeking a waiver from Sections 5.1.3(h), and 5.1.3 (i). The Petitioner is seeking a waiver from Section 5.1.3(h) (Parking Space Layout) which requires

that all parking areas be designed so that each motor vehicle may proceed to and from its parking space without requiring the movement of any other vehicle and proposes to locate 5 tandem parking spaces within the parking garage. The Petitioner is further seeking a waiver from Section 5.1.3(i) (Maneuvering Aisle Width) which requires a minimum maneuvering aisle width of twenty-four feet for 90-degree parking spaces and proposes a width of 16 to 18 feet within the parking garage. Existing column to column width spacing in the parking garage currently precludes compliance with this condition

1.10 McMahon Associates, Inc., conducted a Traffic Impact Study to determine the traffic impacts associated with the construction of the proposed senior assisted living and memory care /independent living facility (Exhibit 4). The study reviewed existing traffic operating parameters on key roadways and intersections, estimated the anticipated traffic volume increases as a result of the proposed project, and analyzed the projects traffic-related impacts. A detailed analysis of traffic operations during the weekday morning and weekday afternoon peak hours, when the combination of adjacent roadway volumes and project trips would be expected to be the greatest was provided. The study also reviewed the previous on-site uses and their impacts to traffic and parking within the study area relative to the proposed project. Based on the analysis of the proposed project and a review of the previous land use, the proposed project was estimated to have a lesser impact on study area traffic and to require less parking than both the previous land use and the proposed on-site parking supply. The proposed project was further shown to have a negligible impact on the area roadways and intersections.

1.11 The Petitioner appeared before the Design Review Board on February 22, 2011 and obtained approval of the project.

1.12 The Board finds that the project incorporates as many green building standards as practical, given the type of building and proposed use. The Petitioner has committed to tracking the Leadership in Energy & Environmental Design (LEED) criteria, and to show that it has met (except for good cause) the LEED "Silver" standard for the project by submitting to the Board the checklist itemizing the LEED criteria for the proposed building.

1.13 The facility will have a minimal impact on neighboring streets. Adequate parking has been provided for staff, deliveries, visiting professionals, family and friends of residents.

1.14 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and site buffers and preservation of views, light and air.

The site has been designed to ensure that there will be no off-site drainage impacts. A drainage system exists on site. The drainage system will ensure that peak storm generation levels will remain unchanged. The proposed site layout plans were presented to the Engineering Department and, as set forth more fully in the Stormwater Management Report filed as part of this Application, it was agreed the proposed project is exempt from the Needham Stormwater Bylaw.

An extensive landscape plan has been developed for screening and enhancing the existing site. Noise and visual impacts have been minimized by locating the proposed 4th floor well set back from the north, east, and south sides of the building, which in many places is set back from the façade of the building further than the By-Law requires and, overall, occupies a smaller percentage of the existing roof area than the By-Law allows. The neighbors to the west will be protected by means of the existing buffering provided by a combination of existing trees and vegetation, new plantings, and the MBTA rail lines.

The lighting system for the project has been designed to fully comply with the Town of Needham lighting requirements and will consist of decorative cut off fixtures on low poles, as well as bollards to provide illumination for pedestrian walkways on site.

The Design Review Board has reviewed and approved the landscaping plan and the exterior lighting plan.

1.15 The convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly, has been adequately provided for. Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, and the proper location of driveway openings in relation to traffic and to adjacent streets, has been assured. As shown on the Plan, the project has been designed to ensure that there will be safe vehicular and pedestrian circulation throughout the site. The access to and egress from the property will be via existing driveway openings off West Street and Highland Avenue that will remain and provide access to the site. Sidewalks exist on both West Street and Highland Avenue that connect to the sidewalks on the site. This allows for easy pedestrian access to the site.

1.16 The arrangement of parking and loading spaces in relation to the proposed uses of the premises is adequate. Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises has been achieved. The proposed exterior parking area complies with the By-Law requirements for number of spaces, illumination, loading, parking space size, location, design and number of handicap spaces, width of maneuvering aisles, setbacks, and landscaping. The parking is distributed throughout the site to provide convenience for employees and visitors. With respect to the interior parking, Special Permits are requested for parking space layout for certain tandem spaces, and for the aisle width in one portion of the garage. Both conditions have existed for many years.

1.17 Adequate methods for disposal of refuse and waste will be provided. The site has been designed such that adequate methods of disposal of refuse resulting from the uses permitted on the site have been assured. A dumpster enclosure is provided adjacent to the loading area west of the building. The dumpster enclosure will be screened by means of a fence. Refuse will be removed from the site by a licensed hauler.

1.18 The relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area are in compliance with other requirements of this By-Law has been adequately addressed by this project. The matters to be considered by this Board in connection with relationship of structures and open spaces to the natural landscape, existing buildings, and other community assets in the area, have been addressed, and apart from the special permits requested, the project complies with all other requirements of the By-Law. The existing building is surrounded by existing commercial buildings to the North, East, and West ranging in size from one story to multi-story buildings, and residential homes to the South. The footprint of the existing building will remain unchanged, and the relatively minor façade changes have been designed to maintain the historic character of the existing building. The addition of the fourth floor on a portion of the building is harmonious with the design of this building and the nearby commercial buildings. There is a natural landscape buffer which will be maintained to the South of the site. To the West of the site are a natural landscape buffer, which will be enhanced by the proposed landscaping plan, as well as the existing MBTA railroad right-of-way. The Senior Center for the Town of Needham is within walking distance of the property. The Design

Review Board has reviewed and approved all proposed changes to the exterior of the building, as well as the proposed new fourth floor.

1.19 The project will not have an adverse affect on the Town's resources, including the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets. The proposed use is expected to have minimal impacts on Town resources due to the nature of the use. It is a clean, quiet, low impact use. The project has been designed to limit adverse impacts to the Town resources as follows: The project will connect to the Town's water system that is located on Highland Avenue. The Petitioner met with the Engineering Department and there were no concerns raised regarding water pressure and flow for this area of Town. The project will maintain the existing sewer connections to the Town's sewer system by means of the connections to the sewer main located on Highland Avenue. The proposed site layout plans were presented to the Fire Department prior to finalizing the layouts and the Fire Department was satisfied with the proposed circulation. Finally, as shown in the Traffic Impact Analysis submitted with this application, the project is expected to have a minimal impact on vehicle trips and level of service on Highland Avenue and West Street during peak hours, even when compared to no-build conditions, and is expected to generate less traffic than the prior use of the site.

1.19 Under Section 7.4 of the By-Law, a Major Project Site Plan Special Permit may be granted in the Avery Square Overlay District, if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions, the Board finds that the proposed development Plan, as conditioned and limited herein for the site plan review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, to have minimal adverse impact and to have promoted a development which is harmonious with the surrounding area.

1.20 Under Section 1.4.6 of the By-Law, a lawful pre-existing nonconforming structure may be structurally altered only pursuant to a special permit issued by the Board pursuant to Section 7.5.2 provided that the Board determines such alteration would not be substantially more detrimental to the neighborhood than the existing non-conforming structure. On the basis of the above findings and criteria, the Board finds that the proposed alteration, as conditioned and limited herein, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the existing non-conforming structure nor to be more detrimental to the neighborhood than the existing non-conforming structure.

1.22 Under Section 3.15.3.2 (b), (c), and (d) of the By-Law, a special permit to operate assisted living and/or Alzheimer's/memory loss facilities, independent living apartments, and buildings with multiple uses containing, as a primary use, such uses as are allowed by special permit or by right in the Avery Square Overlay District or the Avery Square Business District may be granted in the Avery Square Overlay District if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions, the Board finds that the proposed development Plan, as conditioned and limited herein, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, to have minimal adverse impact and to have promoted a development which is harmonious with the surrounding area.

1.23 Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.3 of the By-Law (Off-Street Parking Requirements) more specifically, in Sections 5.1.3(h)and 5.1.3(i), as further described in Section 1.9 above, may

be granted provided the Board finds that owing to special and unique circumstances, the particular use, structure or lot does not warrant the application of certain design requirements. On the basis of the above findings and conclusions, the Board finds that there are special and unique circumstances justifying the waiver of the above-noted requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 4-0 to GRANT (1) the requested Major Project Site Plan Review Special under Section 7.4 of the By-Law, (2) the requested Special Permit under Section 1.4.6 of the By-Law for the alteration of a lawful pre-existing non-conforming structure, (3) the requested Special Permit under Section 3.15.3.2 (b), (c), and (d) of the By-Law, to operate assisted living and/or Alzheimer's/memory loss facilities, independent living apartments, and buildings with multiple uses containing, as a primary use, such uses as are allowed by special permit or by right in the Avery Square Overlay District or the Avery Square Business District, and (4) the requested Special Permit under Section 5.1.1.5, to waive strict adherence with the requirements of Section 5.1.3 (Parking Plan Design Requirements) of the Zoning By-Law, more specifically, in Section 5.1.3(h) to waive the parking space layout standard which requires that all parking areas be designed so that each motor vehicle may proceed to and from its parking space without requiring the movement of any other vehicle and to approve in the alternative 5 tandem parking spaces within the parking garage as shown on the Plan, and in Section 5.1.3(i),to waive the maneuvering aisle width standard which requires a minimum maneuvering aisle width of twenty-four feet for 90-degree parking spaces and to approve in the alternative a maneuvering aisle width of 16 to 18 feet within the parking garage as shown on the Plan; subject to the following plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building Inspector shall not issue any building permit, nor shall he permit any construction activity on the site to begin on the site until and unless he finds that the Plan is revised to include the following additional corrected or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Inspector. Where approvals are required from persons other than the Building Inspector, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Inspector before the Inspector shall issue any building permit or permit for any construction on the site. The Petitioner shall submit nine copies of the final Plans as approved for construction by the Building Inspector to the Board prior to the issuance of a Building Permit.

2.0 No plan modifications are required.

CONDITIONS

3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.42 hereof.

3.1 This permit is issued for the operation of a 155-unit facility comprised of 72 independent living apartment units (96 bedrooms), 55 regular assisted-living units (66 beds) and 28 Alzheimer's related assisted-living units (30 beds) specializing in Alzheimer's and other memory loss related conditions. 9 of the 72 independent living apartment units shall be affordable independent living apartment units as defined in Section 1.3 of the By-Law.

Notwithstanding the above, the Petitioner may reallocate the 83 assisted living unit beds to either the regular assisted living classification or the Alzheimer's assisted living classification as authorized under Section 3.2 below.

3.2 No administrative use, other than that needed for operation of the independent living units, regular assisted living units, Alzheimer's assisted living units or other community activity incidental to the facility being conducted on the site, shall be allowed.

3.3 The nine affordable independent living apartment units in the project shall be as defined in Section 1.3 of the By-Law. Said units shall comply with all applicable provisions of the Department of Housing and Community Development's (DHCD) Chapter 40B Guidelines, dated February 22, 2008, as amended, and shall be eligible for the Chapter 40B Subsidized Housing Inventory as "Local Action Units" under the DHCD Local Initiative Program. It shall be the Petitioner's responsibility to prepare any and all applications, exhibits, and supporting documentation that DHCD requires in order to approve the unit for the Subsidized Housing Inventory and to record a DHCD-approved affordable housing restriction with the Norfolk Registry of Deeds or the Land Court. No certificate of occupancy shall be issued for the project until the Petitioner provides evidence that such restriction has been so recorded.

3.4 Subject to DHCD approval, the Petitioner shall set aside up to 70% of the affordable units as local preference units, i.e. offered first to Needham residents or persons with a connection to the Town, in accordance with a local preference policy determined by the Select Board consistent with DHCD directives and applicable state and federal laws. The Town will provide reasonable assistance to the Petitioner in designing an affirmative marketing plan for the Affordable Units. The Town may delegate oversight of an affirmative marketing plan and local preference selection procedures to another organization deemed appropriate by the Board to represent the Town interests. All costs associated with preparing and implementing the affirmative marketing plan and local preference procedures shall be paid by the Petitioner.

3.5 The Town of Needham intends to enter into an agreement with a person or entity selected by the Town Manager and approved by DHCD to monitor the Petitioner's compliance with the affordability restriction on an annual basis and to provide an annual report of its monitoring to the Town (the "Monitoring Agent"). The Petitioner shall pay for the cost of the Monitoring Agent pursuant to a separate agreement between the Town and the Petitioner. The Petitioner shall cooperate with the monitoring agent by providing all documentation necessary to demonstrate that the affordable housing units comply with Section 1.3 of the Zoning By-Law and this Decision and are occupied by income-eligible households.

3.6 The building, parking areas, driveways, walkways, landscape areas, and other site and off-site features shall be constructed in accordance with the Plan, as modified by this Decision. Any changes, revisions or modifications to the Plan, as modified by this Decision, shall require approval by the Board.

3.7 The proposed building and support services shall contain the dimensions and shall be located on that portion of the locus exactly as shown on the Plan, as modified by this Decision, and in accordance with the applicable dimensional requirements of the By-Law. Notwithstanding the above, the Petitioner may revise the floor plans without the need for additional hearings or approvals, provided that the total square footage of the building does not increase, the total number of independent living apartment units does not exceed 72 units (96 bedrooms), the total number of assisted-living units does not exceed 83, and the

total number of assisted living beds (whether they be regular assisted living beds or Alzheimer's related assisted living beds) does not exceed 96.

3.8 All buildings and land constituting the premises shall remain under a single ownership.

3.9 The staffing for the 83 regular assisted living units and Alzheimer's related units shall be limited to 58 employees on-site during the largest shift, including both assisted living employees, and other assisted living affiliated employees.

3.10 Sufficient parking shall be provided on the locus at all times in accordance with the Plan, as modified by this Decision, and there shall be no parking of motor vehicles off the locus at any time except in the 28 parking spaces on Highland Avenue adjacent to the property.

3.11 A total of 149 parking spaces shall be provided on the site at all times in accordance with the Plan, as modified by this Decision. A total of 34 of these on-site spaces shall be provided on the first-floor parking garage in the building with the remaining 115 on-site spaces to be provided in the surface lots located on the west and south sides of the site. In addition, a total of 28 on-street parking spaces on Highland Avenue adjacent to the property are available to be used. All off-street parking shall comply with the requirements of Section 5.1.3 of the By-Law, except as otherwise waived by this Decision.

3.12 All required handicapped parking spaces shall be provided including above-grade signs at each space that include the international symbol of accessibility on a blue background with the words "Handicapped Parking Special Plate Required Unauthorized Vehicles May Be Removed at Owners Expense". The quantity & design of spaces, as well as the required signage shall comply with the M.S.B.C. 521 CMR Architectural Access Board Regulation and the Town of Needham General By-Laws, both as may be amended from time to time.

3.13 All shift changes shall be staggered, and the Petitioner shall use best efforts to prevent shift changes during the a.m. and p.m. peak-hour traffic periods.

3.14 The emergency diesel fueled generator to be installed at the edge of the parking lot along the MBTA right-of-way shall be designed and operated so as to comply with all applicable Federal, state and local regulations addressing sound attenuation to protect adjoining properties and the nearest inhabited residence from excessive noise, as defined in said regulations. The emergency diesel fueled generator shall also be installed and screened as far as practical to minimize the visibility of the emergency generator. The Petitioner shall deliver to the Board for its review and approval plans and specifications of said emergency diesel fueled generator, including sound attenuation components, if necessary together with Petitioner's certification to the Board that said emergency generator has been designed such that when it is operated it will be in compliance with the regulations described above with respect to noise, and screened in accordance with the requirements described above.

3.15 Prior to project occupancy, an as-built plan of the emergency generator together with a sound level analysis prepared by an acoustical engineer (if, in the opinion of the Board, available manufacturer's specifications are insufficient to demonstrate compliance with applicable noise standards) shall be submitted to the Board for its review and approval. The sound analysis shall demonstrate compliance with all applicable Federal, state and local regulations addressing sound attenuation to protect adjoining properties and the nearest inhabited residence from excessive noise, as defined in said regulations.

3.16 Normal maintenance and testing of the emergency generator shall be limited to one occurrence per month between the weekday hours of 9:00 a.m. and 5:00 p.m. for a period not to exceed 2 hours. The emergency generator shall not operate more than 300 hours per rolling 12-month period, including the normal maintenance and testing procedure as recommended by the manufacturer and periods when the primary power source for WELL LCB Needham Landlord LLC, has been lost during an emergency, such as a power outage, an on-site disaster or an act of God.

3.17 This Special Permit to operate an 155-unit facility as described in this Decision is issued to WELL LCB Needham Landlord LLC, c/o LCB Senior Living, 3 Edgewater Drive, Suite 101, Norwood, Massachusetts, and the operation may not be transferred, set over, or assigned by WELL LCB Needham Landlord LLC, to any other person or entity without the prior written approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient. Notwithstanding the above, this permit may be transferred to an affiliated entity (under common control with WELL LCB Needham Landlord LLC) without Board approval or action, provided the Board is provided with a copy of the name and address of such entity.

3.18 The non-memory care assisted living units may have a small refrigerator, microwave, sink and small convection cook top. The memory care units may have a small refrigerator and sink. If a memory care resident is evaluated and is deemed capable to use a microwave, the Petitioner may allow a microwave in that resident's memory care unit. The Petitioner shall install a charcoal filtration ventilation system for cooking exhaust and shall operate the kitchen without negative impact on the abutting properties from cooking odors.

3.19 All utilities, including telephone and electrical service, shall be installed underground from the street line.

3.20 The Petitioner shall secure from the Needham Department of Public Works a Sewer Connection Permit or impact fee, if applicable.

3.21 The Petitioner shall secure from the Needham Department of Public Works a Street Opening Permit and any grants of location that are required from the utility companies.

3.22 The Petitioner shall secure from the Needham Department of Public Works a Water Main and Water Service Connection Permit per Town requirements.

3.23 The Petitioner shall seal all abandoned drainage connections and other drainage connections where the developer cannot identify the sources of the discharges. Sealing of abandoned drainage facilities and abandonment of all utilities shall be carried out per Town requirements.

3.24 The Petitioner shall connect the sanitary sewer line only to known sources. All known sources that cannot be identified shall be disconnected and properly sealed.

3.25 The construction, operation and maintenance of any subsurface infiltration facility, on-site catch basins and pavement areas, shall conform to the requirements outlined in the Town of Needham Stormwater By-Law.

3.26 The Petitioner shall implement the following maintenance plan:

a. Parking lot sweeping - sweep twice per year; once in spring after snowmelt, and early fall.

b. Catch basin cleaning - inspect basins twice per year; in late spring and fall. Clean basins in spring.

c. Proprietary Devices - inspect and maintain per manufacturing recommendations.

3.27 The maintenance of site and parking lot landscaping shall be the responsibility of the Petitioner and the site and parking lot landscaping shall be maintained in good condition.

3.28 The Petitioner shall comply with the Public Outreach & Education and Public Participation & Involvement control measures required under NPDES. The Petitioner shall submit a letter to the DPW identifying the measures selected and dates by which the measures will be completed.

3.29 All solid waste shall be removed from the site by a private contractor. Snow shall also be removed or plowed by private contractor. All snow shall be removed or plowed such that the total number and size of parking spaces are not reduced.

3.30 All deliveries and trash dumpster pick up shall occur only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, not at all on Sundays and holidays. The trash shall be picked up no less than two times per week. The dumpster shall be screened with a wooden fence, which shall be maintained in good condition. The dumpster shall be maintained in a locked condition with the key controlled by management to ensure compliance with the trash removal conditions of this permit. The dumpster shall be emptied, cleaned and maintained to meet Board of Health standards.

3.31 All lights shall be shielded and adjusted during the evening hours to prevent any annoyance to the neighbors. The Petitioner shall adjust its parking lights during the night and early morning. Between the hours of 10:00 p.m. and 11:00 p.m., the Petitioner shall shut off most of the parking lot lights using the lights on the building to shine down and provide basic security. The building lights shall be set at a low light level to prevent any annoyance to the neighbors.

3.32 The Petitioner shall track the Leadership in Energy & Environmental Design (LEED) criteria for the project and shall submit to the Board the checklist itemizing the LEED criteria as it relates to the proposed building. The Petitioner shall show that it has met (except for good cause) the LEED "Silver" standard for the Project.

3.33 In constructing and operating the proposed building on the locus pursuant to this Special Permit, due diligence shall be exercised, and reasonable efforts shall be made at all times to avoid damage to the surrounding areas or adverse impact on the environment.

3.34 Excavation material and debris, other than rock used for walls and ornamental purposes and fill suitable for placement elsewhere on the site, shall be removed from the site.

3.35 All construction staging shall be on-site. No construction parking shall be on public streets. Construction parking shall be all on site or a combination of on-site and off-site parking at locations in which the Petitioner can make suitable arrangements. Construction staging plans shall be included in the final construction documents prior to the filing of a Building Permit and shall be subject to the review and approval of the Building Inspector.

3.36 The following interim safeguards shall be implemented during construction:

a. The hours of construction shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday.

b. The Petitioner's contractor shall provide temporary security chain-link or similar type fencing around the portions of the project site, which require excavation or otherwise pose a danger to public safety.

c. The Petitioner's contractor shall designate a person who shall be responsible for the construction process. That person shall be identified to the Police Department, the Department of Public Works, the Building Inspector and the abutters and shall be contacted if problems arise during the construction process. The designee shall also be responsible for assuring that truck traffic and the delivery of construction material does not interfere with or endanger traffic flow on Highland Avenue and West Street.

d. The Petitioner shall take appropriate steps to minimize, to the maximum extent feasible, dust generated by the construction including, but not limited to, requiring subcontractors to place covers over open trucks transporting construction debris and keeping Highland Avenue and West Street clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be required.

3.37 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:

a. The final plans shall be in conformity with those approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.

b. A construction management and staging plan shall have been submitted to the Police Chief and Building Inspector for their review and approval.

c. The Petitioner shall deliver to the Board for its review and approval plans and specifications of said emergency diesel fueled generator, including sound attenuation components, if necessary together with Petitioner's certification to the Board that said emergency generator has been designed such that when it is operated it will be in compliance with the regulations described above with respect to noise. The emergency gas generator shall also be installed and screened as far as practical so as to minimize the visibility of the emergency generator. Said plans and certification shall be approved by the Board.

d. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this Special Permit and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.

3.38 No building or structure, or portion thereof, subject to this Special Permit and Site Plan Approval shall be occupied until:

a. An as-built plan, supplied by the engineer of record certifying that the on-site and off-site project improvements were built according to the approved documents, has been submitted to the Board and Department of Public Works. The as-built plan shall show the building, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing

improvements on-site and off-site, in their true relationship to the lot lines. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.

b. There shall be filed with the Building Inspector and Board a statement by the Department of Public Works certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalks and curbing improvements on-site and off-site, have been constructed to the standards of the Town of Needham Department of Public Works and in accordance with the approved Plan.

c. There shall be filed with the Board and Building Inspector a Final Construction Control Document signed by a registered architect upon completion of construction.

d. There shall be filed with the Board and Building Inspector an as-built Landscaping Plan showing the final location, number and type of plant material, final landscape features, parking areas, and lighting installations. Said plan shall be prepared by the landscape architect of record and shall include a certification that such improvements were completed according to the approved documents.

e. There shall be filed by the Petitioner an as-built plan of the emergency generator and a sound level analysis prepared by an acoustical engineer (if, in the opinion of the Board, available manufacturer's specifications are insufficient to demonstrate compliance with applicable noise standards). The sound analysis shall demonstrate compliance with all applicable Federal, state and local regulations addressing sound attenuation to protect adjoining properties and the nearest inhabited residence from excessive noise, as defined in said regulations. Said as-built plan and sound level analysis shall be reviewed and approved by the Board.

f. The Town shall have received a copy of the recorded DHCD-approved affordable housing restriction as described in paragraph 3.3.

g. Notwithstanding the provisions of Sections a, b, and d hereof, the Building Inspector may issue one or more certificates for temporary occupancy of all or portions of the buildings prior to the installation of final landscaping and other site features, provided that the Petitioner shall have first filed with the Board in an amount not less than 135% of the value of the aforementioned remaining landscaping or other work to secure installation of such landscaping and other site and construction features.

3.39 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commissions or other agencies, including, but not limited to, the Board of Selectmen, Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.

3.40 The building or structure authorized for construction by this permit shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Inspector.

3.41 The Petitioner, by accepting this permit Decision, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the

application submitted, that this information is true and valid to the best of the Petitioner's knowledge.

3.42 Violation of any of the conditions of this decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this decision if the Town prevails in such enforcement action.

LIMITATIONS

4.0 The authority granted to the Petitioner by this permit is limited as follows:

4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conduced on-site and off-site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this Decision.

4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this Decision and to take other action necessary to determine and ensure compliance with the Decision.

4.3 This Decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

4.4 The conditions contained within this Decision are limited to this specific application and are made without prejudice to any further modification or amendment.

4.5 No approval of any indicated signs or advertising devices is implied by this Decision.

4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.

4.7 This Site Plan Special Permit shall lapse on May 18, 2023, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to May 18, 2023. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided except for good cause.

4.8 This decision shall be recorded in the Norfolk District Registry of Deeds and shall not become effective until the Petitioner has delivered a certified copy of the document to the Board. In accordance with G.L. Chapter 40A, Section 11, this Major Site Plan Special Permit shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time is recorded in the Norfolk District Registry of Deeds and is indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at the risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The provisions of this Special Permit shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown of the Plan, as modified by this Decision, in full force and effect for the benefit of and enforceable by the Town of Needham.

Any person aggrieved by this Decision may appeal pursuant to General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this Decision with the Needham Town Clerk.

Witness our hands this 18th day of May, 2021.

NEEDHAM PLANNING BOARD

_____
Jeanne S. McKnight, Chairman

_____
Paul S. Alpert

_____
Martin Jacobs

_____
Adam Block

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____2021

On this _____day of _____, 2021, before me, the undersigned notary public, personally appeared _____, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

_____
Notary Public
My Commission Expires: _____

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by WELL LCB Needham Landlord LLC, c/o LCB Senior Living, 3 Edgewater Drive, Suite 101, Norwood, MA 02062, for Property located at 100-110 West Street, Needham, MA, has passed,

____and there have been no appeals filed in the Office of the Town Clerk or
____there has been an appeal filed.

_____ _____
Date Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____	Board of Selectmen	Board of Health
Town Clerk	Engineering	Director, PWD
Building Inspector	Fire Department	Design Review Board
Conservation Commission	Police Department	Evans Huber
Parties in Interest		

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

60 WALNUT STREET, WELLESLEY, MASSACHUSETTS 02481
781-943-4000 • FAX 781-943-4040

EVANS HUBER
781-943-4043
EH@128LAW.COM

May 14, 2021

Via Electronic Mail
Members of the
Needham Planning Board

And

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Avenue, Needham

Dear Planning Board Members and Ms. Newman:

I am writing on behalf of Needham Enterprises LLC. Following discussions with Ms. Newman and Town counsel, Christopher Heep. Needham Enterprises hereby withdraws, without prejudice, the pending Application for Minor Project Site Plan Review for the Project at 1688 Central Avenue, currently scheduled for hearing on May 18, 2021.

Needham Enterprises is doing so based on the following express understandings with the Town:

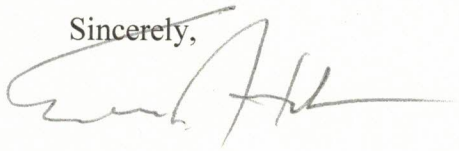
1. Needham Enterprises will be submitting electronically, by May 20, an application for major project site plan review. However, it is expressly understood and agreed that no special permit pursuant to Section 7.4 of the Bylaw will be required for this project, nor will the review criteria normally applicable to major project site plan review be applicable in this case. Instead, the Board's jurisdiction and authority will be limited to the criteria enumerated in M.G. L. c. 40A, Section 3.

2. The matter will be scheduled for hearing on June 15, 2021.

3. There will be no need to re-file with the Town the materials relating to the project previously filed on behalf of the applicant.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Evans Huber

From: Evans Huber
To: Lee Newman
Cc: Roy Cramer; Alexandra Clee
Subject: 100 West Street draft decision open items
Date: Monday, May 17, 2021 1:39:21 PM

Lee, thanks for taking the time to discuss the revised draft decision today. Following our discussion here is a summary of the remaining open items that we would like to discuss with the Board. Please forward these comments to the Board:

1. Sections 1.12 and 3.32: As I mentioned, the petitioner's buildings typically comply with a different, comparable standard known as the National Green Building Standard. Also, we believe it would be appropriate to flesh out the "good cause" exception, to reflect the fact that this is an existing building and it may not be possible to comply with all LEED Silver (or comparable National Green Building) standards. We request that 3.32 be re-written as follows:

   > The Petitioner shall track the Leadership in Energy & Environmental Design (LEED) criteria, or the National Green Building criteria for the project and shall submit to the Board the checklist prepared by the project architect itemizing the LEED or National Green Building criteria as they relate to the proposed building. The Petitioner shall show that it has met (except for good cause, including but not limited to the limitations imposed by the existing building) the LEED "Silver" standard or comparable National Green Building criteria for the Project.

2. Section 3.5. We had requested that the requirement that the petitioner pay for the cost of the Monitoring Agent be removed. You have provided me with information as to this cost. In light of that information, we renew our request that this requirement be removed.

3. Section 3.14: We renew our request that the requirement of generator screening be removed. There is no screening around the existing generator.

4. Section 3.17. As you and I discussed, this requirement relates only to change of the entity operating the facility and does not relate to change of ownership. Nevertheless, we continue to request that this section be deleted. Any new entity that might come in the replace LCB as the operator would have to comply with the extensive regulatory framework administered by EOEA. We do not believe it is appropriate for the Board to attempt to exercise control over that process, nor is it necessary to protect the Town's interest in insuring that any potential replacement operator would be well qualified.

5. Section 3.30: The plans submitted to the Board and approved by the DRB call for the dumpster enclosure to be vinyl, not wood. We request that the requirement of wood fencing be changed to "wood or vinyl."

6. Section 3.31. We discussed my client's concerns with this section as drafted. We agreed that a section 3.31 modified as follows might be acceptable to the Board and would request that this wording be used for Section 3.31:

All lights shall be shielded and adjusted during the evening hours to prevent any annoyance to the neighbors. The Petitioner shall reduce its parking lights during the night and early morning consistent with safety and security requirements. No later than 11:30 p.m., the Petitioner shall reduce the parking lot lights using the lights on the building to shine down and provide basic security. The building lights shall be set at a low light level to prevent any annoyance to the neighbors to the extent reasonable and practicable, consistent with safety and security requirements.

7. Sections 3.37(c) and 3.38(e): These two sections require Board approval of the as-built plans and noise analysis of the emergency generator. We request that it be clarified that such approval does not require a public hearing, by adding "without the requirement of a public hearing" at the end of each of these sections.

Thanks again, Evans

Evans Huber
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Wellesley, MA 02481
781-943-4000 (main)
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www.128law.com

Certification

NGBS Analysis & Incentives



NGBS Green Certified Homes



Home Innovation
NGBS GREEN CERTIFIED

Comparing NGBS to LEED and other green home certification rating systems.

Market Research

Building Science

Product Testing

Certification

Green Homes & Development

NGBS Green Marketing

NGBS Analysis & Incentives

Comparing Green Home Building Rating Systems

Energy Performance

The topic of equivalency often arises in discussions about green rating systems. While there are many elements of performance in green rating systems, energy performance is a key consideration.

QUESTIONS?

Contact us with questions about NGBS Green Certification.

Sign up for Insider Update for monthly news.

Connect with us on Twitter or LinkedIn.

Multifamily & Mixed-Use
Single-Family
Certified Water Rating Index (WRI) Score
NGBS Green+
NGBS Green Existing Building Certification
Land Development
Resources
ENERGY STAR Certification
WaterSense Certification
Accessibility
Engineered Structural Wood
Insulation
Plumbing
Solid Surface Materials
Green Certified Products
Find Green Certified Products
Browse Green Certified Products
Get Listed
Lab Certified Products
Cold Formed Steel Framing
Engineered Structural Wood

The Multifamily Energy Performance Comparisons compare the energy performance of the ICC-700 *National Green Building Standard™* (NGBS) against other residential and commercial building codes, energy ratings, and green building certifications.

2015 NGBS Multifamily Energy Performance Comparison
2015 & 2020 NGBS Energy Performance Comparison – Single-Family & Low-Rise Multifamily
2015 & 2020 NGBS Energy Performance Comparison – Mid- and High- Rise Multifamily

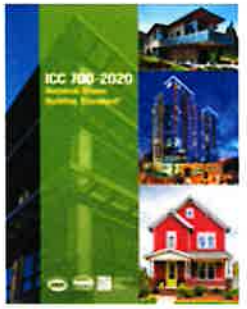
Compare NGBS to LEED

Cost and Stringency Comparison of 2012 National Green Building Standard™ ICC 700-2012, LEED-H 2008, and LEED v4 for Homes Design and Construction evaluates the costs and technical requirements of bringing sample code-compliant production houses in different climate zones (Dallas, Denver, and Minneapolis/St. Paul) into compliance with three different green building rating systems. For each of three climate zones, the homes were specified to the minimum building code requirements of the IECC/IRC 2009 and IECC/IRC 2012.3, and the building codes provided the basis from which the incremental costs of green building standard compliance are measured.

Determining Equivalency: Comparison of the National Green Building Standard and LEED NC compares the scope and requirements of the National Green Building Standard (NGBS) and LEED for New Construction —the most popular green rating systems for multifamily communities 8+ stories in height.

2012 NGBS vs. LEED NC v3
2015 NGBS vs. LEED NC v4
2020 NGBS vs. LEED NC v4.1

GET THE 2020 NGBS TODAY!



Get your copy of the 2020 National Green Building Standard.

Get yours today

Products

Insulation Products

Plumbing Products

Solid Surface Materials

Standards

Government

NGBS vs. LEED-ND Comparison Report evaluates the equivalency between 2012 ICC-700 National Green Building Standard (NGBS) Land Development criteria and the LEED 2009 for Neighborhood Development (LEED-ND) rating system. The report evaluates sustainability goals, process and maintenance of the rating systems, and verification and certification process and procedures.

AIA Cincinnati has also published a report comparing LEED for Homes and the National Green Building Standard. While the City of Cincinnati offers tax incentives for new and renovated homes certified to LEED, the local HBA requested that the NGBS be adopted for the same incentives. This report reviews both residential green building rating systems to determine if they are equivalent in performance and rigor of proof.

The Home Builders Association of Greater Chicago released a report evaluating the additional costs of elevating three sample code-compliant, urban, residential building types in the City of Chicago into compliance with Chicago Green Homes Program (CGH), NGBS, and LEED-H.

Compare NGBS to ENERGY STAR and HERS

Multiple-attribute green certifications like NGBS Green are more comprehensive than energy labels and ratings, such as ENERGY STAR and HERS. View these resources to learn more:

Compare NGBS Green Certification to HERS and other programs
Comparison ENERGY STAR Version 3.0 and 2015 National Green Building Standard™

Compare NGBS to Healthy Building Programs

NGBS Green certification stands apart from healthy building programs, as it is more comprehensive and better aligned with residential construction.

Select NGBS Green Certification for Health and Well-Being

Compare NGBS to EarthCraft

The NGBS and EarthCraft rating systems offer a framework for assessing the health, performance, and sustainability of new and renovated buildings. The NGBS and EarthCraft cover the same concepts, but the NGBS is more comprehensive and rigorous.

NGBS 2020 vs. EarthCraft Multifamily New Construction (ver. 2015.3.30)

Current Incentives Available for NGBS Green Certified Projects

Since ANSI approved the National Green Building Standard, municipalities and government officials have consistently deemed it to be on par or superior to other residential green rating systems. Home Innovation Research Labs has created a **current summary** of all known incentives across the country that specifically recognize certification to the NGBS.

OUR CLIENTS

Forest Products Laboratory
Georgia-Pacific Wood Products
Homes by Dickerson
Huber Engineered Woods
Defining Innovation.

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Home Builders & Contractors
Energy Efficiency Optimization
Decision Maker Research

Manufacturers
Building Science
New Technology Assessment
Certification

Government
Building Science
Market Research

Focus Groups and Qualitative Research
Green Homes
Market Research
Trends and Reports

Focus Groups and Qualitative Research
Market Research
New Product Development and Life Cycle Management
Product Testing
Standards Development

Condition Assessments
Custom Consulting and Services
Home Building Innovation
Natural Disaster Assistance
Standards Development

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Home Innovation
RESEARCH LABS™

DETERMINING EQUIVALENCY

COMPARISON: 2020 NATIONAL GREEN BUILDING STANDARD (NGBS) AND LEED RESIDENTIAL BD+C MULTIFAMILY HOMES v4.1

November 2020

400 Prince George's Blvd. | Upper Marlboro, MD 20774 | 800.638.8556 | HomeInnovation.com

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OVERVIEW SUMMARY

By any measure, NGBS Green certification based on the 2020 National Green Building Standard ICC-700 and LEED RESIDENTIAL v4.1 are equivalent regarding expected building performance. There are differences in how the two programs are structured, the specific compliance criteria, and the verification protocols. Yet these differences do not impact on the building performance expectations. There are also many similarities in the two programs, and the similarities have grown in recent LEED versions with LEED RESIDENTIAL becoming more NGBS-like.

LEED is unsurprisingly the most widely recognized program because it was the first national program; the rating system's parent organization, the U.S. Green Building Council (USGBC), is a large membership association that offers a professional accreditation for industry professionals; and USGBC has lobbied for many years for LEED's exclusive adoption by government agencies. But that does not make it better.

Government agencies, legislative bodies, and financial institutions increasingly recognize NGBS and LEED as equivalent for multifamily buildings. Below is a detailed comparison of LEED RESIDENTIAL v4.1 and the 2020 NGBS.

NATIONAL GREEN BUILDING STANDARD DEVELOPMENT

The National Green Building Standard ICC-700 (NGBS) is the first and only residential green building rating system to undergo the full consensus process and receive approval from the American National Standards Institute (ANSI). Since the first 2008 NGBS version, each subsequent NGBS version has been approved by the American National Standards Institute (ANSI).[1]

The NGBS is also the first and solely residential green building standard to be part of the ICC suite of I-codes that form a complete set of comprehensive and coordinated building codes. As the industry standard for green residential development, it is embedded within the International Green Construction Code (IgCC) as an alternative compliance path for multifamily residential buildings and the residential portion of mixed-use buildings. Further, the NGBS is the sole compliance path in the IgCC for residential buildings under four stories. The IgCC was developed as a collaboration between ICC, USGBC, AIA, and ASHRAE.

The NGBS was developed as a national residential green building rating system, because previously developed programs were either not well suited for housing or too local in their scope and practices. Until the NGBS was developed, residential multifamily building certifications lagged other building types such as office space, education facilities, and medical buildings. Nationwide, LEED is only used widely for multifamily buildings in jurisdictions where there is a mandate or financial incentives. If LEED is not mandated, multifamily buildings typically select another green certification program. As a result, to provide a more relevant green building rating system for residential buildings, USGBC recently overhauled the LEED rating system to win over residential buildings in places where LEED is not mandated. USGBC's remedy to their rating systems incompatibility with multifamily is the development of the new LEED v4.1 RESIDENTIAL BD+C MUTIFAMILY HOMES, which is the subject of this analysis.

[1] The original 2008 version was approved in 2009; the 2012 version was approved in early 2013; the 2015 edition was approved in 2016; and the 2020 version was approved in January 2020.

Despite the impeccable ANSI standard development process and ICC sponsorship, the NGBS sometimes suffers from the misperception that it is not as stringent as the USGBC LEED rating systems. This is simply not true.

The NGBS's compliance criteria is just as rigorous, if not more, than the LEED rating systems. This is true in comparing older LEED versions, and it remains true with the new LEED v4.1. Further, when evaluating green building certifications, compliance criteria are only part of the equation. Equally important are the certification program policies, procedures, and conformance verification criteria. In this regard, the NGBS Green program is rigorous beyond other green building certification programs including LEED RESIDENTIAL.

If we are to be successful in transforming the way we design, build, maintain and operate our buildings, homes and communities, we will need to provide architects, builders, remodelers, developers, engineers, building scientists, realtors, appraisers, financiers, homeowners, renters, government agencies, code officials, with a truckload of innovative, effective, affordable, tools to help them reach that goal.

LEED RESIDENTIAL BD+C MULTIFAMILY HOMES DEVELOPMENT

USGBC's development process suggests a consensus-based approach to development of its LEED rating system; however, it is not a true consensus standard. To participate in the LEED rating system development an individual must be a USGBC member. This factor alone would disqualify LEED from being accepted as a true consensus standard, because the development process is not open to all stakeholders and the public. Furthermore, there is no obligation to ensure balance among the stakeholders. Finally, USGBC is not accredited as a standards development organization, and LEED is not approved as a national standard by any national standards-making body.

Does this make the LEED rating systems bad? No. But in the instance where a voluntary, consensus standard such as the NGBS does exist, and is supported by all the foundational principles that underpin voluntary consensus standards, it is hard to understand how a legislative body can recognize a proprietary, non-consensus rating system such as LEED and at the same time reject the NGBS.

Synergy in Rating System Development Between the NGBS and LEED

Any analysis on program equivalency between NGBS and LEED would be disingenuous and incomplete if it ignores how over the past decade the NGBS has influenced the content of the LEED rating systems, and at the same time, how the LEED rating system has influenced the development of the NGBS. What is apparent from this comparison of LEED RESIDENTIAL 4.1 and the 2020 NGBS as compared to previous analysis of LEED NC, is that the LEED RESIDENTIAL rating system is ***more similar*** and includes ***more NGBS-like practices***. For example, LEED NC didn't previously include any of the moisture management practices included in all versions of the NGBS. Now, LEED RESIDENTIAL includes practices to address moisture management just like the NGBS. These LEED revisions highlight USGBC's acknowledgement that LEED NC simply did not work well with multifamily without provisions and practices specifically designed for residential construction. USGBC moved to two separate rating systems, LEED NC for office space and LEED RESIDENTIAL for multifamily affirmed the industry's need for a rating system that works with residentially used buildings, just like the NGBS.

Further, many of the individuals involved in the development of both rating systems are the same. The sphere of green professionals willing, able, and technically expert to devote their time to such a green standards development process is relatively small, therefore, many of the same individuals work on

LEED, the NGBS, and other rating systems such as Green Globes. Second, the number of green building issues is finite – both LEED and the NGBS rating systems are inevitably trying to solve the same problems, mitigate the same issues, and accelerate the same innovations. This is evidenced in the closely overlapping green building categories between the two rating systems. And, over the years, the green practices embedded in the rating systems have become more similar than different.

This reaffirms our position that choice in rating systems can provide great benefit to agencies, investors, developers, and other industry professionals, provided that the choices are equally credible and rigorous. This has been the conclusion of the federal government that recognizes LEED and the NGBS. This has been the conclusion of institutional investors and Fannie Mae, and Freddie Mac, all of which recognize LEED and the NGBS side-by-side. This has been the conclusion of the Virginia Housing Development Authority and other local Virginia jurisdictions that recognizes LEED and NGBS. Myriad organizations that set policies to guide financial and regulatory decisions have determined that LEED and the NGBS are functional green building rating system equivalents.

NGBS vs. LEED RESIDENTIAL BD+C Multifamily Homes V4.1 Scope

The NGBS is designed specifically for the buildings in which we live – multifamily buildings, mixed-use buildings where there is a residential component, assisted living, student housing, hotels, and other residential board and care facilities. LEED New Construction (NC) is intended for use by a wide array of commercially permitted buildings, which includes multifamily buildings. While commercial buildings and residentially-used buildings may share construction types and methods, occupancy matters, and, thus, the NGBS is uniquely suited to residential occupancy.

The NGBS scope covers single-family home, multifamily buildings, the residential portions of mixed-use buildings, mixed-use buildings where the residential portion is greater than 50% of the gross floor area, building conversions, renovations and additions of existing buildings, and land developments.[2] (This comparison report addresses the new construction compliance path.) There are no restrictions based on height, or construction type.

The NGBS covers residential construction with units that meet the definition of a dwelling unit—i.e., "a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation, "or sleeping unit —i.e., "a room or space in which people sleep, and can include permanent provisions for living, eating, and either sanitation and kitchen facilities but not both."

CATEGORIES OF GREEN PRACTICES

The NGBS and LEED RESIDENTIAL have practices in five identical categories: (1) Water Efficiency, (2) Energy Efficiency; (3) Location & Transportation / Sustainable Sites; (4) Resource Efficiency; and (5) Indoor Environmental Quality.

[2] This report covers the 2020 NGBS. The 2020 NGBS scope was specifically amended to include mixed-use buildings, as long as the non-residential portion is 49% or less of the gross floor area, and other residentially-used buildings such as assisted living facilities, hotels, and dormitories. See **2020 NGBS 101.2.1 Residential designation** for the occupancies specifically covered in the NGBS scope. Previous NGBS versions did not include the non-residential portion of mixed-use buildings.

LEED RESIDENTIAL includes an Integrative Process credit, which specifies energy modeling and water budget analysis during a project's design phase. While not represented as a NGBS practice, these activities are typically conducted as part of the NGBS Green certification process.

LEED RESIDENTIAL addresses site selection and development in two separate categories: (1) Location & Transportation; and (2) Sustainable Sites. The NGBS addresses these topics in one combined section, Chapter 5: Lot Design, Preparation, & Development.

LEED RESIDENTIAL offers a dedicated category for Innovation in Design. The NGBS recognizes innovative green practices in each of its six categories.

LEED RESIDENTIAL also offers a section for Regional Priority. The NGBS provides greater flexibility for architects and developers to recognize regional priorities, because the NGBS is a more expansive, flexible point system.

Finally, the NGBS has a category for Construction, Operation, and Maintenance Manuals and Training for Multifamily Buildings. LEED NC has no comparable category.

NGBS	LEED RESIDENTIAL
6 categories of green practices: • Lot Design, Preparation, & Development • Resource Efficiency • Energy Efficiency • Water Efficiency • Indoor Environmental Quality • Operation, Maintenance, and Building Owner Education *(* Each NGBS category includes an innovative practices section.)*	9 categories of green practices: • Integrative Process • Sustainable Sites • Location & Transportation • Water Efficiency • Energy & Atmosphere • Materials & Resources • Indoor Environmental Quality • Innovation* • Regional Priority

NGBS VS. LEED RESIDENTIAL MANDATORY REQUIREMENTS COMPARISON

Both NGBS and LEED have mandatory practices necessary to attain certification at any level.

LEED RESIDENTIAL has 16 prerequisites. For **every** LEED prerequisite, the NGBS has an identical or equivalent practice that is either mandatory or awards points toward certification: 5 of these practices are mandatory for NGBS Green certification, and 11 are voluntary and earn points toward certification. For many practices, the NGBS's minimum point threshold requirements for each chapter and far higher point requirements for certification make it less consequential that an NGBS practice is voluntary, especially at higher certification levels. Buildings must incorporate an increasing number of practices to earn points in each chapter, meaning that the voluntary practices relevant for that building type (such as multifamily) are far more likely to be selected and incorporated into the design.

Importantly, the LEED prerequisite for Minimum Energy Performance at the Certified level is identical to the NGBS mandatory energy efficiency performance requirement, however, at certification levels above Certified/Bronze the NGBS's energy efficiency requirements are more stringent.

In comparison, the NGBS has 45 Mandatory practices, 35 of which are not required by LEED. Many of these practices address critical green building issues such as building durability (i.e., moisture management), minimum energy efficiency, pollutant control, and building owner and resident education. Some, but not all of these NGBS mandatory practices are covered by LEED credits, with the notable exception being the NGBS mandatory practices in Chapter 10 for operation, maintenance, and building training.

NGBS VS. LEED RESIDENTIAL CERTIFICATION REQUIREMENTS

LEED offers four levels of certification Certified, Silver, Gold, and Platinum. NGBS offers four certification levels for multifamily buildings or the residential portion of mixed-use buildings: Bronze; Silver; Gold; and Emerald. Non-residential space in a mixed-use multifamily building can earn one level - Certified.

For LEED, buildings may attain points in any category to achieve the total points required for a given certification level; LEED does not require point minimums in every category of the rating system.

Certification via LEED RESIDENTIAL is based on total points achieved out of the 100 available points.

Certified	40-49 points
Silver	50-59 points
Gold	60-79 points
Platinum	80 points and above

Within the NGBS, no one category of green practices is weighted as more important than another. All projects must achieve a minimum point threshold in every category of green building practice to be certified at any level. The NGBS is the only national program with this level of cross-category stringency, making it the most rigorous and comprehensive green building rating system.

Threshold Point Ratings for Green Buildings

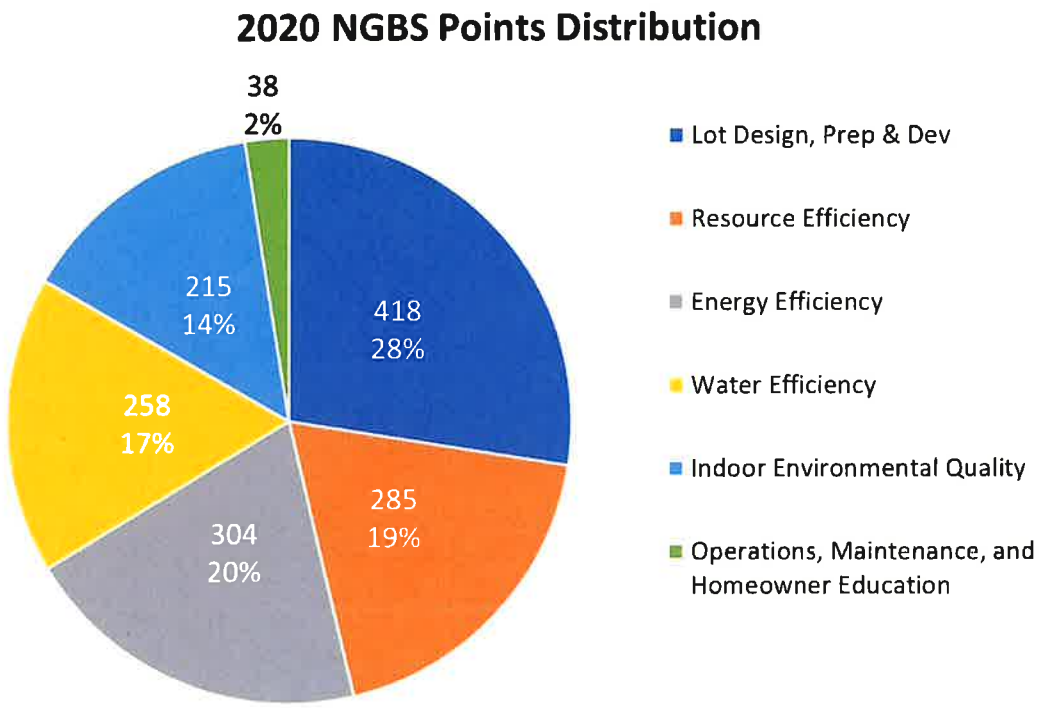
Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
1.	Chapter 5	Lot Design, Preparation, and Development	50	64	93	121
2.	Chapter 6	Resource Efficiency	43	59	89	119
3.	Chapter 7	Energy Efficiency	30	45	60	70
4.	Chapter 8	Water Efficiency	25	39	67	92
5.	Chapter 9	Indoor Environmental Quality	25	42	69	97
6.	Chapter 10	Operation, Maintenance, and Building Owner Education	8	10	11	12
7.		Additional Points from Any Category	50	75	100	100
		Total Points:	231	334	489	611

(a) In addition to the threshold number of points in each category, all mandatory provisions of each category shall be implemented.

(b) For dwelling units greater than 4,000 square feet (372 m^2), the number of points in Category 7 (Additional Points from Any Category) shall be increased in accordance with Section 601.1. The "Total Points" shall be increased by the same number of points.

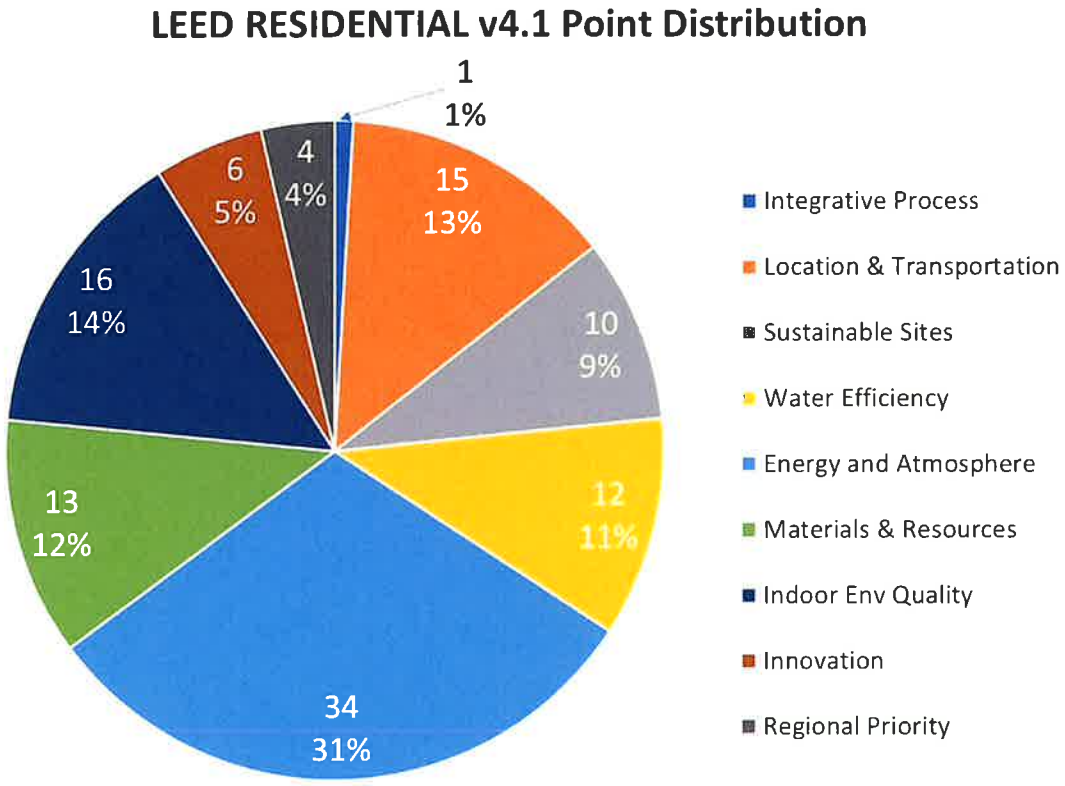
NGBS VS. LEED RESIDENTIAL POINT DISTRIBUTION

LEED and NGBS both address the same categories of green practices, but the distribution of practices available under category differ. The NGBS is more balanced, comprehensive, and offers more choices.



The chart above illustrates the number and relative point percentage available in each NGBS catagory of green building practices. The number of points that are achievable within each of the NGBS section is relatively even, with each category having between 14 and 28% of the available points.

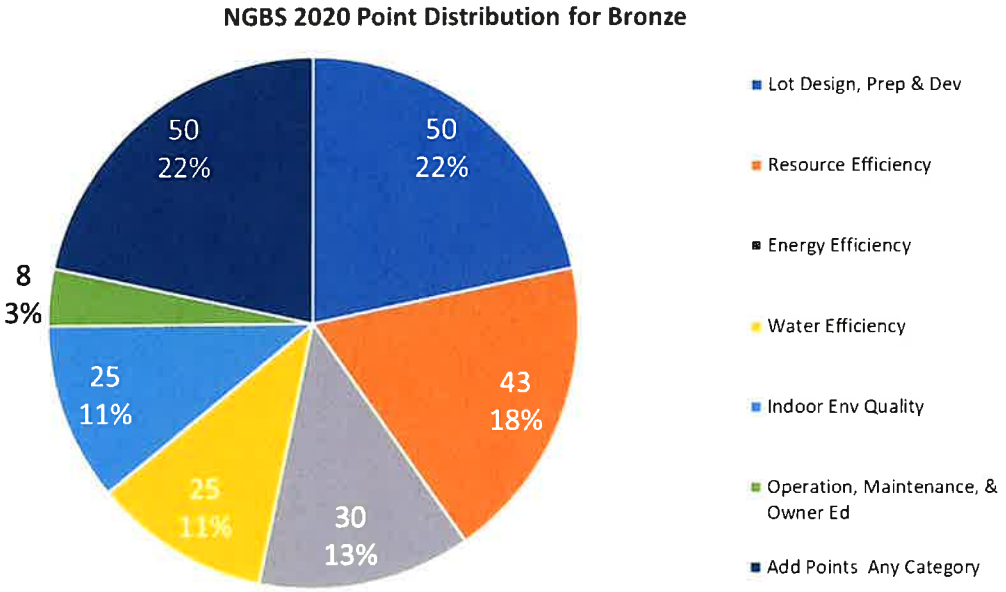
The next chart illustrates the percentage of points available in each LEED catagory of green building practices. There is a greater range in the points avialable under each category. About two-thirds of points are available from just three of the 9 LEED categories (Energy & Atmosphere; Indoor Environmental Quality; Location and Transportation). Less than ten percent are available under the Sustainable Sites (9%), Regional Priority (4%), and Integrative Process (1%) categories.



UNDERSTANDING THE IMPORTANCE OF POINT THRESHOLDS FOR ENERGY EFFICIENCY

Because LEED does not require higher levels of performance in every green category like the NGBS does, one can not assume that because LEED has a higher percentage of points available in Energy and Atmosphere that LEED buildings will be more energy efficient. Higher levels of LEED certification also do not guarentee that a LEED building will be more energy efficient. A LEED Platnimum building is not required to be more energy efficienct that a LEED Certified building. This is not the case with the NGBS, which mandates successively higher levels of performance with higher certification levels. As discussed below, a building certified to the 2020 NGBS Bronze level is expected to be as energy efficient as a LEED certified building.

POINT THRESHOLD FOR NGBS CERTIFICATION AT THE BRONZE LEVEL



The above chart shows the NGBS points required for a Bronze level certification. The threshold point requirements for each chapter are relatively balanced. While it might appear that the Energy Efficiency points required is relatively low, the NGBS sets the Bronze baseline performance at the 2018 IECC to ensure the energy efficiency consumption target is met. Furthermore, a Bronze certified building must attain the minimum performance level for each chapter and then an additional 50 points from any category. Our analysis of previous NGBS Green certified buildings is that architects and building owners are making smart performance decisions for these points. For buildings in the Northeast where energy costs are high and the climate is cold, these buildings will often earn these additional points for Energy Efficiency practices, while buildings in the Southwest will often earn additional points for Water Efficiency practices.

NGBS GREEN CERTIFICATION PROGRAM

Home Innovation serves as Adopting Entity and provides certification services to the NGBS. Home Innovation is a 56-year old, internationally recognized, accredited product testing and certification laboratory located in Upper Marlboro, Maryland. Our work is solely focused on the residential construction industry and our mission is to improve the affordability, performance, and durability of housing by helping overcome barriers to innovation. Our core competency is as an independent, third-party product testing and certification lab, making us uniquely suited to administer a green certification program for residential buildings. Home Innovation has been a US Department of Energy Building America Research team for 15 years.[3] Our staff is made up of mechanical, structural, and electrical engineers; planners; economists; architects; former builders, remodelers, and contractors; lab and technicians. Combined, they possess an unparalleled depth of knowledge and experience in all facets of market analysis and building science

[3] The U.S. Department of Energy's Building America Program is an industry-driven, cost-shared research program to accelerate the development and adoption of advanced building energy technologies and practices in new and existing homes.

research and testing. Why is that important? Because behind every building seeking NGBS compliance stands a team of experts on a mission to help them succeed. Participation in NGBS Green brings our building science expertise to each project team at no additional cost.

As testament to Home Innovation's competency as an independent, third-party certification agency, in 2017 the US Environmental Protection Agency (EPA) initially selected Home Innovation to serve as one of only two Multifamily Review Organization (MRO) for the ENERGY STAR Multifamily High-Rise (MFHR) Program. Home Innovation continues as an MRO for both MFHR and the EPA's recently released ENERGY STAR Multifamily New Construction (MFNC) programs.

NGBS VERIFICATION: REQUIRES TWO MANDATORY INSPECTIONS

The NGBS requires that a qualified, independent third-party inspect the project and verify that all green design or construction practices claimed by the builder toward green certification are incorporated correctly into the project. Most projects require at least two inspections. The verifier must perform a rough inspection before the drywall is installed to observe the wall cavities, and a final inspection once the project is complete. The required verification offers imbues an elevated level of rigor and quality assurance to the projects that are certified. A local jurisdiction can be assured that construction practices for higher building performance and healthier residences are successfully achieved.

Verifiers record the results of their rough and final inspections on a Verification Report which is submitted to Home Innovation Research Labs. Home Innovation reviews every rough and final inspection to ensure national consistency and accuracy in the verification reports. After the Verification Reports are reviewed and approved, our team issues green certification to the project.

Home Innovation Research Labs qualifies, trains, tests, and accredits the NGBS Green Verifiers and maintains a current list at HomeInnovation.com/FindNGBSVerifier. Verifiers must possess experience in residential construction and green building. Many verifiers are Home Energy Rating System (HERS) raters and/or LEED Accredited Professionals. Potential verifiers are trained on how to verify every NGBS practice. After completing the training, verifiers must pass a three-part exam and carry sufficient insurance to earn accreditation. Verifiers renew their accreditation annually and retrain and retest with every NGBS version.

Home Innovation maintains strict rules to ensure verifiers remain independent and free of conflict-of-interest on the projects for which they provide verification services. Verifiers serve as our field agents to confirm buildings are NGBS compliant. Further, we regularly audit our verifiers and their verifications as part of our internal quality assurance program.

Both LEED and NGBS Green require a preliminary meeting with the project team to conduct a preliminary rating of the project. At this meeting the LEED Rater or the NGBS Green Verifier will determine the targeted NGBS/LEED certification level; the NGBS/LEED credits the project will pursue in order to meet the targeted certification level; and the individuals accountable for meeting the NGBS/LEED requirements for each measure.

The NGBS Green inspection requirements imbue a high level of Quality Assurance on the certification program, which LEED simply does not share. For example, we know from our verifiers that it is common that insulation is not installed correctly, and frankly, it is impossible to determine correct insulation installation via photographs. Our verifiers inspect each apartment before drywall and can ensure the

behind the wall practices are done correctly before the drywall is installed, or if necessary, have the contractor correct any installation issues.

Further, Home Innovation retains QA oversight for Verifiers and the verification services they provide. For LEED, GBCI outsources this responsibility to an outside party.

LEED VERIFICATION

LEED RESIDENTIAL verification has changed considerably from LEED NC verification – it has been revised to be much more like NGBS Green verification. However, NGBS Green remains more rigorous.

For LEED verification, according to GBCI, "The Green Rater's role is not to opine on the quality of design or the quality of construction of a LEED Residential project. The project team is wholly responsible for the design and construction quality of their LEED Residential project." This philosophy is diametrically opposed to the NGBS Green certification program's philosophy. An NGBS Green Verifier is required to determine a building's NGBS conformance and this includes if the construction quality meets the NGBS's requirements.

The LEED verification manual states that photo documentation may be used as a substitute for onsite verification.[4] NGBS Green does not allow photos to substitute for in-site verification.

Both programs allow sampling for verification purposes; however, NGBS Green's sampling policy is more stringent regarding how many units can be sampled and who can sample. This is another reason that the NGBS Green program is more stringent.

One of the biggest differences between LEED and NGBS Green is the certification timing, LEED will certify the building before the building is complete – only 60% of the building's gross floor area must be complete for LEED certification. NGBS Green does not certify the building until construction is complete, the verification reports have been reviewed and accepted, and quality assurance is completed.

NGBS VS. LEED NC VERIFICATION REQUIREMENTS COMPARISON

	NGBS	LEED RESIDENTIAL
On-site Inspections	Every NGBS new construction project is required to be inspected at least twice by an independent, third-party Accredited Verifier. There is no self-certification.	LEED Residential requires on-site verification by a LEED Green Rater. Not all units are required to be inspected (see below)
Visual Inspection Required	Practices must be visually inspected to receive points; documentation, photos, or written assertions are not allowed as alternatives	Photo documentation allowed
Sampling of Visual Inspection Practices	Allowed by Master Verifiers[5] only	Yes
Sampling Protocol	1 in 7 can be sampled in a building with more than 20 units	1 in 10 units; if photos used for documentation sampling set applies
Certification Issued	Certification only issued after final verification AND Home Innovation QA completed	Certification issued when 60% of building's square footage is complete.[6]

[4] See page 15, LEED Residential QA Manual

[5] Currently there are only 20 NGBS Green Master Verifiers nationwide out of 270 total Verifiers.

[6] https://www.usgbc.org/leed/v41

CREDIBILITY AND RIGOR OF THE NGBS COMPARED TO LEED

Several third-party studies have been published to demonstrate the affordability and/or rigor of the NGBS.[7]

- *Green Home Building Rating Systems - A Sample Comparison* evaluates the costs and technical requirements of bringing two sample code-compliant production houses in different climate zones into compliance with the 2012 NGBS and LEED for Homes.
- AIA Cincinnati published a report comparing the 2008 NGBS and LEED for Homes that found the programs to be essentially equivalent in rigor, but the NGBS to be more affordable and easier to use.
- The Home Builders Association of Greater Chicago released an independently prepared report evaluating the additional costs required to elevate three sample code-compliant, urban, residential building types in the City of Chicago into compliance with the Chicago Green Homes Program (CGH), the 2008 NGBS, and LEED-H.

LEGISLATIVE AND REGULATORY PARITY WITH LEED

NGBS is considered as on par or more stringent than LEED or Green Communities as a green building rating system for residential projects. Below is a sampling of where the NGBS is recognized – the full list is available here.

- On the federal level, HUD recognizes the NGBS by name specifically as on par with LEED and Green Communities.[8] In funding notices for jurisdictions affected by natural disasters, the agency cites the NGBS as an acceptable green standard for reconstruction efforts.
- HUD's April 2016 Mortgage Insurance Premium reduction program recognizes NGBS Green as one of the accepted green certification programs.
- The U.S. Department of Army recognizes NGBS as a LEED equivalent for military housing nationwide.
- Fannie Mae and Freddie Mac recognize NGBS Green for financing incentives in the same tier, or higher, than LEED.
- 25 states recognize, mandate, or incentivize NGBS certification through their Qualified Allocation Plan for the federal Low-Income Housing Tax Credit Program.[9]
- Between 2009 and 2012, NYSERDA provides financial incentives for residential buildings built in New York that were certified to the Silver level of either the NGBS or LEED.
- Between 2009 and 2012, Delaware provided financial incentives for homes built to the Silver level of either the NGBS or LEED in its Green for Green program.
- In New Mexico, homes certified to either the NGBS or LEED can qualify for the generous state Sustainable Building Tax Credit for New Construction.

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[7] Many government agencies and financial institutions, such as Fannie Mae and Prudential, have also completed detailed analyses to compare the NGBS and LEED as part of their due diligence to accept the NGBS for their incentives or regulatory programs, however, these studies have not been released publicly. See discussion on page 13 of this report.

[8] U.S. Department of Housing and Urban Development memo from Kathryn Saylor, Assistant Inspector General for Evaluation to Clifford Taffet, General Deputy Assistant Secretary, dated November 20, 2015 citing National Green Building Standard specifically as one of the HUD adopted energy building rating systems.

[9] http://www.homeinnovation.com/services/certification/green_homes/resources/ngbs_incentives_summary/qap_recognition.

To date, most jurisdictions recognize the NGBS as an alternative compliance path for any regulatory or incentive green building program. For a more complete listing of where NGBS has been recognized, visit our summary of incentives.

NGBS VS. LEED RESIDENTIAL 4.1 COMPARISON

Below is a chapter comparison of LEED RESIDENTIAL 4.1 vs. the 2020 NGBS.

Location and Transportation / Sustainable Sites

LEED RESIDENTIAL includes chapters for Location & Transportation, which address site selection, density, and alternative transportation, and Sustainable Sites, which addresses site assessment and development.

The NGBS addresses all LEED Location & Transportation topics in Chapter 5 Lot Design, Preparation, and Development.

NGBS practices that are directly comparable are shown to the right of the LEED prerequisites and credits. Further below, a table shows NGBS Lot Design, Preparation, and Development practices that address concepts not represented in the LEED rating system.

LEED RESIDENTIAL Version 4.1 | Location & Transportation (LT)		
Type	***Credit***	***Points***
Credit	LEED for Neighborhood Development Location	15
Credit	Previously Developed Land *or* Sensitive Land Protection	1-2
Credit	High Priority Site	1
Credit	Surrounding Density and Diverse Uses	1-5
Credit	Access to Quality Transit	1-3
Credit	Bicycle Facilities	1
Credit	Reduced Parking Footprint	1
Credit	Electric Vehicles	2

NGBS Chapter 5: Lot Design, Preparation, & Development Practices		
Practice Number	***Practice***	***Points***
501.1(1)	Certified Development (NGBS or equivalent)	15
501.1(2)	Infill, Greyfield, Brownfield Lots	10-15
503.7(1)	Environmentally Sensitive Areas Not Disturbed	4
501.1(2)	Infill, Greyfield, Brownfield Lots	10-15
501.2(4)	Community Resources / Walkability	4-5
505.3	Density	4-8
505.5	Mixed-use development	8
505.8	Street network	5
501.2(1-3), 501.2(5)	Multi-modal Transportation	Up to 19
501.2(6)	Bicycle parking	2-6
501.2	Bike Sharing Program	5
501.2(7)	Car Sharing	5
505.1	Driveways and parking area	Up to 16
505.6	Multi-Unit Plug-In Electric Vehicle Charging	Up to 10
505.7	Residential CNG vehicle refueling	4

LEED NC Version 4 | Sustainable Sites (SS)		
Type	***Credit***	***Points***
Prerequisite	Construction Activity Pollution Prevention	0
Credit	Site Assessment	1
Credit	Site Development – Protect or Restore Habitat	1
Credit	Open Space	1
Credit	Rainwater Management	1-3
Credit	Heat Island Reduction	1-2
Credit	Light Pollution Reduction	1

NGBS Chapter 5: Lot Design, Preparation, & Development Practices		
Practice Number	***Practice***	***Points***
503.3	Soil Disturbance and Erosion	Up to 15
503.4(1)	Site Assessment	7
503.4(2)	Hydrologic Assessment	10
503.7(2)	Environmentally Sensitive Areas Restored	4
503.6(1-3)	Wildlife Habitat	9
505.5	Community Gardens	3
505.10	Exercise and Recreation Space	9
503.4(3)	Low Impact Development	10
505.2	Heat Island Mitigation	10
503.6(4)	Outdoor Lighting	3

Additional NGBS Lot Design, Preparation, and Development Practices		
Practice Number	***Practice***	***Points***
502.1	Project Team, Mission Statement, and Goals	4
503.1	Natural Resources	3-31
503.2	Slope Disturbance	1-27
503.4(4)	Permeable Materials	5-10
503.5	Landscape Plan	1-52
503.8	Demolition of Existing Buildings	5-6
504.1	On-Site Supervision and Coordination	4
504.2	Trees and Vegetation	3-12
504.3(2-9)	Soil Disturbance and Erosion Implementation	3-33
505.9	Smoking Prohibitions	3-9

Prerequisites: LEED requires a Construction Activity Pollution Plan.

NGBS does not have mandatory practices in Chapter 5 Lot Design.

Point Distribution: LEED: 39 points available
NGBS: 418 points available

Analysis:

LEED and the NGBS share many similar practices and are functional equivalents for site selection, lot design, location, and transportation. The NGBS includes at least one practice for each of the LEED Location and Transportation and Sustainable Sites items.

The NGBS offers ten additional practices not included in LEED: establishing a project team, developing a mission statement and written goals; minimizing slope disturbance; creating a landscape plan to limit water and energy use and enhance the natural environment; onsite supervision during lot clearing; preservation of trees and vegetation; and increasing the project's density. NGBS Chapter 5 Lot Design,

Preparation, and Development is more process-oriented than other NGBS chapters, because environmentally sensitive strategies differ depending on locale, topography, climate, and so on.

There are two big differences between LEED and NGBS regarding site selection. One difference is the greater diversity of NGBS practices compared to LEED. The NGBS is designed to apply to a wide range of sites, from the rural single-family home, to a neo-traditional neighborhood of townhouses, to the high-rise urban apartment building. As a result, many NGBS Chapter 5 practices are not relevant at all sites seeking NGBS certification. An architect designing a downtown Miami apartment building, for example, will likely be able to claim NGBS points for increased density and public transportation access, but will not be able to claim points to slope disturbance minimization and many of the natural resource preservation points.

The second difference is that the NGBS has practices and awards points toward certification for lot design separately from lot construction. This is to ensure that green site practices figure prominently in the design process ***and in addition*** during construction. The NGBS Consensus Committee was pragmatic in their recognition that the design team is different than the on-site team. The NGBS rewards *both* teams when a site is designed and constructed to have fewer environmental impacts.

For Bronze level certification, at least 50 points must be achieved within this chapter. The NGBS requires at least 22% of total points toward Bronze be attained from the Chapter 5 Lot Design.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
1.	Chapter 5	Lot Design, Preparation, and Development	50	64	93	121
		Total Points:	231	334	489	611

Water Efficiency

LEED RESIDENTIAL includes a Water Efficiency chapter that address indoor and outdoor water use, and water metering. NGBS Chapter 8: Water Efficiency is comparable.

Previously, LEED only offered a performance path to compliance for water efficiency. LEED RESIDENTIAL now offers a prescriptive path in addition to that existing performance compliance option. The reverse is true for the NGBS. The NGBS previously only offered a prescriptive path for water efficiency compliance and now the 2020 NGBS offers a performance path, the Water Rating Index (WRI).

LEED RESIDENTIAL Version 4.1 | Water Efficiency		
Type	***Credit***	***Points***
Prerequisite	Water Use Reduction	0
Prerequisite	Building-Level Water Metering	0
Credit	Water Use Reduction	1-10
Credit	Water Metering	1-2

NGBS Chapter 8: Water Efficiency Practices		
Practice Number	***Practice***	***Points***
804	Water Performance Path (WRI)	Score varies by level
802.10.1	Pools and Spa Meter	Mandatory
802.3	Water Usage Metering	Capped at 50% of earned Chapter 8 points
801.6	Irrigation Systems	Mandatory, 3-18
801.5	Water Closets and Urinals	1-21
802.5	Lavatory Faucets	Up to 21
802.5.2	Kitchen Faucets	Up to 4
802.5.3	Auto faucet	3
801.3	Showerheads	Up to 20
801.2	Water-Conserving Appliances	2-18
804	Water Performance Path (WRI)	Score varies by level, points are available for any score lower than 70
1004	Verification System	1-3

Additional NGBS Water Efficiency Practices		
Practice Number	***Practice***	***Points***
802.1	Indoor Hot Water	11-81
802.7	Rainwater Collection and Distribution	5-70
802.8	Sediment Filters	1
802.9	Water treatment devices	7
802.9.2	Reverse Osmosis	3
802.10	Pools and Spas	10
803.1	Reclaimed, Gray, and Recycled Water	5-20
803.2	Reclaimed Water, Graywater, or Rainwater Pre-piping	3 per roughed-in system
803.3	Automatic Shutoff Water Devices	2
803.4	Engineered Biological System or Intensive Bioremediation System	20
803.5	Recirculating Humidifier	1
803.6	Advanced Wastewater Treatment System	20

Prerequisites:

LEED requires:

- A 20% reduction of indoor water use or 3 points in WE credit; and
- Building-level water metering.

NGBS requires:

- A WRI score of 70 or lower which is roughly equivalent to a 30% reduction in water use or 25 points from Chapter 8 Water Efficiency.
- A separate water meter for pools and spas.

Point Distribution:

LEED: 12 points available
NGBS: 258 points available

Analysis:

For Water Efficiency, LEED and NGBS overlap in intent, practices, and compliance options. The NGBS has a more stringent water efficiency performance path but the rating systems are equivalent regarding their prescriptive compliance path for water efficiency.

LEED offers a choice of performance path with a minimum 20% reduction in the water use baseline or a prescriptive path where the building must earn 3 points. NGBS offers a choice of performance path with a minimum 30% reduction in the water use baseline or a prescriptive path where the building must earn 25 points. NGBS Green certified buildings at the Bronze certification level that use the WRI performance path will be at least 10% more efficient than a Certified LEED building.

The NGBS Consensus Committee assigned points to practices in Chapter 8 Water Efficiency based on the expected water savings from each practice. Point assignments are based on four factors: cold water savings, hot water savings, energy intensity, and longevity of the appliance/fixture/technology. The Committee reviewed typical household indoor and outdoor water usage to establish a baseline household water use using flow rates for fixtures meeting current mandatory building code requirements[10]. Water savings (gallons) were estimated for each practice and points were assigned to each practice relative to the amount of water saved. The point values were then adjusted based on energy intensity (using a national average) and longevity.

The LEED rating system includes items for whole-building and advanced water metering. The Building-Level Water Metering prerequisite requires property managers to share whole-project water usage data with USGBC for at least 5 years. The NGBS does not a similar mandatory practice but has a voluntary practice that awards points for post-occupancy water use metering.

For LEED, the water use reduction prerequisite and credit are based on fixture and appliance efficiency. LEED does not address structural waste from hot water supply systems design which is a significant area of focus in the NGBS, with up to 29 points available.

The NGBS includes several additional water efficiency practices not included in the LEED rating system, including: capture and pre-piping for reclaimed, gray, and rainwater; sediment filters designed to protect plumbing fixtures; and leak detection and automatic shut-off devices.

[10] For the 2020 NGBS the code baseline is the 2018 IBC, IRC, and IECC.

For Bronze level certification, at least 25 points must be achieved within this chapter. The NGBS requires at least 11% of total points toward Silver be attained from the Water Efficiency chapter.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
4.	Chapter 8	Water Efficiency	25	39	67	92
		Total Points:	231	334	489	611

Energy & Atmosphere

LEED RESIDENTIAL has an Energy and Atmosphere (EA) chapter, and the NGBS has Chapter7: Energy Efficiency. Energy performance, energy metering, and renewable energy topics are addressed in both.

LEED RESIDENTIAL Version 4.1 | Energy & Atmosphere		
Type	***Credit***	***Points***
Prerequisite	Fundamental Systems Testing and Verification	0
Prerequisite	Minimum Energy Performance	0
Prerequisite	Energy Metering	0
Prerequisite	Fundamental Refrigerant Management	0
Credit	Enhanced Commissioning	1-6
Credit	Optimize Energy Performance	1-18
Credit	Whole Building Energy Monitoring and Reporting	1
Credit	Grid Harmonization	1-2

NGBS Chapter 7 Energy Efficiency Practices		
Practice Number	***Practice***	***Points***
701.4.1	HVAC system sizing	Mandatory
701.4.2	Duct systems	Mandatory
701.4.3	Insulation and air sealing	Mandatory
703.1.1	Building thermal envelope compliance	Mandatory
703.1.2	Building envelope leakage	Mandatory
705.6.1	Installation and Performance Verification[11]	3
701	Minimum Energy Efficiency Requirements	Mandatory, 0
706.7	Energy Consumption control	1-3
Not Addressed[12]		
705.5	HVAC Design and Installation	1-4
Also Addressed in Chapter 10 Operations, Maintenance, and Building Owner Education		
701.1; 702; 703; 704	Successful compliance with one of 4 compliance paths: 1. Alternative Bronze/Silver 2. Performance Path 3. Prescriptive Path 4. ERI Target Path	Mandatory, 30-70
705.7	Submetering System	1
706.14	Third-party utility benchmarking service	1-3
1004.1	Post Occupancy Performance Assessment	1-3
706.10	Automatic Demand Response	1
706.11	Grid interactive Battery Storage System	2
706.12	Smart Ventilation	1

[11] While this NGBS practice is voluntary and awards points, for NGBS Green certification, commission and verification is de facto mandatory. No building can earn NGBS Green certification from Home Innovation unless it complies with the third-party inspection requirements of this practice and all other NGBS practices.

[12] "CFC" production was phased out in the mid-1990s and replaced with "HCFC" refrigerants like R-22. Now R-22 is on a long-term phase out with 2020 as the last production year. For residential equipment, R-22 has largely been replaced with "HFC" blends (commonly R-410A). New equipment does not have CFC refrigerant, but it could have HCFC refrigerant (R-22) until the industry uses up that inventory, but inventory currently low.

Credit	Renewable Energy	1-5		706.5	On-Site Renewable Energy System	2 per KW / number of dwelling units
				706.2	Renewable Energy Service Plan	1-2
Credit	Enhanced Refrigerant Management	1		706.13	Alternative Refrigerant	1-2
Credit	Domestic Hot Water Pipe Insulation	1		705.6.3	Insulating hot water pipes	1

Additional NGBS Energy Efficiency Practices		
Practice Number	***Practice***	***Points***
705.2	Lighting Controls	1-21
705.3	Induction Cooktop	1
705.4	Return Ducts and Transfer Grilles	2
705.6.3	Insulating hot water pipes	1
705.6.4	Portable Hot Water Demand Re-circulation System	1-2
706.1	Energy Consumption Control	1-3
706.3	Smart Appliances and Systems	1-2
706.4	Pumps	1-5
706.6	Parking Garage Efficiency	2
706.7	Grid-Interactive Electric Thermal Storage System	1
706.8	Electrical Vehicle Charging Station	2
706.9	CNG Vehicle Refueling station	1
706.12	Smart Ventilation	1
706.15	Entryway air seal	2-4

Prerequisites: LEED has four EA prerequisites: (1) Fundamental System Testing and Verification; (2) Minimum Energy Performance; (3) Energy Metering; and (4) Fundamental Refrigerant Management. To demonstrate minimum energy performance, there are three options: (1) ASHRAE Standard 90.1-2016 compliance, (2) Prescriptive Path compliance based on the New Building Institute Multifamily Guide, or (3) Dwelling unit energy simulation that meets or exceeds the ENERGY STAR v3 HERS Index Target.

The 2020 NGBS sets the 2018 IECC as the energy performance baseline. While the NGBS sets a different metric for the baseline energy performance, (the 2018 IECC for the NGBS vs ASHRAE 90.1 for LEED) the performance targets of both baselines ***are almost identical***.[13] NGBS Section 701 sets the mandatory energy efficiency prerequisites to ensure compliance with the 2018 performance baseline. These mandatory items address HVAC systems, duct systems, and insulation and air sealing. The NGBS has four compliance options (with compound requirements) that are intended to ensure the project's energy-related systems are installed and commissioned according to the owner's project requirements, basis of design and construction documents.

[13] See energy efficiency comparison chart below.

Like LEED, the NGBS offer multiple paths for demonstrating energy performance:

- Performance
- Prescriptive
- ERI Target
- Alternative Bronze and Silver (ESCH or ESMFHR certification) [14]
- Alternative Gold (IgCC compliance)
- Alternative Gold for Tropical Zones (IECC compliance and prescriptive measures)

The NGBS Prescriptive Path compliance requires a building to earn sufficient points in Chapter 7 to meet the desired certification level. Each point earned in NGBS Chapter 7 is roughly equivalent to 0.05% reduction in energy consumption according to an analysis completed by the US Department of Energy. (Thus, a Silver level building would be approximately 7.5% more energy efficient than a 2018 IECC code minimum building.)

Most energy efficiency compliance paths require at least two additional energy efficiency practices above the 2018 IECC performance baseline, either two from Section 705 (Additional Practices) or one from Section 705 and one from Section 706 (Innovative Practices).[15] These practices would offer at least 0.1% energy savings beyond that mandated by the specific energy efficiency compliance pathways.

Point Distribution: LEED 34 points are available.
NGBS 304 points are available.

Analysis:

At the minimum certification levels, LEED RESIDENTIAL and NGBS are on-par for energy efficiency. LEED RESIDENTIAL requires compliance with ASHRAE 90.1-2016 for minimum energy performance. The NGBS requires energy performance on-par with IECC 2018. ASHRAE 90.1-2016 is an alternative compliance path for the 2018 IECC.

At the higher certification levels (Silver, Gold, Emerald/Platinum) the NGBS is more stringent than LEED regarding minimum required energy performance. LEED does not require higher energy performance for higher certification levels (Silver, Gold, Platinum). The NGBS requires 7.5% higher energy performance above Bronze for Silver level certification; 7.5% higher energy performance above Silver for Gold level certification; and 5% higher energy performance above Gold for Emerald certification level.

LEED and NGBS both offer multiple compliance options to demonstrate energy performance. The NGBS offer more compliance options and greater flexibility without less rigor.

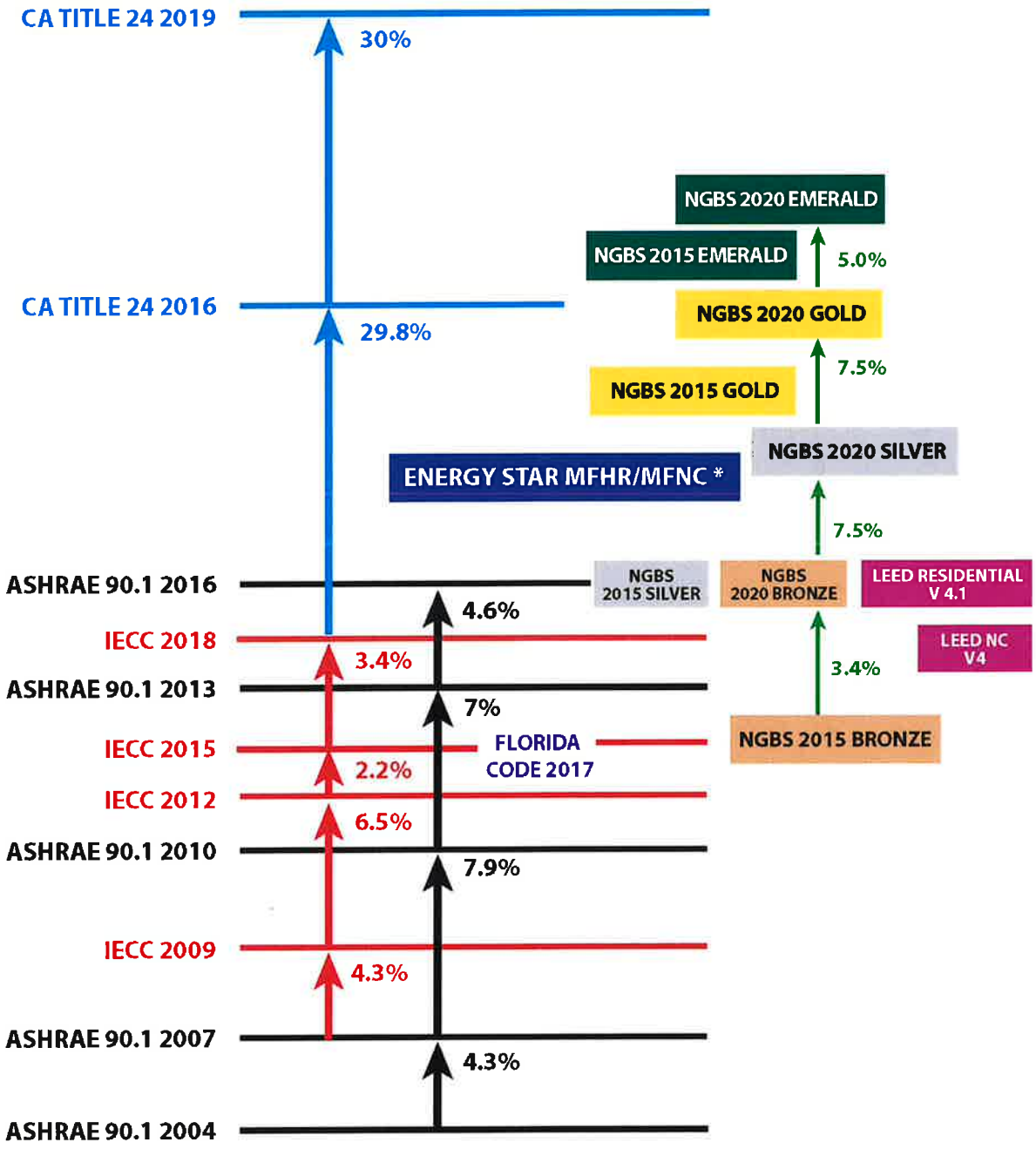
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[14] An ENERGY STAR MFHR V1.0 Rev. 03 certified building can earn Bronze for NGBS Chapter 7; an ENERGY STAR MFHR V1.0 Rev. 03 with a baseline of ASHRAE 90.1-2010) earns Silver for NGBS Chapter 7. Home Innovation also recognizes ENERGY STAR MFNC as an alternative to ENERGY STAR MFHR.

[15] Buildings following the Alternative Bronze or Silver compliance paths based on ENERGY STAR compliance and the alternative compliance path for Tropical Zone buildings do not need to include the two additional practices.

2015 AND 2020 NGBS ENERGY EFFCIENCY COMPARISON

MID- AND HIGH-RISE MULTIFAMILY BUILDINGS



* ENERGYSTAR MFHR and ENERGYSTAR MFNC 15% above state adopted code

Visit https://www.energycodes.gov/state-code-adoption-tracking-analysis for the respective state adopted codes

Updated November 6, 2020

LEED and NGBS both specify performance verification. The NGBS is stricter regarding who is qualified to perform verification.

LEED's fundamental commissioning prerequisite outlines a set of activities to evaluate mechanical, electrical, plumbing, and renewable energy systems and assemblies meet ASHRAE guidelines; specifies the role of a "commissioning agent" to conduct those activities; and requires that an operation and maintenance plan be developed specific to the building's energy systems.

The NGBS does not require building commissioning as per LEED; however, the intent of many of the NGBS practices is to ensure the project's energy-related systems are installed and calibrated according to the owner's project requirements, basis of design and construction documents. The NGBS identifies specific energy efficiency testing to be conducted, including air leakage, HVAC airflow, and HVAC duct leakage testing. These tests must be conducted by a qualified third-party professional. (Operation and maintenance plan requirements are also required by NGBS but included in the Operation, Maintenance, and Building Owner Education chapter.)

For LEED, commissioning is conducted by a "Commissioning Agent." The Commissioning Agent can be an employee of the owner company, independent consultant, or employee of the project's design or construction firm. For NGBS, verification must be conducted by an accredited NGBS Green Verifier. Home Innovation's NGBS Green Verifier Agreement and program policies strictly require independent third-party review to ensure no conflict of interest. Home Innovation does not allow member of an owner company or anyone from the design or construction firms to perform on-site verification.

Refrigerant Management: The only EA LEED prerequisite without a comparable NGBS practices is the refrigerant management credit and the NGBS has a voluntary credit that deals with this issue. This topic is less relevant to residential HVAC systems, which is why it is not mandatory withing the NGBS.

Innovative Practices: The NGBS includes 13 practices not addressed by LEED. The NGBS offers innovative practices applicable to residential construction, including lighting and lighting controls, induction cooktops, energy consumption control, smart appliances, grid-interactive storage, and electrical vehicle charging.

For Bronze level certification, at least 30 points must be achieved within this chapter. The NGBS requires at least 13% of total points toward Bronze be attained from the Energy Efficiency chapter.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
3.	Chapter 7	Energy Efficiency	30	45	60	70
		Total Points:	231	334	489	611

Materials & Resources

LEED RESIDENTIAL includes a Materials and Resources chapter, which addresses recycling, construction waste management, and sustainable products. The NGBS addresses these topics, within its Resource Efficiency chapter; however, the NGBS Resource Efficiency chapter is broader covering important green building issues, such as enhanced durability, reduced maintenance, regional materials, universal design, and resilience.

LEED RESIDENTIAL Version 4.1 | Materials & Resources		
Type	***Credit***	***Points***
Prerequisite	Storage and Collection of Recyclables	0
Prerequisite	Construction and Demolition Waste Management Planning	0
Credit	Building Life-Cycle Impact Reduction	2-5
Credit	Environmentally Preferable Products	1-6
Credit	Construction and Demolition Waste Management	1-2

NGBS Chapter 6: Resource Efficiency Practices		
Practice Number	***Practice***	***Points***
607.1	Recycling and composting	6
605.1	Hazardous Waste	Mandatory
605.2	Construction Waste Management Plan	6
603.1	Reuse of Existing Building	1-12
603.2	Salvaged Materials	1-9
610.1.1	Whole-Building Life Cycle Assessment	2-15
610.1.2.1	Product LCA	Up to 10
610.1.2.2	Building Assembly LCA	Up to 10
611.1	Product Declarations	5
606.1	Biobased Products	3-8
606.2	Wood-Based Products	3-4
606.3	Manufacturing Energy	2-6
604.1	Recycled Content	1-6
609.1	Regional Materials	1-10
611.2	Sustainable Products	3-9
605.2	On-Site Recycling	7
605.3	Recycled Construction Materials	1-6

Additional NGBS Resource Efficiency Practices		
Practice Number	***Practice***	***Points***
601.1	Conditioned Floor Area	Mandatory, 3-14
601.2	Material Usage	3-9
601.3	Building Dimensions and Layouts	3-13
601.4	Framing and Structural Plans	4
601.5	Prefabricated Components	4-13
601.6	Stacked Stories	2-8
601.7	Prefinished Materials	1-12
601.8	Foundations	3
602.1.1	Capillary Breaks	Mandatory, 0-3
602.1.2	Foundation Waterproofing	4
602.1.3	Foundation Drainage	Mandatory, 0-6
602.1.4	Crawlspaces	Mandatory, 0-14
602.1.5	Termite Barrier	4-8
602.1.6	Termite-Resistant Materials	2-12
602.1.7	Moisture Control Measures	Mandatory, 2-14
602.1.8	Water-resistive barrier	Mandatory, 0
602.1.9	Flashing	Mandatory, 0-18
602.1.10	Exterior Doors	2-6 points
602.1.11	Tile Backing Materials	Mandatory
602.1.12	Roof Overhangs	4
602.1.13	Ice Barrier	Mandatory
602.1.14	Architectural Features	Mandatory, 1-5
602.1.15	Kitchen and vanity cabinets	2
602.2	Roof Surfaces	3
602.3	Roof Water Discharge	4
602.4	Finished Grade	Mandatory, 0-2
603.3	Scrap Material	4
607.1(2)	Composting	3
607.2	Food Waste Disposers	1
608.1	Resource-Efficient Materials	3-9
612.3	Universal Design Elements	1-12
613	Resilient Construction	2-15

Prerequisites: The LEED M&R chapter requires: (1) buildings to have a place to collect and store recyclables; and (2) a construction and demolition waste management plan be developed and implemented.

The NGBS Resource Efficiency chapter includes significantly more mandatory items. The NGBS incentivizes smaller apartments through points and penalizes larger apartments by requiring additional points for the building to attain certification at any level. The NGBS requires the building to have a plan for the proper handling and disposal of hazardous waste. Numerous mandatory practices address moisture management and drainage. A small subset of the NGBS moisture management practices have comparable to the requirements in the LEED EQ chapter, but many NGBS mandatory moisture practices are not represented at all in LEED RESIDENTIAL.

Point Distribution: LEED: 13 points available
NGBS: 346 points available

Analysis:

The NGBS Resource Efficiency chapter is more robust and has more mandatory provisions than the LEED Material & Resources chapter.

Every LEED credit has at least one comparable NGBS practice. In addition, there are over 30 NGBS practices that deal with building materials and resources not addressed by LEED.

The NGBS includes multiple practices that rewards buildings designed and constructed to conserve construction materials. The NGBS penalizes buildings with large apartments. NGBS requires that buildings with oversized units attain additional points to achieve certification at any level to compensate for the additional material use. In addition, the NGBS rewards advanced framing, building dimensions and layouts that are designed to reduce cuts and waste, use of detailed framing and structural plans, use of prefabricated components, stacked stories, prefinished materials, and foundation systems that minimize soil disturbance.

The NGBS offers multiple practices designed to manage moisture. Moisture impacts the long-term performance of materials and can adversely affect indoor air quality. LEED does not include similar practices to address moisture management. Many of these NGBS practices are mandatory, including:

- Installation of a capillary break and vapor retarder at concrete slabs and crawlspaces;
- Installation of exterior drain tile for below grade spaces;
- Dampproof walls are required for walls below finished grade;
- Insulation within cavities is dry when enclosed by drywall;
- Water-resistive barrier and/or drainage plan system is installed behind exterior veneer and/or siding;
- Flashing is provided to minimize water entry into wall or roof assemblies;
- Tile backed materials are provided in wet areas;
- Horizontal ledgers are sloped away for gravity drainage; and
- Finished grade is sloped to facilitate drainage away from the building.

The NGBS rewards points for products manufactured with energy derived from renewable sources.

Organic waste management is addressed by two different practices. One practice awards a point where food waste disposals are installed. Another practice awards a point where compost facilities are provided.

Finally, the NGBS addresses Universal Design, a concept that supports residents aging-in-place and Resiliency.

For Bronze level certification, at least 43 points must be achieved within Chapter 6. The NGBS requires at least 18% of total points be attained from the Resource Efficiency chapter.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
2.	Chapter 6	Resource Efficiency	43	59	89	119
		Total Points:	231	334	489	611

Indoor Environmental Quality

LEED RESIDENTIAL and the NGBS both include an Indoor Environmental Quality chapter that pollutant control, building ventilation, low-emitting products, and thermal comfort.

LEED RESIDENTIAL Version 4.1 | Indoor Environmental Quality		
Type	***Credit***	***Points***
Prerequisite	Minimum Indoor Air Quality Performance	0
Prerequisite	Combustion Venting	0
Prerequisite	Garage Pollutant Protection	0
Prerequisite	Radon-Resistant Construction	0
No equivalent LEED prerequisite or credit		
Prerequisite	Interior Moisture Management	0
Prerequisite	Environmental Tobacco Smoke Control	0
Prerequisite	Compartmentalization	0
Credit	Enhanced Compartmentalization	1

NGBS Chapter 9 Indoor Environmental Quality Practices		
Practice Number	***Practice***	***Points***
901.1-901.2.2	Space and Water Heating Options	Mandatory, 0-32
902.1.6	Ventilation for Multifamily Common Areas	3
902.2.1	Building Ventilation Systems	Mandatory, 3-8
902.2.2	Ventilation Airflow Testing	4
901.1-901.2.2	Pollutant Source Control via spot ventilation	Mandatory, 0-32
901.13	Carbon Monoxide Alarms	Mandatory
901.1.2	Air handling equipment	5
901.3	Garages	Mandatory
902.3	Radon Control	Mandatory, 6-12
902.3.1	Radon reduction option	
902.3.2	Radon Testing	Mandatory
602.1.10	Tile backing materials	Mandatory
602.17	Moisture Control Measures	Mandatory, 2-8
901.6	Carpet	Mandatory
902.1.1	Spot Ventilation	Mandatory
505.9	Smoking Prohibitions	3-9
701.4.3.	Insulation and Air sealing	Mandatory
902.6	Living Space Contaminants	Mandatory
703.2.4	Building envelope leakage	1-11

Credit	No Environmental Tobacco Smoke	1	901.15	Non-smoking areas	1-2
Credit	Enhanced Indoor Air Quality Strategies	1-4	901.14	Building entrance pollutants control	1-2
			902.1.2	Automatic timer	2-11
			902.2.1	Building ventilation	3-10
			902.2.2	Ventilation Airflow Testing	4
			902.2.3-902.2.4	Merv filters	2-5
			905.3	Enhanced air infiltration	2
Credit	Low-Emitting Materials	1-4	901.9	Interior Architectural Coatings	1-8
			901.8	Wall coverings	4
			901.9	Interior Architectural Coatings	1-9
			901.10	Interior Adhesives and Sealants	5-8
			901.11	Insulation	4
			901.4	Wood Materials	Mandatory, 2-10
			901.5	Cabinets	5
			901.12	Furniture and Furnishings	4
Credit	Indoor Air Quality Assessment	1-2	902.4	HVAC System Protection	3
			904.1	Indoor Air Quality (IAQ) During Construction	2
			904.2	Indoor Air Quality (IAQ) Post Completion	3
Credit	Thermal Comfort	1	905.1	Humidity Monitoring System	2
			903.3	Relative Humidity	7
			Also Addressed within Energy Efficiency Chapter		
Credit	Daylight and Quality Views	1	*Not Addressed*		
Credit	Acoustic Performance	1-2	905.4	Sound barrier	4

Additional NGBS Indoor Environmental Quality Practices		
Practice Number	***Practice***	***Points***
901.8	Wall Coverings	4
902.5	Central Vacuum System	3
902.6	Living Space Contamination	Mandatory, 0
903.1	Plumbing (moisture management)	2-5
903.2	Duct Insulation (moisture management)	1-3
904.3	Microbial growth and moisture inspection	Mandatory
905.1	Humidity monitoring system	2
905.2	Kitchen Exhaust	2
905.5	Evaporative coil mold protection	2

Prerequisites:

LEED requires dwelling unit ventilation that complies with ASHRAE 62.1-2016 and kitchen and bathroom local exhaust. LEED also requires combustion venting, compartmentalization, garage pollutant protection, radon resistant construction, and smoking prohibitions.

Like LEED, the NGBS also mandates local kitchen and bathroom exhaust combustion venting, compartmentalization, garage pollutant protection, and radon resistant construction. In total, the NGBS has 11 Mandatory practices that relate to pollutant source controls, and pollutant control. The NGBS mandates whole-building ventilation for dwelling units only when the maximum air infiltration rate is less than 5.0 ACH50, otherwise whole-building ventilation is voluntary and awards points.

Point Distribution:

LEED: 16 points available

NGBS: 215 points available

Analysis:

LEED's Environmental Quality chapter and the NGBS Chapter 9 Indoor Environmental Quality overlap considerably regarding intent and practices.

Most LEED items are represented in NGBS practices. The NGBS has Indoor Environmental Practices not represented by LEED. For example, the NGBS requires Radon Testing in Zone 1.

LEED RESIDENTIAL requires whole-building ventilation by specifying compliance with ASHRAE 62.1 for mechanically and naturally ventilated spaces. The NGBS does not specify compliance with ASHRAE 62.1 unless the building maximum air infiltration rate is less than 5.0 ACH50. If the buildings air infiltration rate is greater than 5.0 ACH50 whole-building ventilation is voluntary and awards points toward certification. The NGBS mandates space and water heating and ventilation practices that achieve similar benefits to whole-building ventilation by specifically controlling pollutants at their source.

LEED RESIDENTIAL requires that residential buildings prohibit smoking in common areas and outside the building. The NGBS does not mandate smoking prohibitions, but instead awards points toward certification.

Both LEED and NGBS include practices related to pollutant control, low-emitting products, IAQ best practices for during and after construction, and thermal comfort. NGBS offers 8 additional practices designed to control pollutant sources not available in LEED.

The LEED credit pertaining to Daylight and Quality Views is not represented in the NGBS. Daylight strategies are not as appliable to residential buildings, as the residential building code requires operable windows be present in every unit. Code requirements ensure that some level of daylight is delivered to every resident. This is different than commercial building design, where there may be large open areas dedicated to multiple workspaces, as well as interior offices with little or no daylight. While the NGBS does not have a directly comparable daylight practice; there some related practices related to dynamic glazing, window shading, and lighting controls for multifamily common areas within NGBS Chapter 7: Energy Efficiency.

For Bronze level certification, at least 25 points must be achieved within this chapter. The NGBS requires at least 11% of total points toward Bronze be attained from the Indoor Environmental Quality chapter.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
5.	Chapter 9	Indoor Environmental Quality	25	42	69	97
		Total Points:	231	334	489	611

Additional LEED Categories

LEED RESIDENTIAL includes four additional categories each with one practice: (1) Integrative Process for 1 point; (2) Innovation for 1-5 points; (3) LEED Accredited Professional for 1 point, and (4) Regional Priority for 1-4 points.

Integrative Process: LEED RESIDENTIAL includes an Integrative Process credit that be achieved by executing activities in the pre-design and design phases that explore the interrelationships among systems.

The NGBS does not include a practice specifically related to Integrative Process, instead this credit's intent is embedded in the NGBS Green Certification process. During the pre-design phase, a project team hires an accredited NGBS Green Verifier to guide them through the verification and certification process. NGBS Green Verifiers typically meet with project teams in the design phase to help them score their project to their desired NGBS certification level and ensure proper details are reflected in plans, specs, and other construction documents. Verifiers will also offer specialized trainings to project teams, subcontractors, and trades to ensure that all team members understand the project goals and how their efforts contribute toward certification achievement.

Integrative Process		**Possible Points: 1**
Credit 1	Integrative Process	1

Innovation LEED RESIDENTIAL has a dedicated Innovation credit. In contrast, the NGBS recognizes and rewards innovative green practices in each of the green building categories as opposed to a separate chapter.

LEED Accredited Professional LEED RESIDENTIAL assigns a point to projects that use a LEED AP on the project team. The NGBS does provide certification points for specific professional designation for design and construction professionals. NGBS Green mandates that the project team hire an accredited NGBS Green Verifier who has been trained in a manner identical to a LEED AP but doesn't award points toward certification.

Innovation in Design		**Possible Points: 6**
Credit 1	Innovation	1-5
Credit 2	LEED Accredited Professional	1

Regional Priority: LEED awards 1-4 points for regional priority.

The NGBS does not have a similar category because its expansive point-based system and extensive green practice choices allow a project team to earn points for practices deemed a regional priority. For example, we typically see projects in the Southwest implement additional water saving practices, while buildings in the Northeast typically emphasize additional energy efficiency practices. The new Resilient Construction practice encourages fortified design and construction but would only be selected in areas facing those specific natural hazards.

Regional priority		**Possible Points: 4**
Credit 1	Regional Priority	1-4

Operation, Maintenance, and Building Owner Education

NGBS Chapter 10: Operation, Maintenance, and Building Owner Education includes practices for building construction, operations, and maintenance manuals; training of building owners; resident manuals and training; public education; post-occupancy assessment; and an innovation practice for using a green Appraisal Institute addendum for valuation. Many of these items are mandatory.

No such chapter exists within the LEED rating system.

NGBS Operation, Maintenance, and Building Owner Education		
Practice Number	***Practice***	***Points***
1002.1	Building Construction Manual	Mandatory, 3-4
1002.2	Operations Manual	Mandatory, 1-5
1002.3	Maintenance Manual	Mandatory, 1-5
1002.4	Training of Building Owners	Mandatory, 2-8
1002.5	Multifamily Occupant Manual	Mandatory, 8
1002.6	Training of Multifamily Occupants	1-3
1003.1	Public Education	1-2
1004.1	Post-Occupancy Assessment	1-4
1005.1	Appraisals	2-6

Prerequisites: LEED does not have any comprehensive practice(s) to ensure certified buildings are operated and maintained by owners, maintenance staff, and/or residents to ensure the benefits of the green features continue post-occupancy. In the EA chapter, there is a LEED requirement for an HVAC operations and maintenance plan. But that requirement does not extend to other aspects of the buildings operation and maintenance.

NGBS requires all certified multifamily buildings to develop and distribute a construction manual, an operations manual, and a maintenance manual to their responsible parties (property management company, building maintenance team, equipment maintenance team, and tenant). Further, to facilitate exchange of information in the event of future transfer of ownership and/or management at least one responsible party must receive all three manuals. Additionally, the NGBS requires residents to also receive a manual and training.

Point Distribution: LEED: 0 points available
NGBS: 39 points available

Analysis:

The impact of the building on the environment does not end with construction. Rather, given the typical multifamily building lifespan the construction impacts on the environment are rather small compared to the potential impacts post-construction. Poor operational and maintenance practices can offset many, if not all, of the efforts that a designer and builder invested in a green apartment building. NGBS Chapter 10 provides building owners, maintenance staff, and residents with educational and technical resources to take advantage of the building's green features and to further minimize the environmental impact of

the building over its lifetime. Building owners and residents can ultimately benefit from reduced utility bills, reduced maintenance costs, improved comfort and indoor air quality, enhanced living standards, and increased value.

For Bronze level certification, at least 8 points must be achieved within this chapter. The NGBS requires at least 3% of the total points toward Bronze certification be attained from the Operation, Maintenance, and Builder Owner Education chapter, however, despite the small number of points required for Bronze certification, this chapter has many mandatory practices for certification.

Threshold Point Ratings for Green Buildings

Green Building Categories			Rating Level Points [a] [b]			
			BRONZE	SILVER	GOLD	EMERALD
6.	Chapter 10	Operation, Maintenance, and Building Owner Education	8	10	11	12
		Total Points:	231	334	489	611

CONCLUSION

As demonstrated above, the 2020 NGBS is clearly equivalent to LEED RESIDENTIAL v4.1 when individual green categories are compared. The NGBS is more comprehensive and more stringent than LEED v4.1 in compliance requirements because of the minimum point thresholds required to earn certification at any level. Furthermore, because the NGBS and Home Innovation's certification program were developed specifically for residential construction, NGBS Green is uniquely suited as a green building standard for multifamily construction.

There is not a single path to sustainable buildings, but multiple paths. And those paths have been and will continue to constantly evolve. The LEED rating systems provide one choice for buildings and the NGBS provides another. On objective review of both programs demonstrates then to be equally stringent and equally credible. If an agency's objective is to facilitate green, high performance buildings, acceptance of the NGBS as a choice for residentially occupied projects is an effective means to that end.


Home Innovation
RESEARCH LABS™

TOWN OF NEEDHAM
MASSACHUSETTS

500 Dedham Ave
Needham, MA 02192
781-455-7550
March 11, 2021

PLANNING BOARD

RECEIVED
TOWN CLERK
NEEDHAM, MASS.
2021 MAR 18 PM 2:56

APPLICATION FOR SITE PLAN REVIEW

Project Determination: [ ] Major Project

[■] Minor Project

This application must be completed, signed, and submitted with the filing fee by the applicant or his representative in accordance with the Planning Board's Rules as adopted under its jurisdiction as a Special Permit Granting Authority pursuant to Section 7.4 of the By-laws.

Location of Property: 1688 Central Avenue, Needham, MA 02492

Name of Applicant: Needham Enterprises, LLC

Address: 105 Chestnut Street, Suite 28, Needham, MA 02492 Tel.#: (781) 444-8060

Applicant is Owner [X] Tenant [ ]

Property Owner's Name: Needham Enterprises, LLC

Address: 105 Chestnut Street, Suite 28, Needham, MA 02492 Tel.#: (781) 444-8060

Characteristics of Property: Lot Area: 3.352 acres Present Use: Vacant Building

Map #: 199 Parcel #: 213 Zoning District: SRA

Description of Project for Site Plan Review under Section 7.4. of the Zoning By-law:

See Exhibit A attached hereto.

Signature of Applicant (or his representative) _____
Roy A. Cramer, Esq.
Evans Huber, Esq.

Address if not Applicant Frieze Cramer Rosen & Huber LLP
60 Walnut Street, Wellesley, MA 02481

Tel. # 781 943 4030

Owner's permission if other than applicant N/A

By: _____

SUMMARY OF PLANNING BOARD ACTION

Received by Planning Board _____ Date 3/18/21

Hearing Date _____

Decision Required by _____(date)
(90 days after hearing for special permit)

Parties in Interest Notified
of Public Hearing _____(date)

Granted _____(date)

Decision and Notices of the
Decision sent _____(date)

Denied _____(date)

Fee Paid _____

Withdrawn _____(date)

Fee Waived _____

NOTE: Reports on Minor Projects must be issued within 35 days of filing date.

Exhibit A
Application for Minor Project Site Plan Review
Needham Enterprises LLC
Property at 1688 Central Avenue, Needham, MA

Description of Project for Minor Project Site Plan Review Under Section 7.4 of the Zoning By-Law

The proposed project is to demolish the existing house and garage at the property, but to leave the existing barn. A new building of 9,966 square feet of gross floor area will be constructed, to house a child care facility. A new parking area that includes 24 parking spaces will also be constructed.

All of the foregoing is more particularly shown on the plans filed herewith.

2021 MAR 18 PM 2:57

Needham Enterprises, LLC
105 Chestnut Street, Suite 28, Needham, MA
02492
781-444-8060 (P) 781-444-8070(F)
Needhamenterprises105@gmail.com

2021 MAR 18 PM 2:57

March 16, 2021

Members of the Needham Planning Board

And

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Avenue Needham

Dear Planning Board Members and Ms. Newman:

As indicated on the attached filing with the Secretary of State's office, I am the Manager and sole Member of Needham Enterprises, LLC. In that capacity, I hereby authorize Attorney Evans Huber to act on behalf of Needham Enterprises, LLC on all matters before the Planning Board regarding 1688 Central Avenue, including but not limited to signing the application for Minor Project Site Plan Review.

Sincerely,

Matt Borrelli
Needham Enterprises, LLC
Manager

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

60 WALNUT STREET, WELLESLEY, MASSACHUSETTS 02481
781-943-4000 • FAX 781-943-4040

EVANS HUBER
781-943-4043
EH@128LAW.COM

March 12, 2021

Members of the
Needham Planning Board

And

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Avenue, Needham

Dear Planning Board Members and Ms. Newman:

I am writing on behalf of Needham Enterprises LLC, with respect to the Application for Minor Project Site Plan Review for the Project at 1688 Central Avenue. The purpose of this letter is to provide the Planning Board with additional information in connection with this Project and, in particular, to discuss how the project will conform to the Review Criteria for Site Plan Review, as set forth in Section 7.4.6 of the Zoning By-Law.

The following are the criteria for the Planning Board to consider during the site plan review process pursuant to Section 7.4.6 of the Zoning By-Law, and the description of how the Project meets those criteria.

(a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;

The proposed project has been designed to protect adjoining premises from detrimental impacts by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air, as follows:

As noted in the stormwater management report prepared by Glossa Engineering, the drainage plan will capture all of the runoff from the building rooftops and most of the runoff from the paved areas, and direct the runoff into an underground infiltration basin. The design and analysis of the system is based on MA DEP stormwater management regulations.

A landscape plan has been developed for screening and enhancing the existing site.

The lighting system for the project parking areas has been designed to comply with the Town of Needham lighting requirements. The parking area is on the side of the property adjacent to Temple Aliyah, and is not close to the residential properties abutting the southern boundary of the property. No light "spillage" onto neighboring residential properties is anticipated.

(b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;

As shown on the plans filed with this application, the project has been designed to ensure that there will be safe vehicular and pedestrian circulation on site. The parking area has been designed with an "island" that vehicles can circulate around so that vehicles dropping off and picking up children can continuously move forward upon entry, following dropoff and pickup, and when exiting the site.

The access to and egress from the property will be via the existing driveway opening onto Central Avenue, where there are adequate sight lines up and down Central Avenue.

(c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;

Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises has been achieved. The proposed parking area complies with the Town of Needham Bylaw requirements for number of spaces, illumination, loading, parking space size, location, design and number of handicap spaces, width of maneuvering aisles, setbacks, and landscaping.

The parking area includes 24 spaces, which is the required number of spaces for the proposed use and the anticipated number of children and staff members. The required parking calculation is based on a formula the Town uses for this type of use, which is 8 spaces, plus 1 space for each 40 children, plus one space per staff member. Applying this formula leads to a calculated parking requirement of 24 spaces.

Please see the Layout and Zoning Plan for additional details of the parking layout.

(d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;

The site has been designed such that adequate methods of disposal of refuse resulting from the proposed use has been assured. A dumpster will be located at the far (eastern) end of

the parking area and will be enclosed with fencing. Refuse will be removed from the site by a licensed hauler.

(e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and

The matters to be considered by this Board in connection with relationship of structures and open spaces to the natural landscape, existing buildings, and other community assets in the area, have been addressed, and the project complies with all other requirements of the Town Bylaw.

The proposed building was designed to fit into the existing surroundings with a façade that measures 84' 6", which is comparable to large homes in the surrounding neighborhood and streets. The building is also designed to architecturally blend in with the surroundings by including design elements to look like a single-family home. There is no proposed signage for the building and there will be no light trespass.

The gross floor area of the building is 9966 square feet on one floor, which, even including the barn that will remain, is far smaller than what would be allowed by the applicable maximum lot coverage (15%) and the applicable FAR (.30) for this Zoning District. In addition, this building is considerably smaller than the abutting Temple Aliyah. Further, the parking will be in the rear of the building, and the Applicant is open to allowing, by agreement, overflow parking for the benefit of Temple Aliyah at certain times that will not conflict with the requirements of NCC.

(f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

The project has been designed to limit adverse impacts to the Town resources as follows:

The Applicant will connect to the Town's sewer system by running, at the Applicant's expense, a sewer main from its current closest point on Country Way, up Central Avenue to the site. Neighboring properties will have the option of connecting, at their expense, to this sewer line. The Applicant has met with Sean Harrington, the Superintendent of Water, Sewer, and Drains, who is in favor of and has approved the plans to do this. The project will connect to the Town's water supply.

The Applicant has engaged a traffic engineer to study this site. As set forth in the

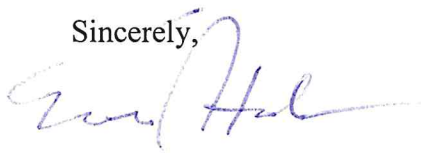
Traffic Impact Assessment, drop-off and pick-up will continue to be staggered, as is NCC's current practice. The facility will be closed on Federal holidays, Patriots Day, the day after Thanksgiving, the week between Christmas and New Years and a week before Needham Public Schools open. There will be no buses to the site. Additionally, the drop-off and pick-up numbers include siblings, meaning that there will be fewer cars than the number of children being dropped off and picked up.

As shown in the Traffic Impact Assessment submitted with this Application, all through traffic on Central Avenue in each direction will continue to enjoy an "A" level of service with little or no delay during the weekday morning commuting peak hour. The Central Avenue southbound left-turn lane utilized for left turns into the site will operate at an "A" level resulting in no turbulence on Central Avenue during the morning peak hour. The site driveway itself will have an acceptable "C" level of service, with average delays, during the morning peak hour.

Based on the projected arrivals and departures, the evening peak hour is expected to generate fewer vehicle trips than the morning peak hour.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Evans Huber

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

60 WALNUT STREET, WELLESLEY, MASSACHUSETTS 02481
781-943-4000 • FAX 781-943-4040

EVANS HUBER
781-943-4043
EH@128LAW.COM

March 16, 2021

Members of the
Needham Planning Board

And

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Ave, Needham; Minor Project Site Plan Review

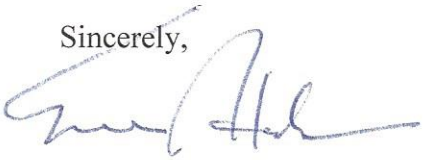
Dear Planning Board Members and Ms. Newman:

As requested by the Planning Department, this letter is submitted as a supplement to my prior letters dated March 11 and 12 in support of the application for Minor Project Site Plan Review for the proposed project at this address.

The anticipated maximum number of children at the site is 100, and the anticipated maximum number of staff is 13. This information can also be found on Sheet A 1-0 of the Architectural Plans and elevations, prepared by Mark Gleusing Architect, 48 Mackintosh Avenue, Needham, MA 02492, dated March 8, 2021, which were submitted with the application.

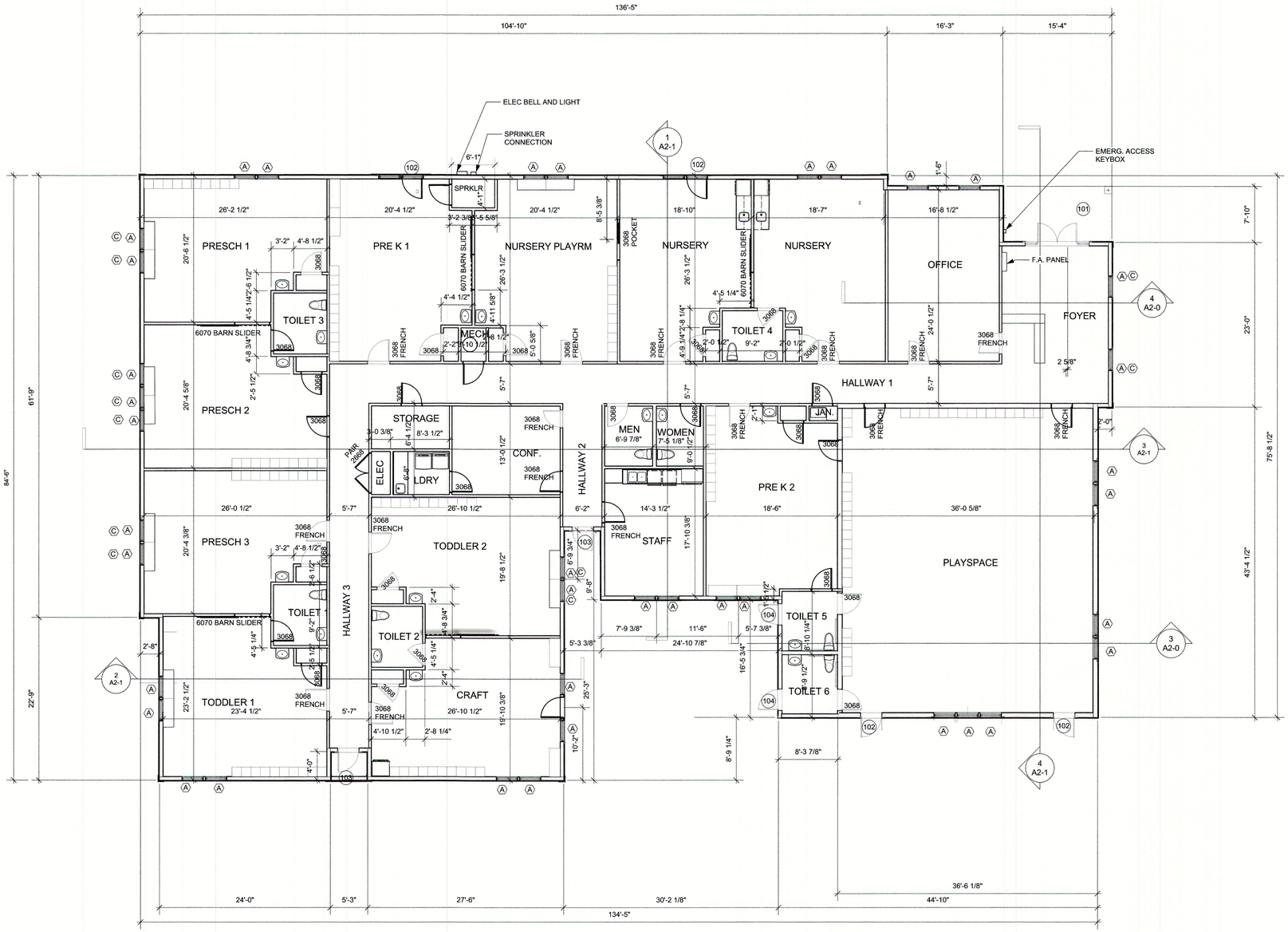
Please let me know if you need anything else.

Sincerely,



Evans Huber

Mark Gluesing Architect
48 Eaton Road
Needham
Massachusetts
02492
781. 444. 3504



1 1st Floor Plan
Scale: 1/8" = 1'-0"

BUILDING DATA

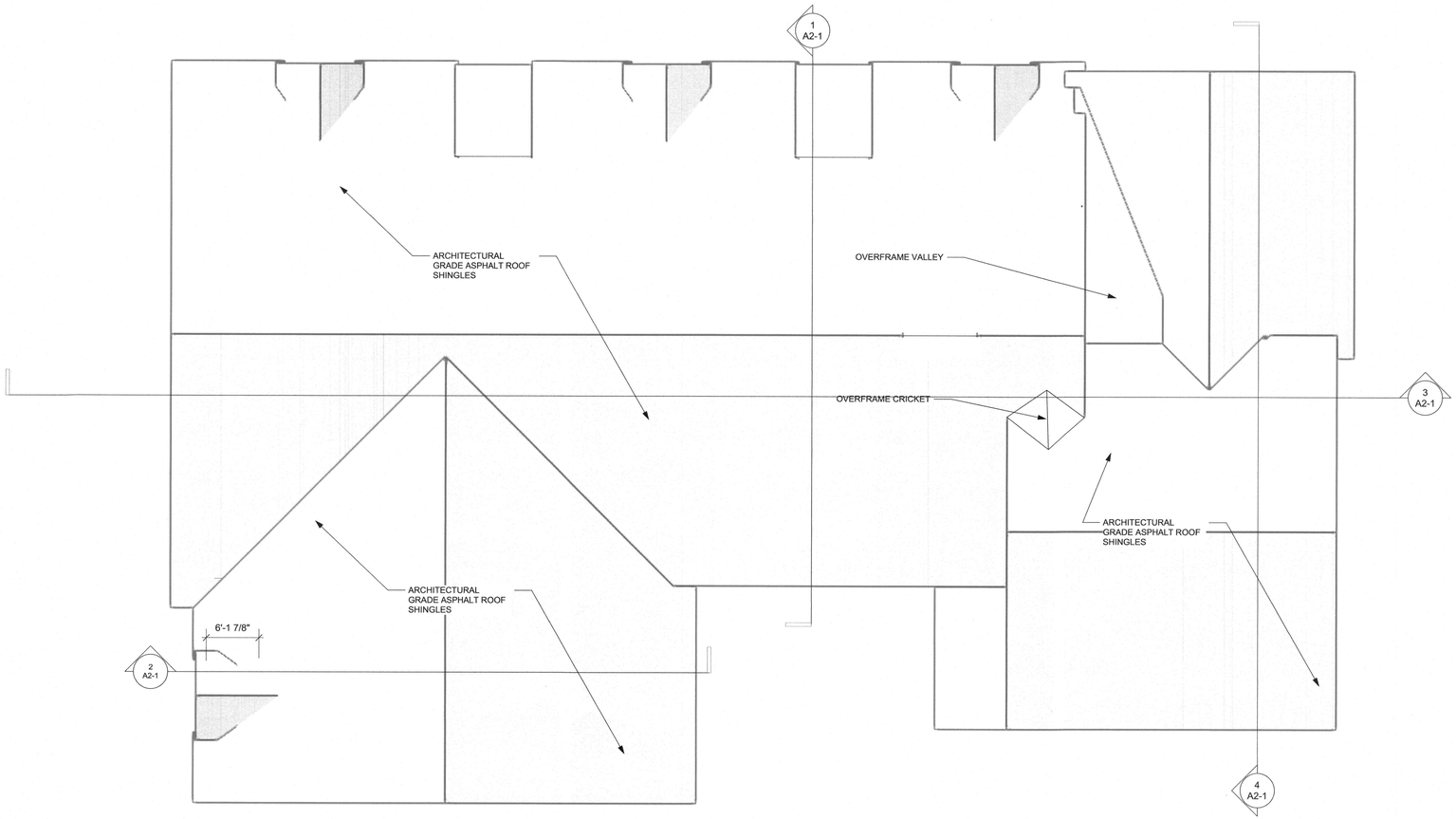
LOT SIZE	146,003 SF
NEW BUILDING SIZE	9,966 SF
PARKING SPACES:	
OPERATIONAL OCCUPANCY	
100 CHILDREN: 8 SPACES+1/40 (3)=	11
13 STAFF	13
TOTAL	24

NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

SITE PLAN REV.
3.8.21

A 1-0

Mark Gluesing Architect
Avenue
Massachusetts
02492
781. 444. 3594



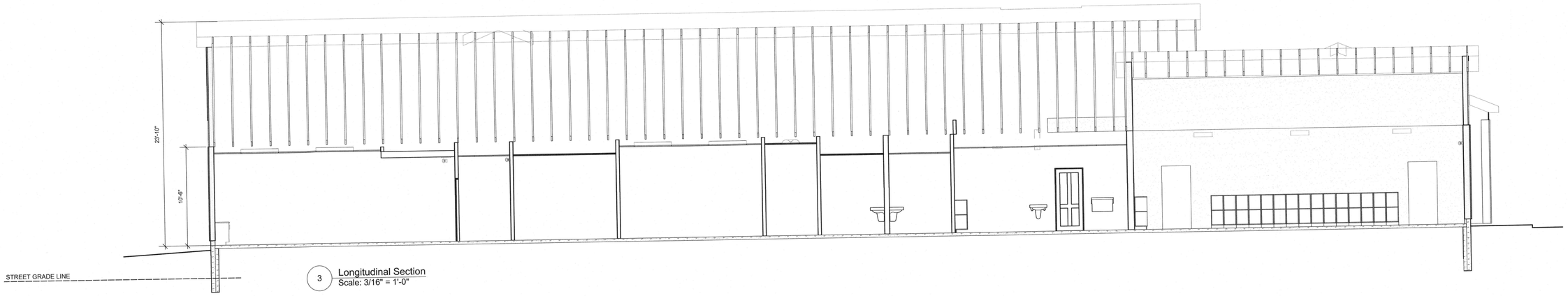
1 Roof Plan
Scale: 1/8" = 1'-0"

NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

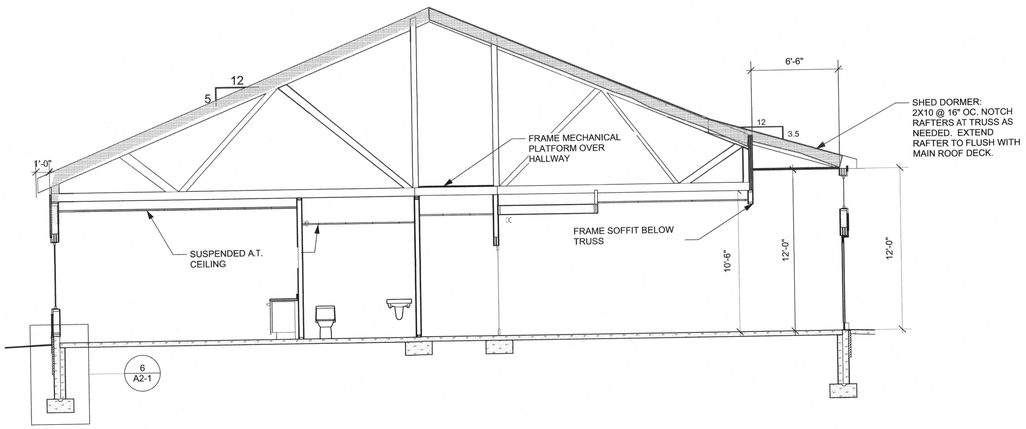
SITE PLAN REV.
3.8.21

A 1-1

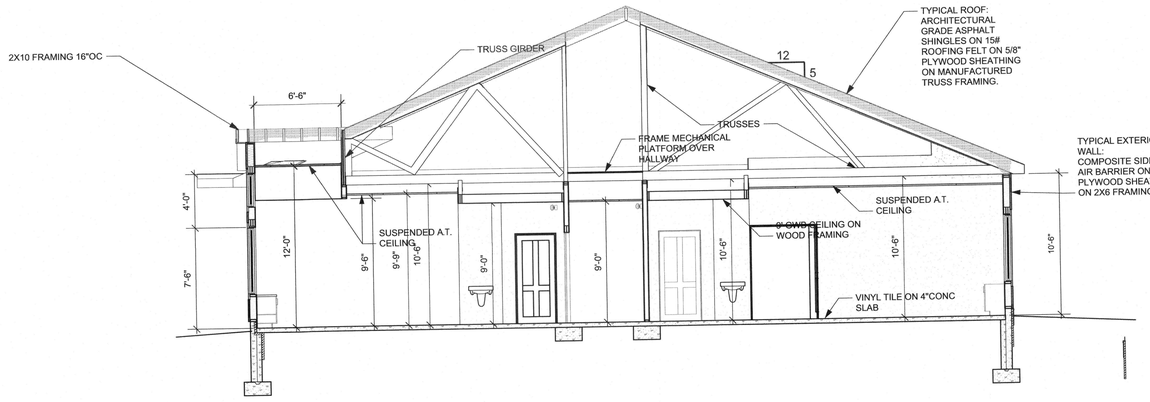
Mark Giesting Architect
46 Nahatan Street
Needham Massachusetts
781 444 3304



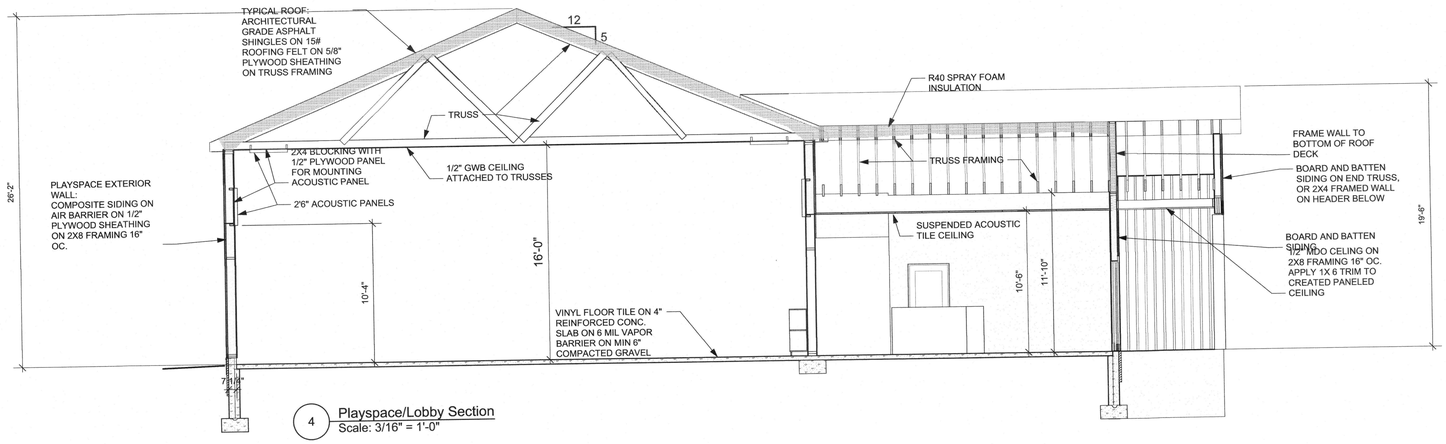
3 Longitudinal Section
Scale: 3/16" = 1'-0"



1 Nursery/Staffroom Section
Scale: 3/16" = 1'-0"



2 Toddler 1/ Craft Section at Dormer
Scale: 3/16" = 1'-0"



4 Playspace/Lobby Section
Scale: 3/16" = 1'-0"

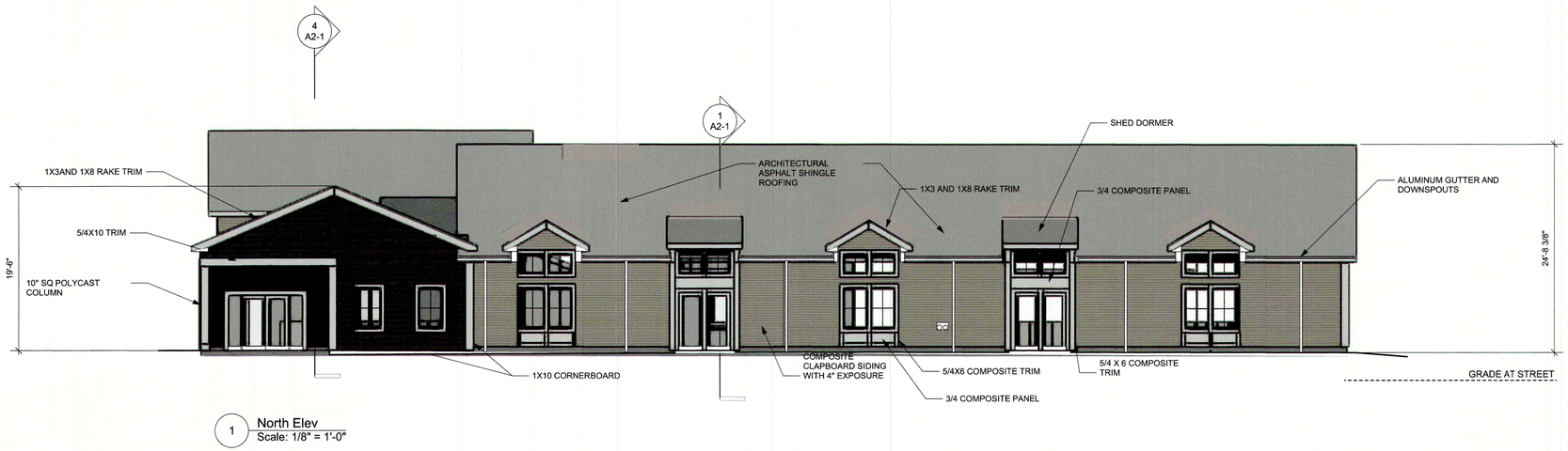
NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

SITE PLAN REV.
3.8.21

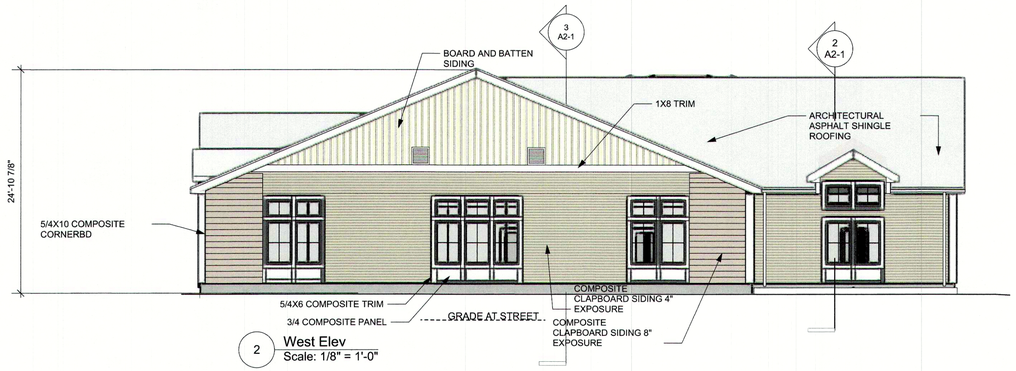
A 2-1

Mark Glussing **Architect**
40 A Chestnut Avenue
Needham Massachusetts
781 444 3504
02492

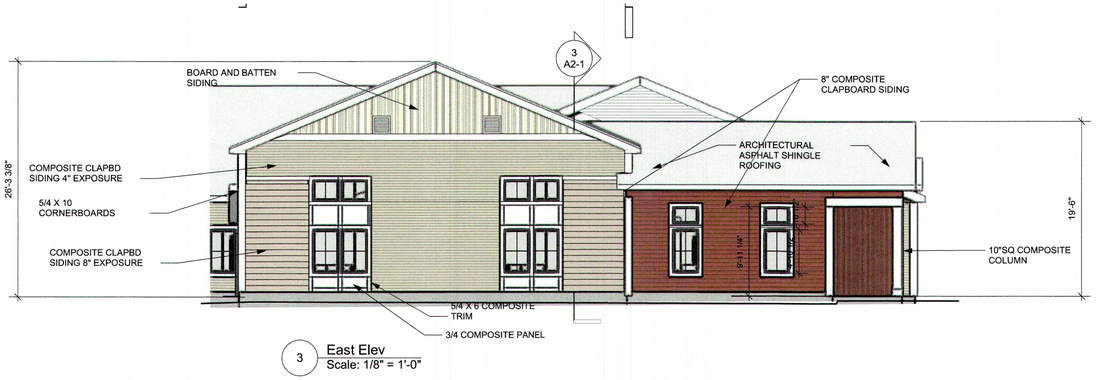




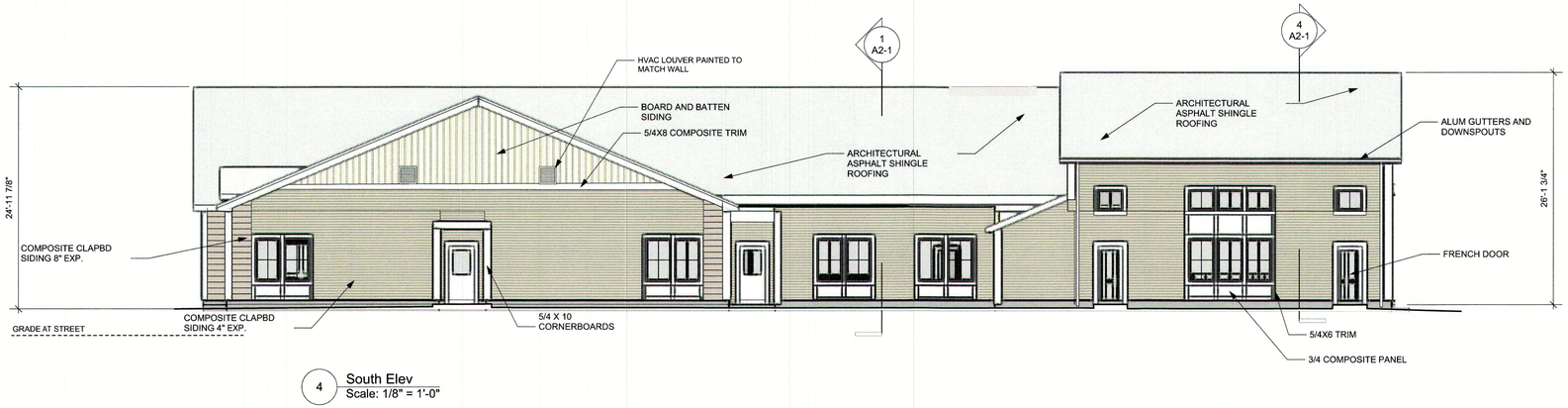
1 North Elev
Scale: 1/8" = 1'-0"



2 West Elev
Scale: 1/8" = 1'-0"



3 East Elev
Scale: 1/8" = 1'-0"



4 South Elev
Scale: 1/8" = 1'-0"

COLOR CHART

SIDING	BENJ MOORE	AC-28
TRIM	BENJ MOORE	OC-85
BOARD/BATTEN AT GABLES	BENJ MOORE	OC-85
SIDING AT ENTRANCE	BENJ MOORE	HC-181

NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

SITE PLAN REV.
3.8.21

A 3-0

ZONING LEDGEND:				
SINGLE RESIDENCE A	REQUIRED/ALLOWED	EXISTING	PROPOSED	COMPLIANCE
MIN. AREA	43,560 S.F.	146,003 S.F.	146,003 S.F.	YES
MIN. FRONTAGE	150'	250.05'	250.05'	YES
MIN. SETBACK FRONT	30'	*105.0' **211.2' ***30'	40.6'	YES
MIN. SETBACK SIDE	25'	*67.5' **65.0' ***54.2'	52.4'	YES
MIN. SETBACK REAR	15'	*864.9' **763.4' ***677.0'	835.9'	YES
MAXIMUM STORIES	2-1/2	*2 **1 ***2	1	YES
MAXIMUM HEIGHT	35'	*30.7' **15.3' ***31.2'	20'	YES
BUILDING COVERAGE	NR	NR	NR	YES
FLOOR AREA RATIO	NR	NR	NR	YES
DRIVEWAY OPENINGS	18' - 25'	19'	24'	YES

*EXISTING HOUSE (TO BE DEMOLISHED)
**OUT BUILDING -1 (TO BE DEMOLISHED)
***OUT BUILDING -2 (TO REMAIN)

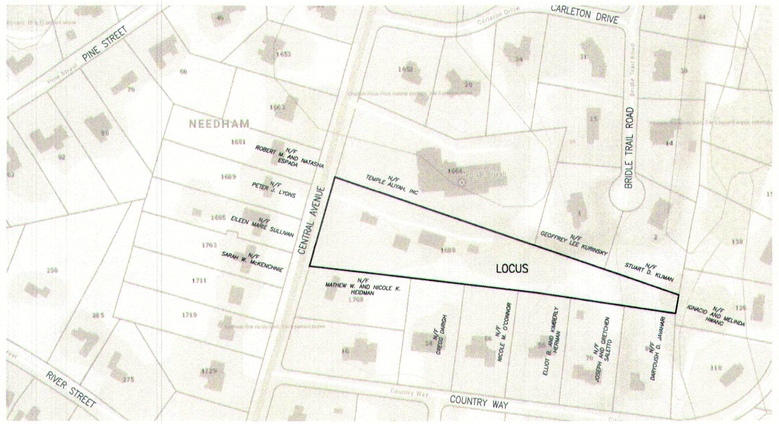
ZONING BYLAW 6.1.3 PARKING PLAN AND DESIGN REQUIREMENTS

	REQUIRED/ALLOWED	EXISTING	PROPOSED	COMPLIANCE
A) PARKING ILLUMINATION	AVG. 1 FOOT CANDLE	N/A	AVG. 1 FOOT CANDLE	YES
B) LOADING REQUIREMENTS	N/A	N/A	N/A	YES
C) HANDICAPPED REQUIREMENTS	2	N/A	2	YES
D) DRIVEWAY OPENINGS	1	1	1	YES
E) COMPACT CARS	50% (8'X16')	N/A	N/A	YES
F) PARKING SPACE SIZE	9'X18.5'	N/A	9'X18.5'	YES
G) BUMPER OVERHANG	1' OVERHANG	N/A	NONE REQUIRED	YES
H) PARKING SPACE LAYOUT	N/A	N/A	N/A	YES
I) WIDTH OF MANEUVERING AISLE	24' (90° STALL)	N/A	24' (90° STALL)	YES
J) PARKING SETBACK				
-FRONT	10'	N/A	181.2'	YES
-SIDE	4'	N/A	42.5'	YES
-REAR	4'	N/A	625.1'	YES
-BUILDING	5'	N/A	5'	YES
K) LANDSCAPE AREA	10%	N/A	10%	YES
L) TREES	1 PER 10 SPACES (3)	N/A	3	YES
M) LOCATION	WITHIN LOT	N/A	WITHIN LOT	YES
N) BICYCLE RACKS	NONE REQUIRED	N/A	NONE REQUIRED	YES

REQUIRED PARKING TO BE DETERMINED BY BUILDING INSPECTOR
PARKING PROVIDED SPACES INCLUDING 2 HANDICAP SPACES

LANDSCAPE AREA REQUIREMENT IS 10% OF REQUIRED SET BACK AREA. SET BACK AREA IS 3,939 S.F. 10% OF 3,939 IS 394 S.F. OF MAINTAINED LANDSCAPE AREA REQUIRED 25% OF THAT OR 98 S.F. TO BE LOCATED WITHIN THE INTERIOR OF THE PARKING AREA. 365 S.F. PROVIDED WITHIN PARKING AREA

SITE DEVELOPMENT PLANS
DAYCARE
1688 CENTRAL AVENUE
NEEDHAM, MA
JUNE 22, 2020



LOCUS
N.T.S

OWNER:
NEEDHAM ENTERPRISES LLC
105 CHESTNUT STREET SUITE 28
NEEDHAM, MA 02492

APPLICANT:
NEEDHAM ENTERPRISES LLC
105 CHESTNUT STREET SUITE 28
NEEDHAM, MA 02492

ASSESSORS PARCELS:
MAP 199, LOT 213

DEED REFERENCE:
BOOK 37770 PAGE 308

PLAN REFERENCE:
PLAN OF LAND DATED SEPTEMBER 28, 1933
BY P.D.G. HAMILTON, CIVIL ENGINEER

PLAN INDEX

SHEET 1: COVER SHEET
SHEET 2: EXISTING CONDITIONS PLAN
SHEET 3: SITE PLAN
SHEET 4: GRADING AND UTILITIES PLAN
SHEET 5: LANDSCAPE PLAN
SHEET 6 & 7: DETAILS
SHEET 8: SEWER PLAN AND PROFILE
SHEET 9: CONSTRUCTION PERIOD PLAN
APPENDIX PHOTOMETRIC AND SITE LIGHTING PLAN

COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED
PROFESSIONAL ENGINEER
1/26/21

COMMONWEALTH OF MASSACHUSETTS
ANDREW C. MURPHY
No. 35042
REGISTERED
PROFESSIONAL SURVEYOR
1/26/21

PREPARED BY
GLOSSA ENGINEERING, INC.
46 EAST ST
EAST WALPOLE, MA 02032
(508) 668-4401

LEDGEND:

EXISTING GRADE ---------- 100 ----------

EXISTING SPOT GRADE × 200.02

EXISTING GAS MAIN ——G——

EXISTING SEWER MANHOLE ○ SMH

EXISTING DRAIN MANHOLE ○ DMH

EXISTING CATCH BASIN ⊞

EXISTING ELECTRIC MANHOLE ○ EMH

EXITING UTILITY POLE UP

EXISTING TEST PIT TEST PIT#5

EXISTING BOUND ⊡

EXISTING FENCE × × × × ×

EXISTING FIRE HYDRANT

EXISTING GATE VALE

TEST PIT # 1

0"		200.00
	A SANDY LOAM 10YR 3/2	
14"		198.33
	B SANDY LOAM 10YR 5/8	
40"		199.67
	C SAND 2.5Y 5/4	
112"		190.67

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 2

0"		201.00
	A SANDY LOAM 10YR 3/2	
13"		199.92
	B1 SANDY LOAM 10YR 5/8	
28"		198.67
	B2 SANDY LOAM 2.5Y 6/3	
48"		197.00
	C SAND 2.5Y 5/4	
108"		192.00

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 3

0"		199.50
	A SANDY LOAM 10YR 3/2	
12"		198.50
	B SANDY LOAM 10YR 5/8	
26"		197.33
	C SAND 2.5Y 5/4	
120"		189.50

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 4

0"		199.75
	A SANDY LOAM 10YR 3/2	
12"		198.75
	B SANDY LOAM 10YR 5/8	
24"		197.75
	C SAND 2.5Y 5/4	
114"		190.25

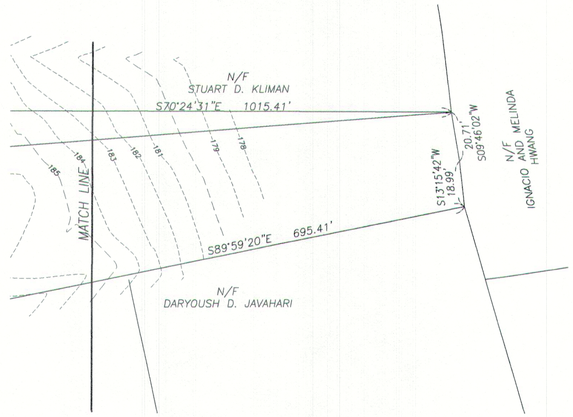
NO REFUSAL
NO MOTTLING
NO WEEPING

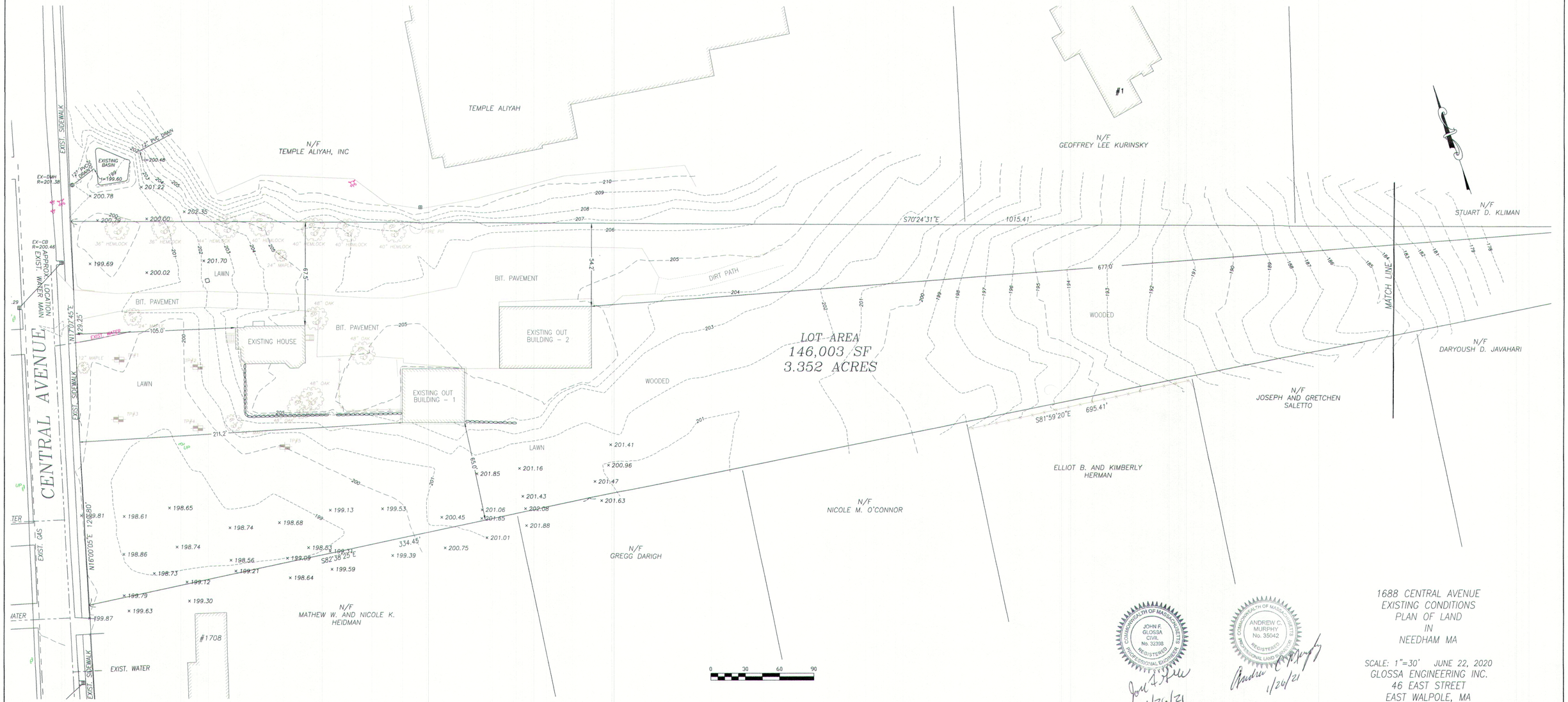
TEST PIT # 5

0"		200.00
	A SANDY LOAM 10YR 3/2	
13"		198.92
	B SANDY LOAM 10YR 5/8	
48"		196.00
	C SAND 2.5Y 5/4	
136"		188.67

NO REFUSAL
NO MOTTLING
NO WEEPING

SOIL TEST PERFORMED BY JOHN F. GLOSSA P.E. SOIL EVALUATOR #890
ON 3-24-20





JOHN F. GLOSSA
COMMONWEALTH OF MASSACHUSETTS
Civil
No. 32398
REGISTERED PROFESSIONAL ENGINEER
1/26/21

ANDREW C. MURPHY
COMMONWEALTH OF MASSACHUSETTS
No. 35042
REGISTERED PROFESSIONAL LAND SURVEYOR
1/26/21

1688 CENTRAL AVENUE
EXISTING CONDITIONS
PLAN OF LAND
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

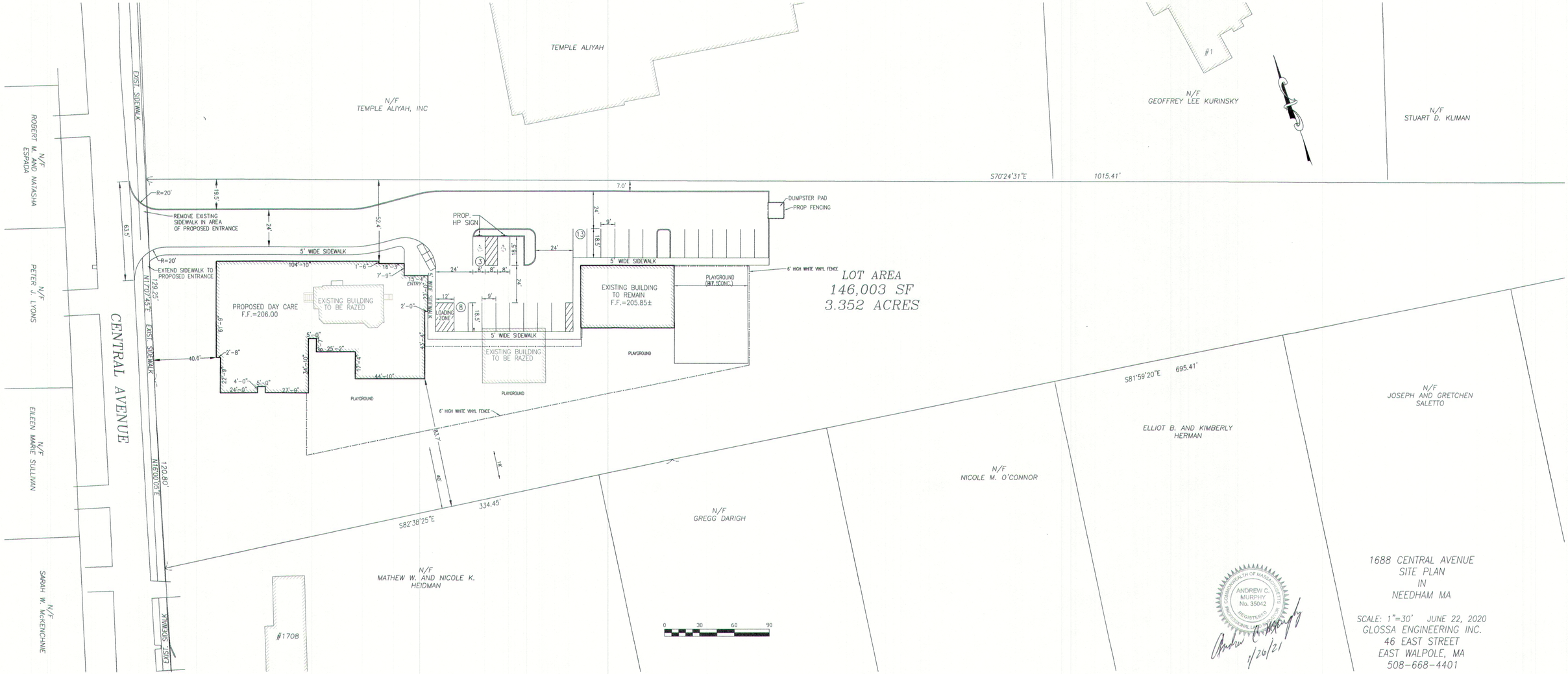
CONSTRUCTION NOTES

1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.

2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT.

LEDGEND:

EXISTING GRADE 100
EXISTING SPOT GRADE 100x0
EXISTING GAS MAIN G
EXISTING SEWER MANHOLE SMH
EXISTING DRAIN MANHOLE EX-DMH
EXISTING CATCH BASIN EX-CB
EXISTING ELECTRIC MANHOLE EX-EMH
EXITING UTILITY POLE UP
EXISTING TEST PIT TEST PIT#5
EXISTING BOUND
EXISTING FENCE
EXISTING FIRE HYDRANT
EXISTING GATE VALE
PROPOSED GRADE 205
PROPOSED SPOT GRADE 205X5
PROPOSED CATCH BASIN CB-1
PROPOSED DRAIN MANHOLE DMH-1
PROPOSED TAPPING SLEEVE AND VALVE PROPOSED 8"X6" TS&V



LOT AREA
146,003 SF
3.352 ACRES

ANDREW C. MURPHY No. 35042 REGISTERED PROFESSIONAL LAND SURVEYOR COMMONWEALTH OF MASSACHUSETTS
1/20/21

1688 CENTRAL AVENUE
SITE PLAN
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

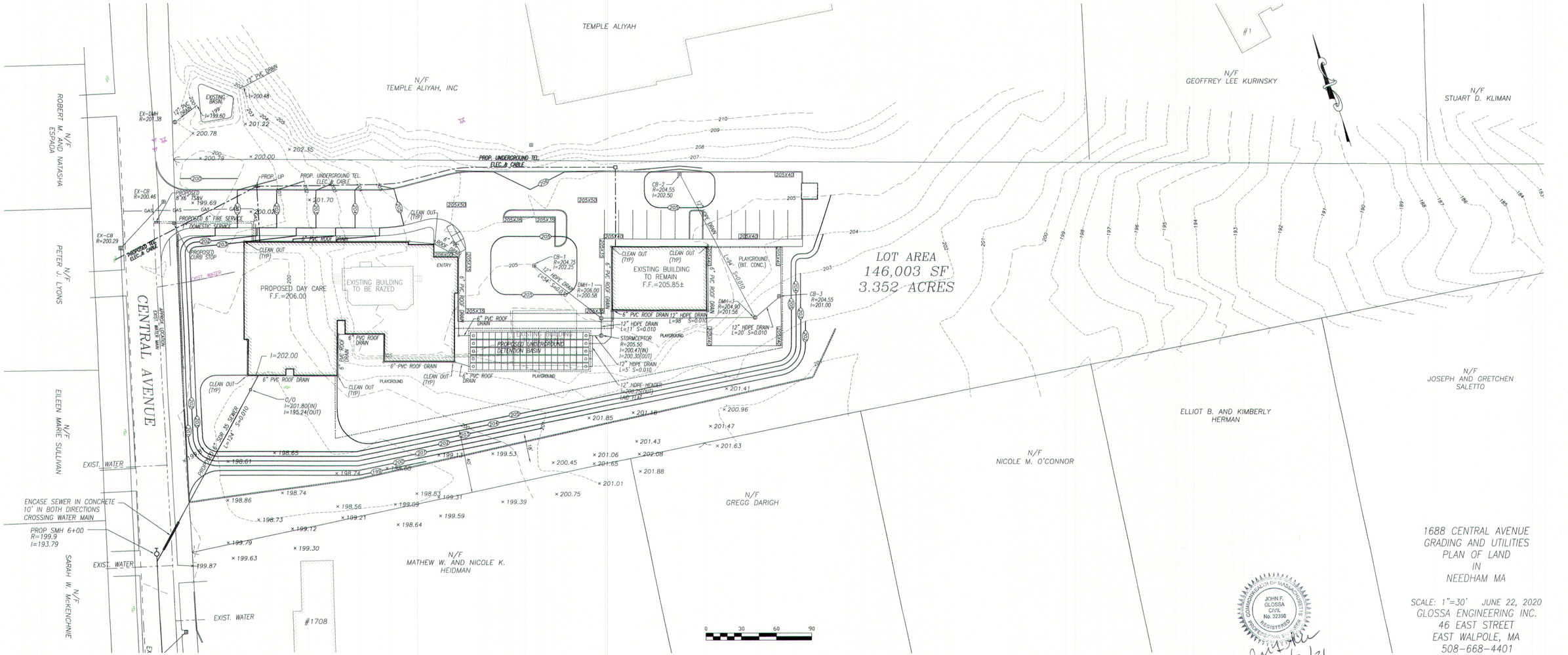
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LEDGEND:

EXISTING GRADE 100
EXISTING SPOT GRADE × 200.02
EXISTING GAS MAIN G
EXISTING SEWER MANHOLE SMH
EXISTING DRAIN MANHOLE EX-DMH
EXISTING CATCH BASIN EX-CB
EXISTING ELECTRIC MANHOLE EX-EMH
EXITING UTILITY POLE UP
EXISTING TEST PIT TEST PIT#5
EXISTING BOUND
EXISTING FENCE
EXISTING FIRE HYDRANT
EXISTING GATE VALE
PROPOSED GRADE 205
PROPOSED SPOT GRADE 205.0 X 5
PROPOSED CATCH BASIN CB-1
PROPOSED DRAIN MANHOLE DMH-1
PROPOSED TAPPING SLEEVE AND VALVE PROPOSED 8"X6" TS&V



1688 CENTRAL AVENUE
GRADING AND UTILITIES
PLAN OF LAND
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

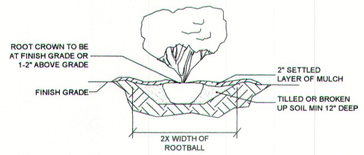
COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED PROFESSIONAL ENGINEER
1/26/21

CONSTRUCTION NOTES

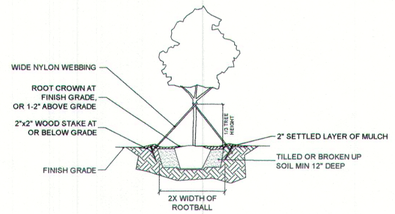
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2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT.

	COMMON NAME	BOTANICAL NAME	SIZE	QUANTITY
PA	PINK AZELEA	RHODODENDRON PERICLYMENOIDES	2'-3'	5
WA	WHITE AZELEA	RHODODENDRON VICOSUM	2'-3'	3
LM	MAPLE "LEGACY"	ACER SACCHARUM	1-1/2" CAL.	4
WP	WHITE PINE	PINUS STOBUS	1-1/2" CAL.	17
CA	CRABAPPLE "DONALD WYMAN"	MALUS "DONALD WYMAN"	1-1/2" CAL.	4
EG	ARBORVITAE "EMERALD GREEN"	THJA OCCIDENTALIS SMARAGD	2'-3'	75
HM	ARBORVITAE "HETZ MIDGET"	THJA OCCIDENTALIS "HETZ MIDGET"	2'-3'	6



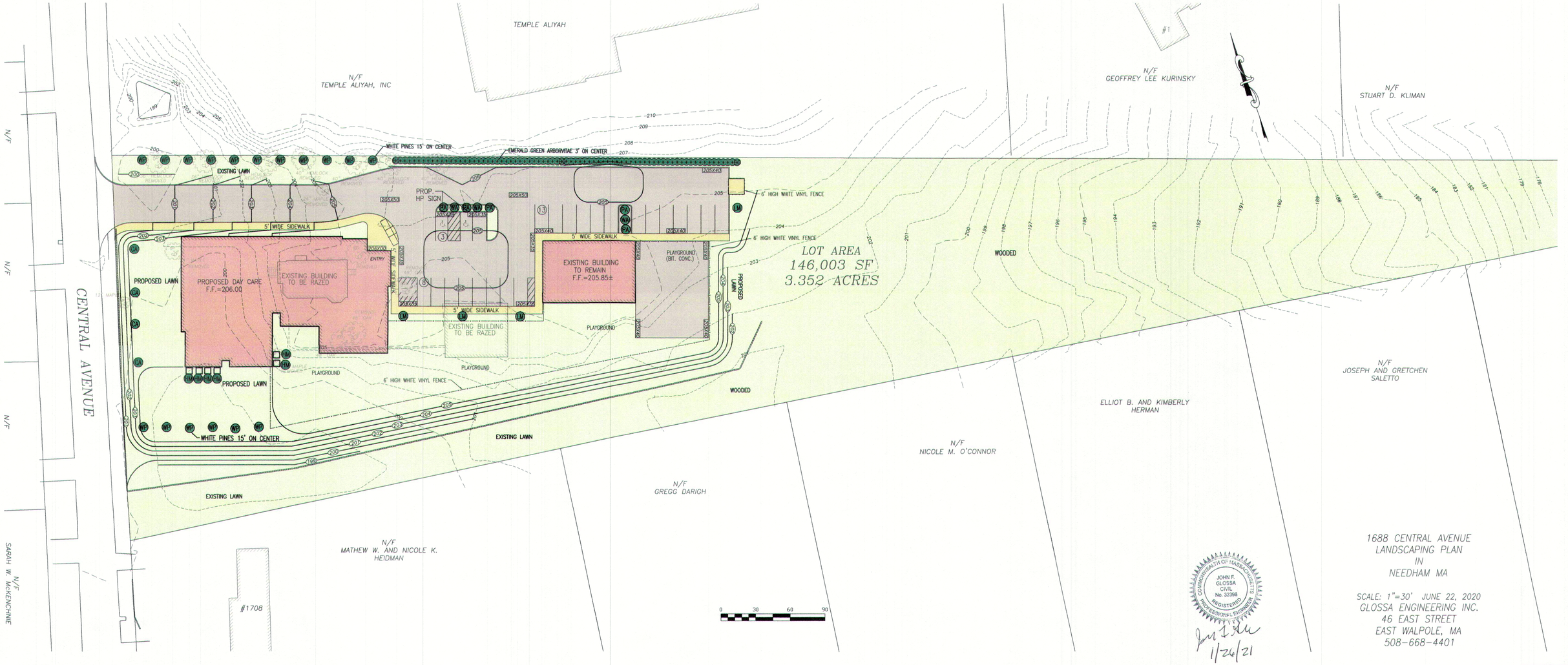
TYP. SHRUB PLANTING:
INDIVIDUAL PLANTING HOLE
NOT TO SCALE



TREE PLANTING
NOT TO SCALE

LEDGEND:

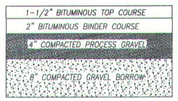
EXISTING GRADE 100
EXISTING SPOT GRADE × 200.02
EXISTING GAS MAIN G
EXISTING SEWER MANHOLE SMH
EXISTING DRAIN MANHOLE EX-DMH
EXISTING CATCH BASIN EX-CB
EXISTING ELECTRIC MANHOLE EX-EMH
EXITING UTILITY POLE UP
EXISTING TEST PIT TEST PIT#5
EXISTING BOUND
EXISTING FENCE
EXISTING FIRE HYDRANT
EXISTING GATE VALE
PROPOSED GRADE 205
PROPOSED SPOT GRADE 205X40
PROPOSED CATCH BASIN CB-1
PROPOSED DRAIN MANHOLE DMH-1
PROPOSED TAPPING SLEEVE AND VALVE PROPOSED 8"X6" TS&V



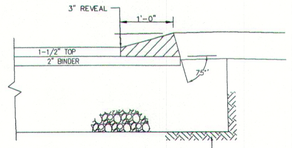
JOHN F. GLOSSA CIVIL No. 32398 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS
1/26/21

1688 CENTRAL AVENUE
LANDSCAPING PLAN
IN
NEEDHAM MA

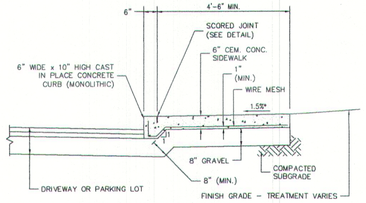
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GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

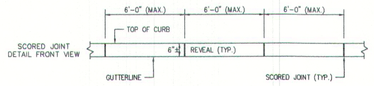


PAVEMENT DETAIL
NOT TO SCALE



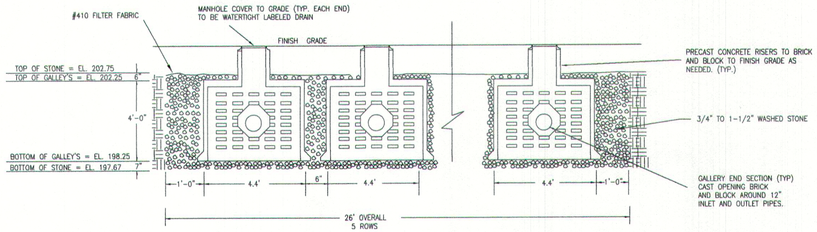
TYPICAL CAPE COD BERM DETAIL
NOT TO SCALE

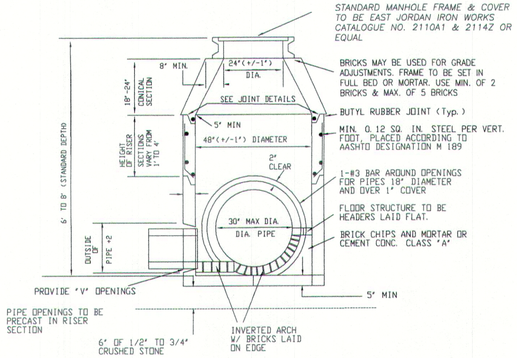




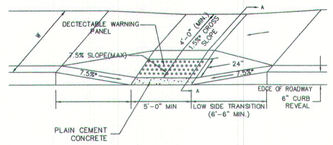
NOTE: MONOLITHIC CONCRETE CURB SHALL NOT BE USED ON ANY PUBLIC STREET OR WAY. MONOLITHIC CONCRETE CURB MAY BE USED ON PRIVATE WAYS, DRIVEWAYS AND IN PARKING LOTS.

* - TOLERANCE FOR CONSTRUCTION ±0.5%



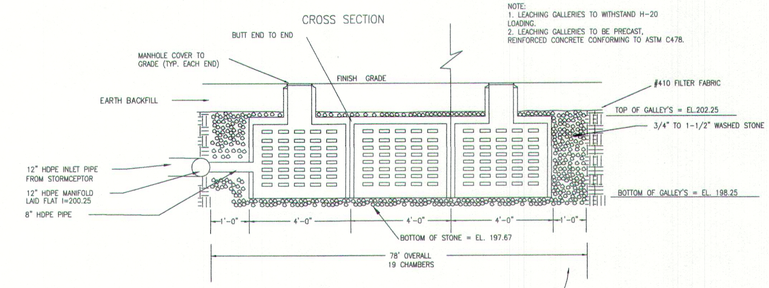


PRECAST CONCRETE DRAIN MANHOLE DETAILS
NOT TO SCALE



CROSS SECTION

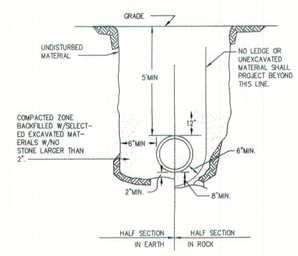
NOTE:
1. LEACHING GALLERIES TO WITHSTAND H-20 LOADING.
2. LEACHING GALLERIES TO BE PRECAST, REINFORCED CONCRETE CONFORMING TO ASTM C478.



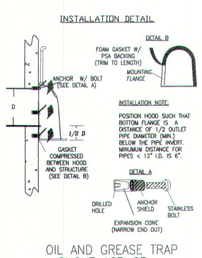
LONGITUDAL SECTION

NOTE: REMOVE ALL UNSUITABLE MATERIAL FROM BENEATH THE INFILTRATION BASIN TO THE TOP OF THE SAND AND GRAVEL LAYER AS DETERMINED BY A DEP APPROVED SOIL EVALUATOR. REPLACE WITH SEPTIC SAND

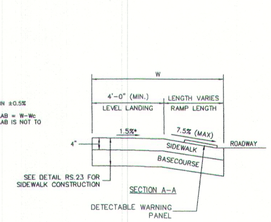
TYPICAL UNDERGROUND INFILTRATION BASIN
NOT TO SCALE



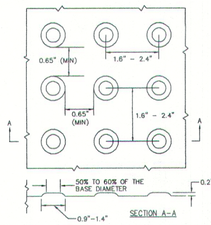
WATER MAIN TRENCH DETAIL
NOT TO SCALE



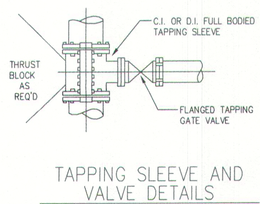
OIL AND GREASE TRAP SNOUT 18R OR APPROVED EQUAL
NOT TO SCALE



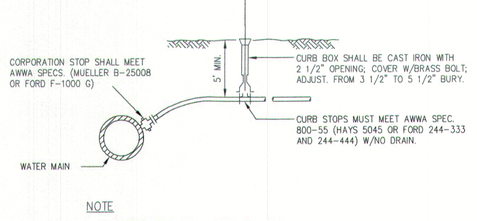
SIDEWALKS SHALL BE CONSTRUCTED IN CONFORMANCE WITH THE CURRENT REGULATIONS OF THE ARCHITECTURAL ACCESS BOARD, THE AMERICANS WITH DISABILITIES ACT AND THE CURRENT MASSHIGHWAY CONSTRUCTION STANDARDS.



PANELS MAY BE CONCRETE PRECAST OR CAST IN PLACE OR OTHER SUITABLE MATERIAL PERMANENTLY APPLIED TO THE RAMP. DETECTABLE WARNING SURFACES SHALL CONTRAST VISUALLY WITH ADJACENT WALKING SURFACES EITHER LIGHT-ON-DARK OR DAR-ON-LIGHT.



TAPPING SLEEVE AND VALVE DETAILS
NOT TO SCALE

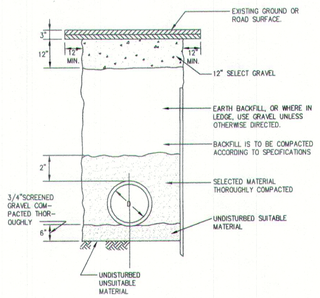


NOTE

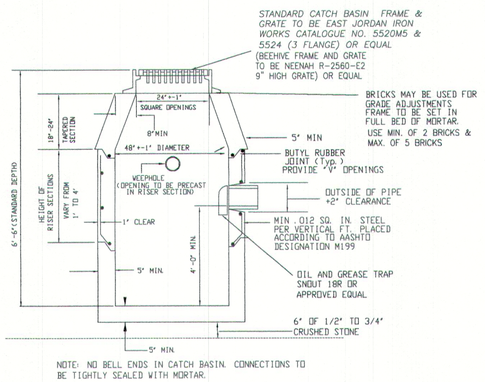
COPPER TUBING SHALL MEET AWWA SPEC. 76-CR TYPE K OR FEDERAL SPEC. WWT-799 TYPE K.

1 1/2" AND LARGER SERVICES ARE REQUIRED TO HAVE A SADDLE.

TYPICAL SERVICE CONNECTION
NOT TO SCALE

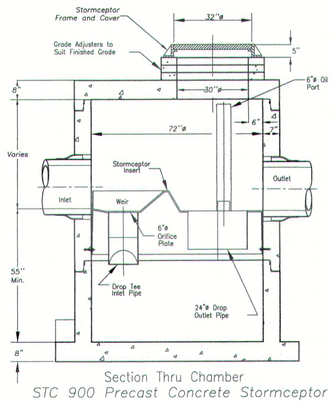


TYPICAL DRAIN TRENCH DETAILS
NOT TO SCALE

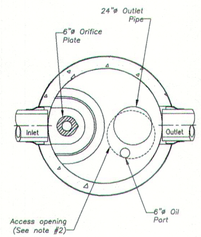


NOTE: NO BELL ENDS IN CATCH BASIN. CONNECTIONS TO BE TIGHTLY SEALED WITH MORTAR.

PRECAST CONCRETE CATCH BASIN DETAILS
NOT TO SCALE



Section Thru Chamber
STC 900 Precast Concrete Stormceptor
(900 U.S. Gallon Capacity)



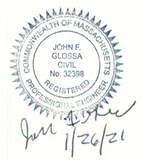
Plan View

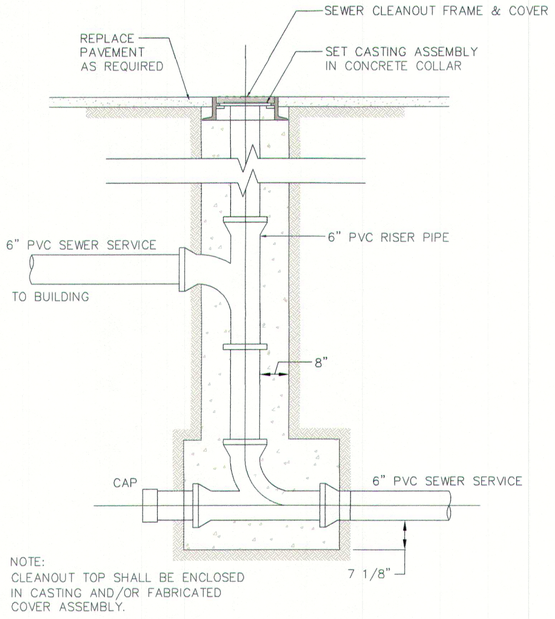
Notes:

1. The Use Of Flexible Connection is Recommended at The Inlet and Outlet Where Applicable.
2. The Cover Should be Positioned Over The Outlet Drop Pipe and The Oil Port.
3. The Stormceptor System is protected by one or more of the following U.S. Patents: #4985148, #5498331, #5725760, #5753115, #5849181, #6068765, #6371690.
4. Contact a Concrete Pipe Division representative for further details not listed on this drawing.

1688 CENTRAL AVENUE
CONSTRUCTION DETAILS
IN
NEEDHAM MA

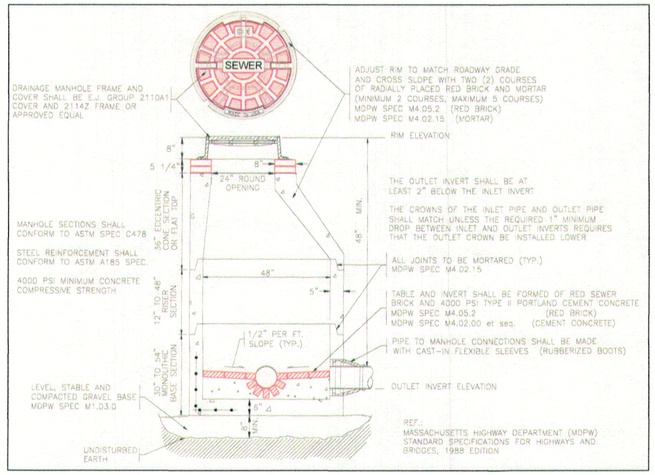
SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401





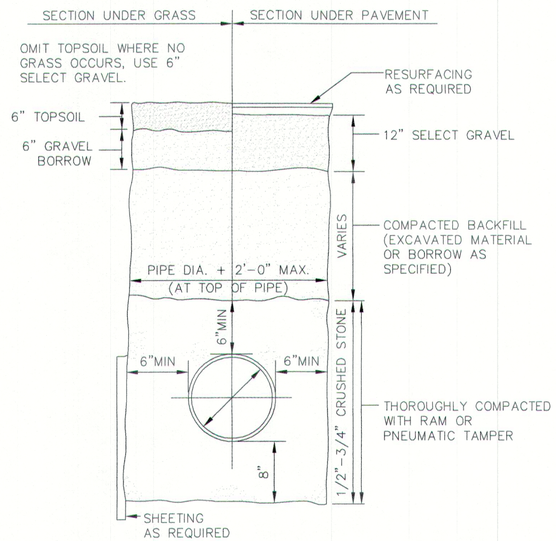
SEWER CLEANOUT DETAIL (C/O)

NOT TO SCALE



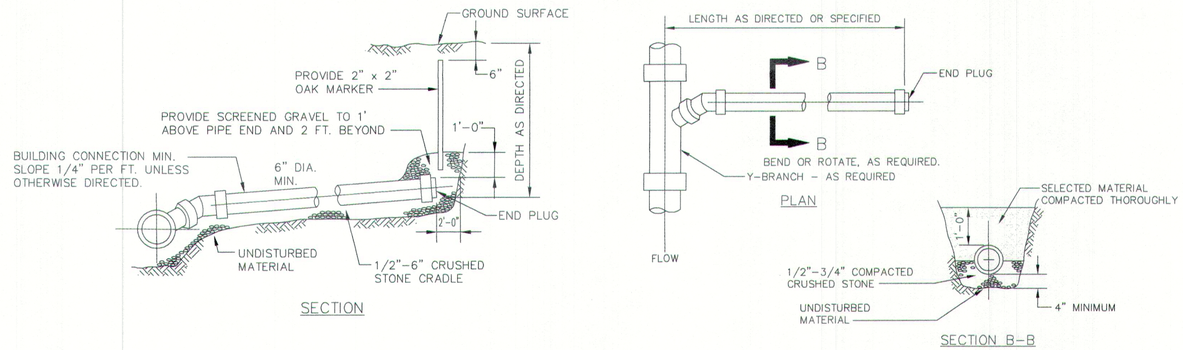
TYPICAL SEWER MANHOLE DETAIL

NOT TO SCALE



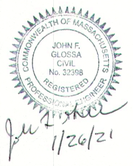
TYPICAL SEWER TRENCH DETAIL

NOT TO SCALE



TYPICAL BUILDING CONNECTION

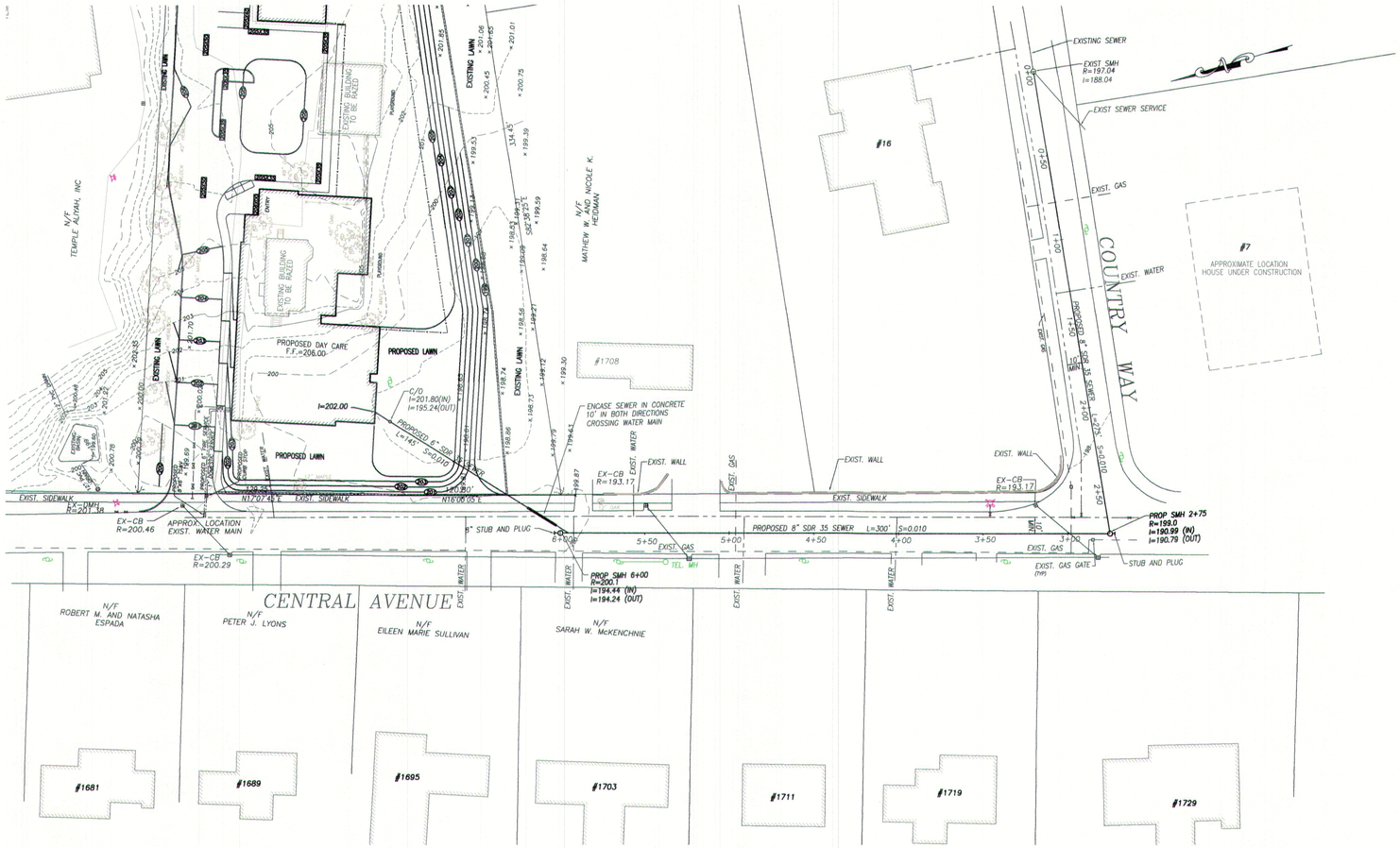
NOT TO SCALE



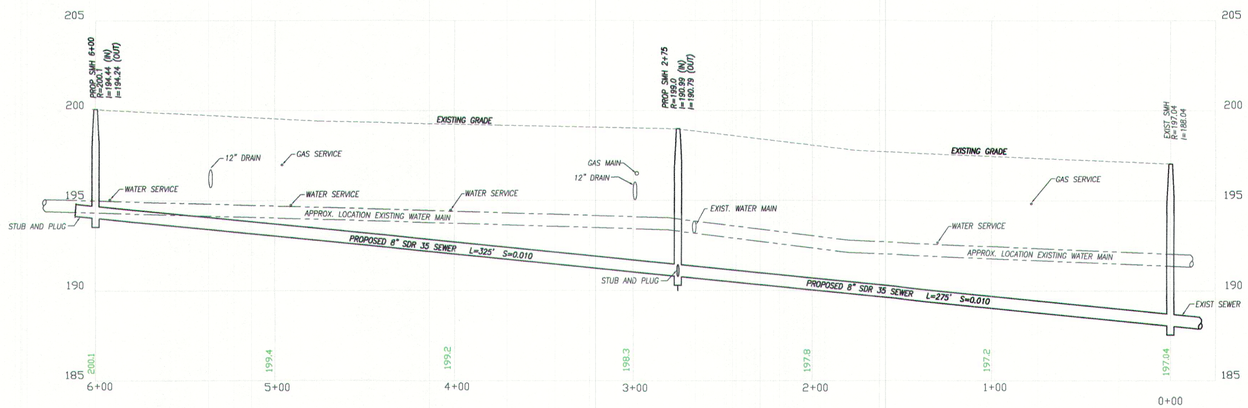
1688 CENTRAL AVENUE
CONSTRUCTION DETAILS
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020

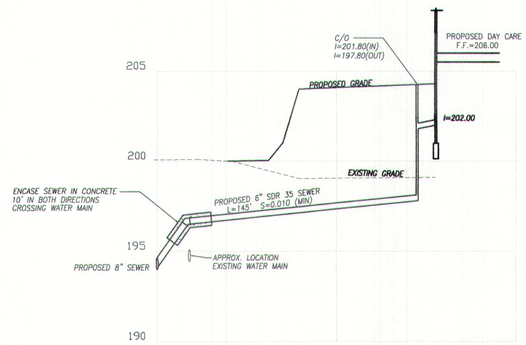
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401



PLAN
SCALE: 1" = 40'



PROFILE
SCALE: HOR. 1" = 40'
VERT. 1" = 4'



BUILDING CONNECTION PROFILE
SCALE: HOR. 1" = 40'
VERT. 1" = 4'

LEDGEND:

EXISTING GRADE	100
EXISTING SPOT GRADE	× 200.02
EXISTING GAS MAIN	
EXISTING GAS GATE	
EXISTING SEWER MANHOLE	EXIST. SMH
EXISTING DRAIN MANHOLE	EX-DMH
EXISTING CATCH BASIN	EX-CB
EXISTING ELECTRIC MANHOLE	EX-EMH
EXITING UTILITY POLE	
EXISTING FENCE	
EXISTING FIRE HYDRANT	
EXISTING GATE VALE	
PROPOSED GRADE	205
PROPOSED SPOT GRADE	P205X.XX
PROPOSED SEWER MANHOLE	PROP. SMH
PROPOSED CATCH BASIN	CB-1
PROPOSED DRAIN MANHOLE	DMH-1
PROPOSED TAPPING SLEEVE AND VALVE	PROPOSED 8"X6" TS&V

CONSTRUCTION NOTES

1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.

2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT

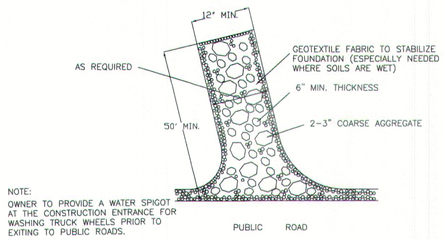
COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32308
REGISTERED
PROFESSIONAL ENGINEER
1/24/21

1688 CENTRAL AVENUE
SEWER EXTENTION
PLAN AND PROFILE
IN
NEEDHAM MA

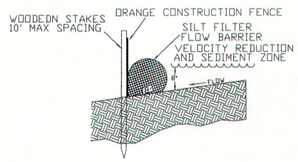
SCALE: AS NOTED NOVEMBER 19, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

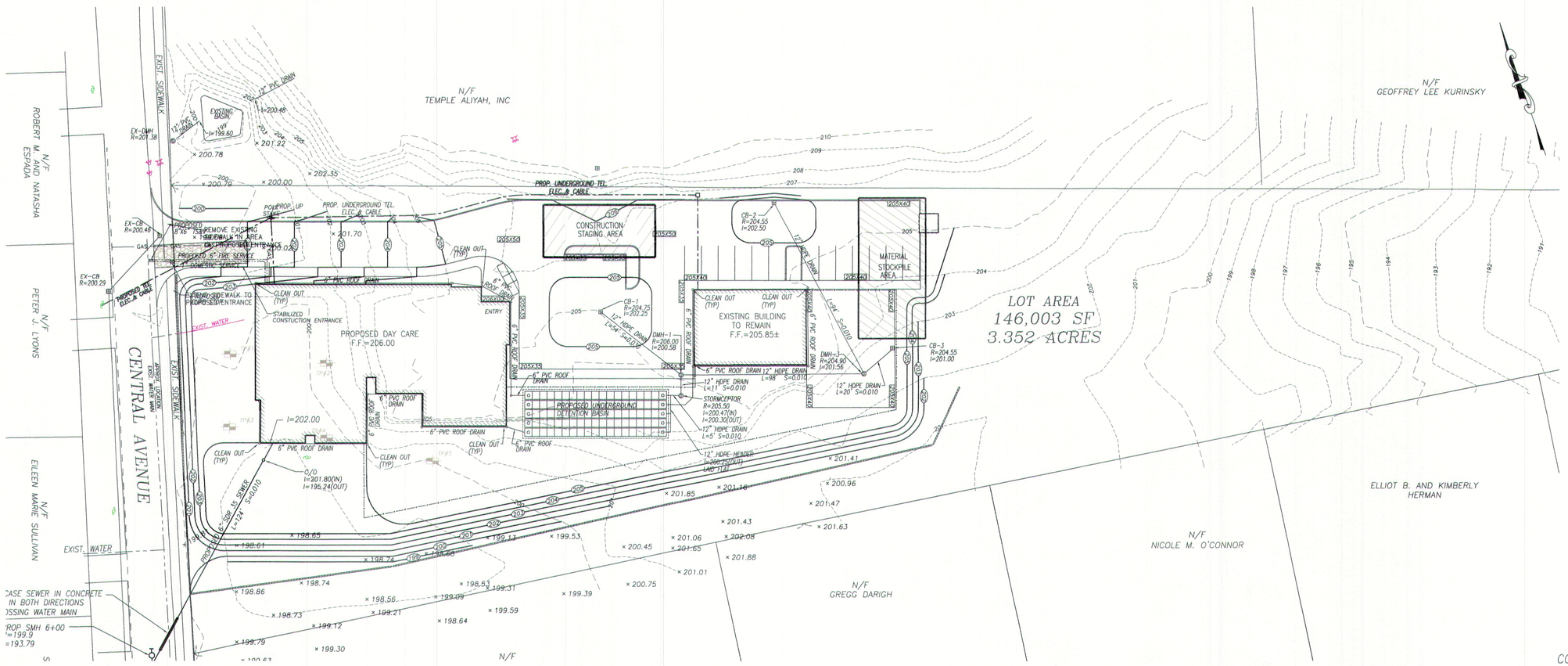
CONSTRUCTION SEQUENCING:
1. INSTALLATION OF SILT BARRIERS AS SHOWN ON THE PLANS
2. INSTALLATION OF STABILIZED CONSTRUCTION ENTRANCE
3. ESTABLISHMENT OF A CONSTRUCTION STAGING AREA
4. ESTABLISHMENT OF A MATERIALS STOCKPILE AREA
5. REMOVAL OF EXISTING BUILDINGS
6. CLEARING AND GRUBBING
7. REMOVAL AND STOCKPILING OF TOP AND SUBSOILS
8. REMOVAL OF SAND AND GRAVEL TO BRING SITE TO SUB GRADE
9. ESTABLISHING AND STABILIZING WITH LOAM AND SEED ALL CUT AND FILL SLOPES
10. INSTALL BINDER COURSE OF DRIVEWAY IN LOCATION OF FINAL ASPHALT DRIVEWAY
11. CONSTRUCTION OF THE BUILDING
12. INSTALLATION OF UNDERGROUND DETENTION BASIN
13. INSTALLATION OF UNDERGROUND UTILITIES, IE DRAINAGE,WATER LINE, ELECTRIC, CATV AND TELEPHONE
14. INSTALLATION OF LANDSCAPING AND GRASS AREAS
15. FINAL COURSE OF ASPHALT FOR DRIVEWAYS
16 CLEAN UP AND DEMOBILIZE

CONSTRUCTION NOTES:
1. ALL AREAS TO BE ALTERED SHALL BE BROUGHT TO SUB GRADE OR FINAL GRADE AT THE START OF CONSTRUCTION
2. AREAS ONCE BROUGHT TO GRADE THAT WILL NOT BE ALTERED AGAIN SHALL BE LOAMED AND SEEDED AND PROTECTED WITH STRAW GUARD AS NEEDED
3. DRAINAGE BASIN AS SHOWN SHALL NOT BECOME OPERATIONAL UNTIL THE SITE IS FINISHED AND SWEPTED OF ALL DEBRIS
4. TEMPORARY SEDIMENT BASINS SHALL BE USED AND MAINTAINED UNTIL ALL PROPOSED PAVED AREAS ARE COMPLETE AND SWEPT OF ALL DEBRIS
5. CATCH BASINS SHALL BE PROTECTED FROM SEDIMENTS AT ALL TIMES UNTIL CONSTRUCTION IS COMPLETE
6. INSTALL SILT SACKS IN ALL EXISTING AND PROPOSED CATCH BASINS



STABILIZED CONSTRUCTION ENTRANCE
NOT TO SCALE





1688 CENTRAL AVENUE
CONSTRUCTION PERIOD PLAN
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED PROFESSIONAL ENGINEER
1/26/21

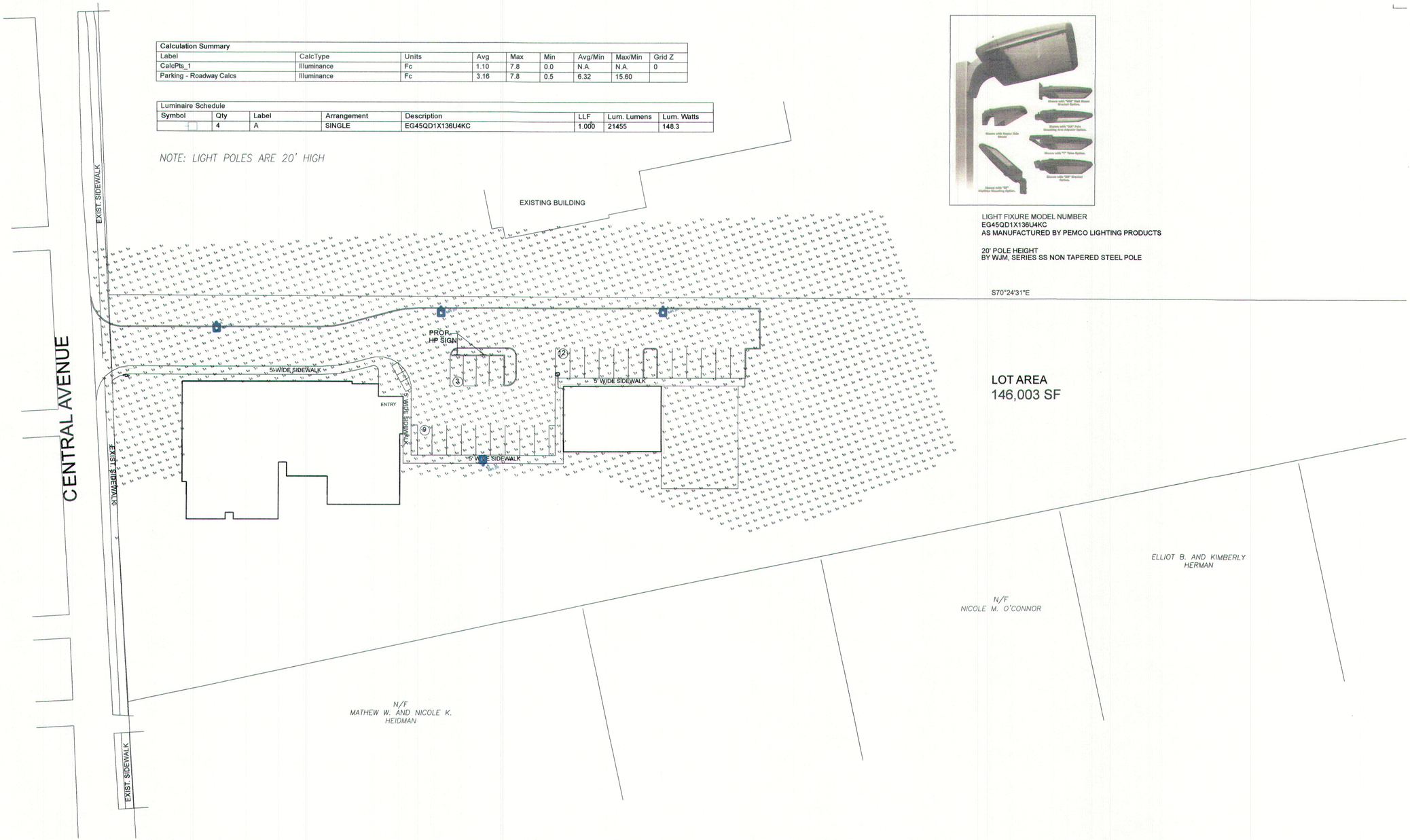
Calculation Summary								
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min	Grid Z
CalcPts_1	Illuminance	Fc	1.10	7.8	0.0	N.A.	N.A.	0
Parking - Roadway Calcs	Illuminance	Fc	3.16	7.8	0.5	6.32	15.60	

Luminaire Schedule							
Symbol	Qty	Label	Arrangement	Description	LLF	Lum. Lumens	Lum. Watts
	4	A	SINGLE	EG45QD1X136U4KC	1.000	21455	148.3

NOTE: LIGHT POLES ARE 20' HIGH

LIGHT FIXURE MODEL NUMBER
EG45QD1X136U4KC
AS MANUFACTURED BY PEMCO LIGHTING PRODUCTS

20' POLE HEIGHT
BY WJM, SERIES SS NON TAPERED STEEL POLE



JOHN F. GLOSSA
CIVIL
No. 32308
REGISTERED PROFESSIONAL ENGINEER
COMMONWEALTH OF MASSACHUSETTS
1/26/21

APPENDIX
PHOTOMETRIC AND SITE LIGHTING PLAN
1688 CENTRAL AVENUE
IN
NEEDHAM MA
SCALE 1"=30' JUNE 22, 2020

Traffic Impact Assessment

For:

Child Care Facility

On:

Central Avenue

In:

Needham, Massachusetts

Prepared For:

Glossa Engineering, Inc.
Walpole, Mass.

Prepared By:

Gillon Associates
Traffic & Parking Specialists

March 2021

Child Care Facility

1688 Central Avenue
Needham, Massachusetts



Gillon Associates Co.
111 River Street, Weymouth, MA 02191-2104
Telephone (781) 762-8856
E-mail: jt.gillon@comcast.net

TABLE OF CONTENTS

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Project Description
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Future Traffic Conditions
    Trip Generation and Distribution
Traffic Operational Analysis
    Analysis Methodology and Findings
    Central Avenue at Site Driveway
Site Distance Evaluation

LIST OF FIGURES

Title	Figure Number
General Location Map	1
Locus Map	2
Existing Peak Hour Traffic Volume	3
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Directional Distribution	5
Projected Peak Hour Traffic Volumes	6
Intersection Levels of Service	7
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EXECUTIVE SUMMARY

- **Central Avenue carries approximately 9,000 vehicles per day in the vicinity of the site. About nine percent of this daily volume occurs during the morning peak hour.**

- **Based on the proponent's projected arrivals and departures, the morning peak hour will have more site generated trips than the evening peak hour. This project is expected to generate approximately 104 new morning peak hour trips with 55 inbound and 49 outbound.**

  The proponent will have staff assist children both arriving and leaving the day care to ensure the drop-off/pick-up circulation line of vehicles keep moving and do not stack back down the 200-foot long driveway.

- **All through traffic on Central Avenue in each direction will continue to enjoy an "A" level of service with little or no delay during the weekday morning commuting peak hour. The Central Avenue southbound left-turn through lane utilized into the Site Driveway, will continue to operate at an "A" level resulting in no turbulence on Central Avenue during the morning peak hour. The Site Driveway itself will have an acceptable "C" level with average delay during the morning peak hour.**

- **The required stopping sight distance at the Central Avenue / Site Driveway intersection is provided.**

INTRODUCTION

Gillon Associates has evaluated the anticipated traffic impacts resulting from the proposed development of a Child Care Facility. The site is located on Central Avenue, just north of Charles River Street in Needham, Massachusetts (Figure 1).

The purpose of this report is to evaluate potential traffic impacts, which may be created by the expected addition of vehicular traffic either originating from or destined to the site. Specifically, this report assesses traffic operational characteristics of the Central Avenue intersection at the site access roadway due to any additional traffic. Based on the proponent's projected arrivals and departures, the morning peak hour will have more site generated trips than the evening peak hour and, thus, was chosen for analysis purposes.

This report provides an identification of the expected traffic generated by the project along with an assessment of projected traffic operating characteristics. Existing traffic volumes were obtained by manually observing and recording Central Avenue traffic volumes in fifteen-minute increments during the morning peak hour.

PROJECT DESCRIPTION

The project site area is 146,003 square feet or just over three acres and includes constructing a 9,941 square-foot child care facility building. An out-building currently used as a barn will be retained for storage and ancillary purposes. The project will have a total of approximately 24 off-street surface parking spaces. The access to this school at #1688 Central Avenue uses a 200 foot-long, 24-foot wide access drive to Central Avenue (Figure 2).

EXISTING TRAFFIC CONDITIONS

Regional Roadway Network

Central Avenue will continue to serve the site and provide access to both local and regional roadway facilities. To the south, Central Avenue provides linkage between the site and Charles River Street and Dover as well as other points to the south. Central Avenue also provides access to the north with linkage to Route 135 and easterly to Needham Center.

Traffic Setting

The project is situated on the easterly side of Central Avenue. This roadway is a two-lane roadway with one lane in each direction. Central Avenue has a roadway pavement width of approximately 25 feet with a bituminous concrete sidewalk on the easterly side of the roadway.

Existing Traffic Volumes

Existing traffic volumes were obtained by manually observing and recording Central Avenue traffic volumes in fifteen-minute increments during the morning peak hour. Morning peak hour traffic volumes on Central Avenue at the site driveway are provided on Figure 3.

FUTURE TRAFFIC CONDITIONS

Trip Generation and Distribution

It is expected that the proposed child care facility will exhibit the same general trip generating characteristics as in other urban and suburban residential communities. In addition to local rates observed and compiled by this firm, the Institute of Transportation Engineers (ITE) provides data on a variety of land uses and there is a considerable amount of empirical data available. In addition, the proponent has found by assigning pick-up and drop-off windows for parents, there is less congestion within the site and they will employ that technique at this site as well. Figure 4 provides a trip generation summary listing the ITE equations along with the resulting trip generation values for the school.

Based on the proponent's projected arrivals and departures, the morning peak hour will have more site generated trips than the evening peak hour. This project is expected to generate approximately 104 new morning peak hour trips with 55 inbound and 49 outbound. This project is also expected to generate approximately 94 new evening peak hour trips with 44 inbound and 50 outbound.

Moreover, the Proponent has researched various Child Care locations to gain a higher level of confidence in our projected drop-off/pick-up vehicle trips. Over time, this location could accommodate between 80 and 100 students although 120 children appears to be allowed.

Observations at the Goddard School Day Care Facility in Medfield revealed 59 students arrived during the weekday morning peak hour.

Goddard School - Medfield MA
Morning Arrival time 3-20-18

Time	Arrive	
7:00-7:15	11	
7:15-7:30	10	
7:30-7:45	11	
7:45-8:00	15	
8:00-8:15	15	
8:15-8:30	18	59
8:30-8:45	6	
8:45-9:00	10	

In September 0f 2019, at a day care with 87 children there was a total of 51 vehicles during the morning peak hour. At the same location this winter there were 60 children in 30 cars on Monday and Friday and 76 children in 45 to 48 cars between Tuesdays and Thursdays.

In essence, all of these observations indicate there will be about 55 vehicles entering the site during the morning peak hour based on 80 children. This data also suggests this child care facility could quite easily accommodate over 100 children without creating on-site grid lock providing staff is available to assist children into the building where other staff members get that child settled and the initial staff member return to bring in the next vehicle's child.

If a parent insists on entering the facility they will be directed to park in an un-occupied parking stall or enter the site all the way to the end by the playground to block a staff member's car who is parked for the day. This operation will keep the drop-off / pick-up line circulating without disruption.

Directional distribution reflects the existing Central Avenue directional split as adjusted to account for residential local attributes during the morning and peak hour as shown on Figure 5. Site generated traffic volumes at the Central Avenue / Site Driveway intersection during the morning peak commuting hour is provided on Figure 6.

TRAFFIC OPERATIONAL ANALYSIS

This section of the report provides a quantitative analysis of anticipated traffic operational characteristics for the build scenarios. These series of capacity analyses were conducted for the weekday morning peak hour to determine the potential impact of the proposed day care facility project.

Analysis Methodology and Findings

The analysis is based on the "Highway Capacity Manual" for non-signalized intersections. This manual has been published by the Transportation Board of the National Research Council and approved by the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine. The most recent Synchro Software version 10.1 was utilized in the assessment.

At un-signalized intersections and driveways the manual assumes that the through and right-turn movements along any main street will operate unrestricted but conflicting movements will be subjected to various periods of delay depending primarily on the frequency of adequate safe gaps to complete these movements. These periods of delay are generally categorized in "Levels of Service" (LOS) ranging from "A" for very short or no delays through "F" for extensive delays. The Massachusetts Highway Design Manual indicates that a "D" Level of Service is acceptable on roadways such as those in the study area. A table comparing levels of service and seconds of delay is provided in the Appendix of this report.

As can be seen on Figure 7, all through traffic on Central Avenue in each direction will continue to enjoy an "A" level of service with little or no delay during the weekday commuting peak hour. As can be seen in the capacity calculations included in the Appendix of this report, the Central Avenue southbound left-turn through-lane utilized into the Site Driveway will also operate at an "A" level resulting in no turbulence on Central Avenue during this peak hour. The Site Driveway itself will have an acceptable "C" level with average delay during the morning peak hour.

SIGHT DISTANCE EVALUATION

The approaching vehicle on Central Avenue must be able to stop in time to avoid making contact with a vehicle emerging from the reconfigured site driveway. The required stopping sight distance from either a minor street or driveway is obtained from "A Policy on Geometric Design of Highways and Streets" as published by the American Association of State Highway and Transportation Officials (AASHTO) 6th Edition published in 2011.

Unlike the minimum safe stopping distance (MSSD) along a section of roadway, stopping sight distance at a driveway is not measured along either the center line or gutter line of a roadway. On page 9-29 of the American Association of State Highway and Transportation Officials (AASHTO) manual, it is stated "If the available sight distance for an entering or crossing vehicle (at an intersection corner) is at least equal to the appropriate stopping sight distance for the major road, then drivers have sufficient sight distance to anticipate and avoid collisions."

The motorist leaving the minor roadway or driveway has an eye height of 3.5 feet and he must be able to see another object (approaching vehicle) with a height of 3.5 feet from a point 14.5 feet back from the travel way. This dimension is based on most motorists stopping 6.5 feet or less from the intersecting roadway plus the eighty-fifth percentile distance of 8.0 feet from a front bumper of a vehicle to the motorist eye, thus, totaling 14.5 feet. The required stopping distance for each minor roadway is based on the formula on the following page:

$$d = 1.47\,Vt + 1.075\,\frac{V^2}{a}$$

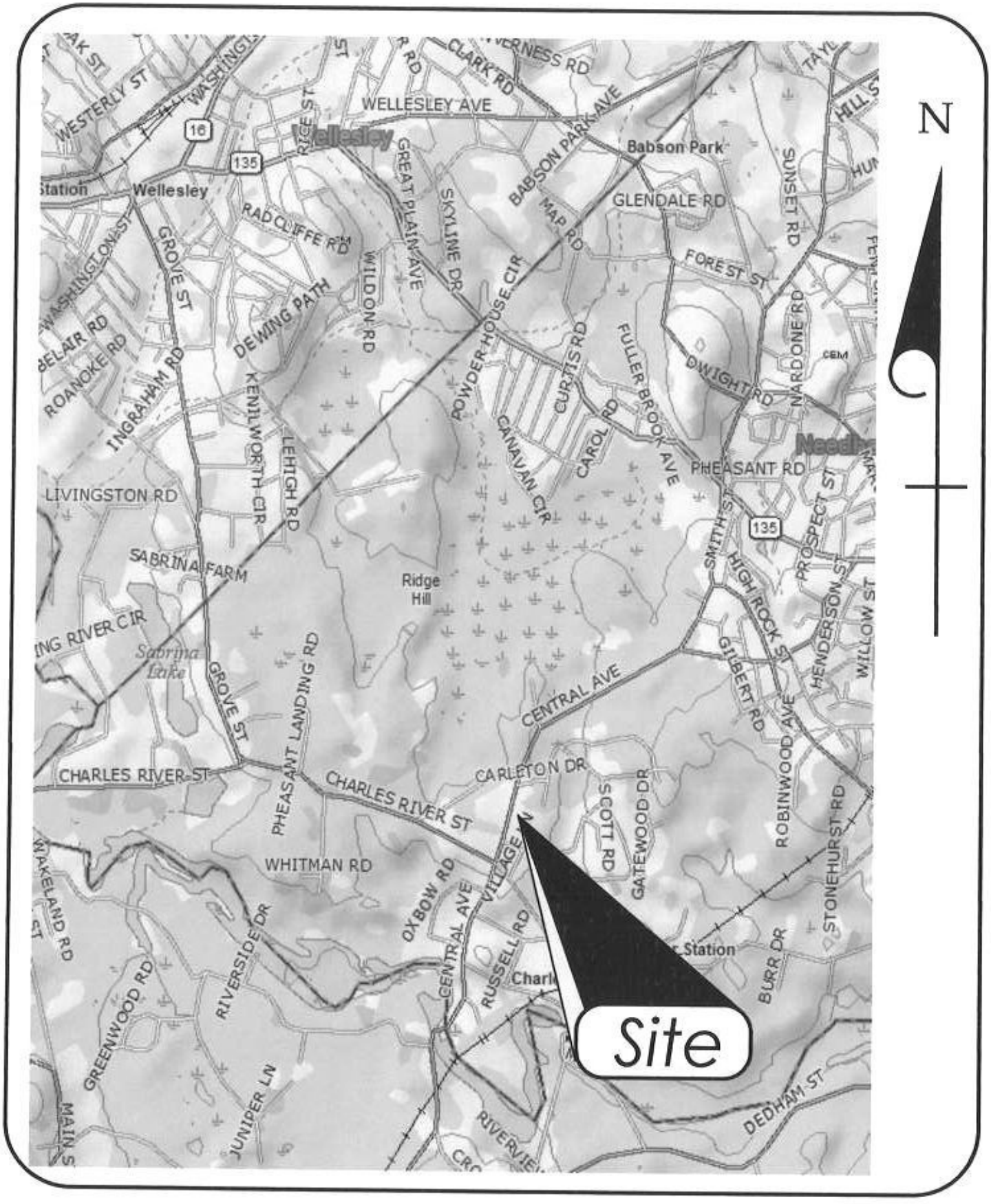
Where: V = Speed (mph)
t = perception & Reaction time (2.5 seconds)
a = deceleration of vehicle (11.2 ft/sec.2)

A speed survey revealed the 85th percentile speed on Central Avenue was 39 mph southbound and 37 mph northbound at the site driveway (Figure 8). Therefore, the required stopping sight distance for Central Avenue at the driveway is computed as shown below:

$$d = 1.47*39*2.5 + 1.075 * \frac{(39)^2}{11.2}$$

d = 143 + 146 = 289 feet

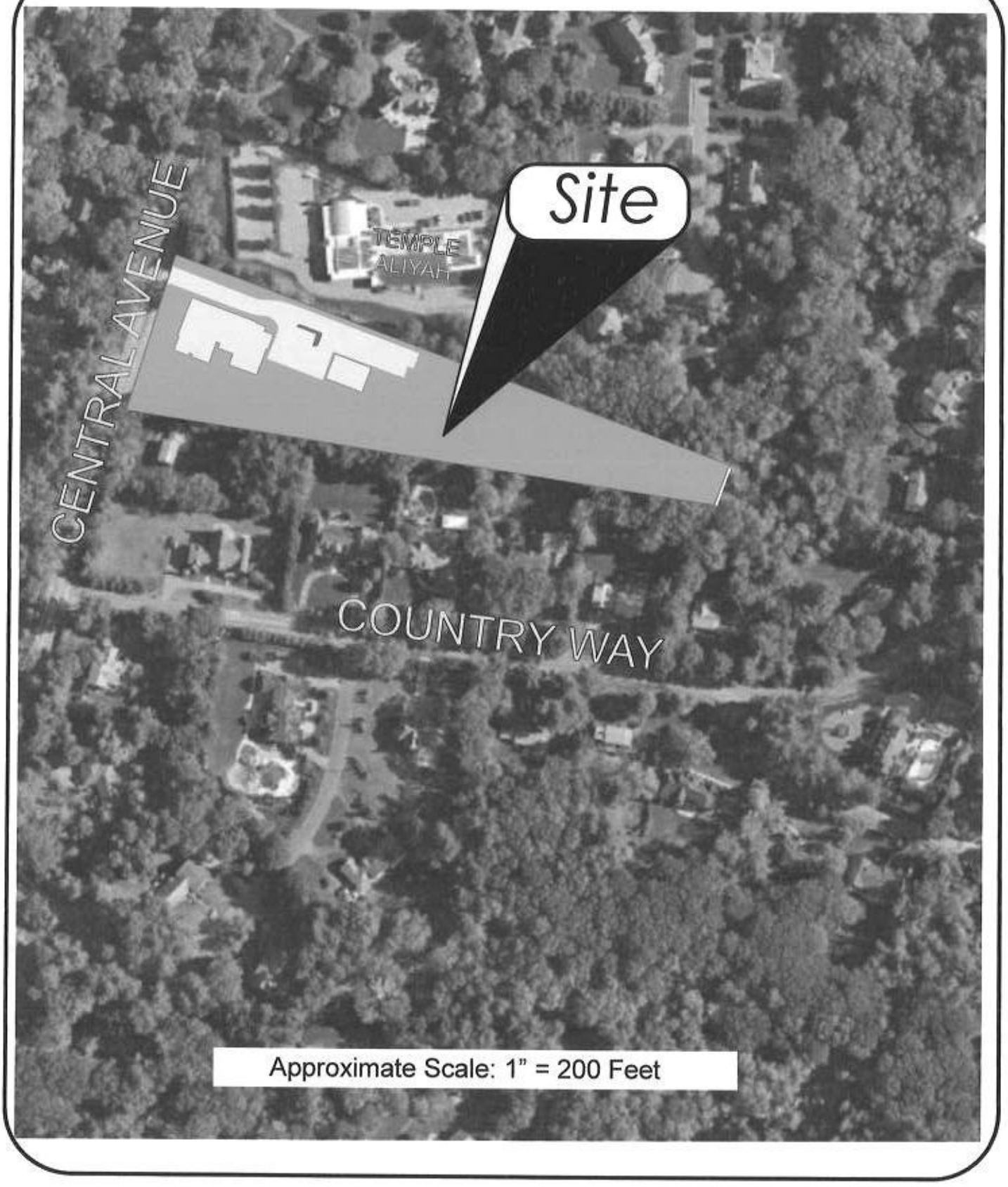
A field review showed that this section of Central Avenue is both straight and flat. As can be seen on Figure 9, there is well over 350 feet of stopping sight distance in both directions on Central Avenue and the stopping sight distance and is safe.



General Location Map

Figure 1

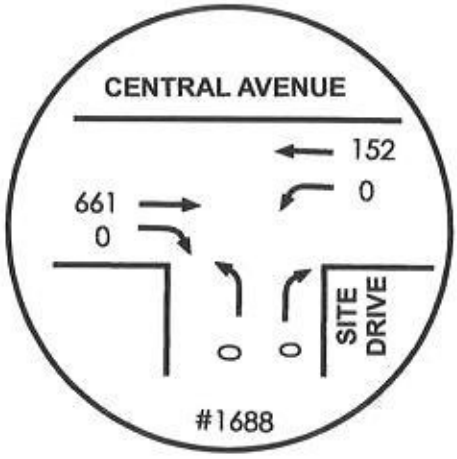
Gillon Associates
Traffic & Parking Specialists



Locus Map

Figure 2

Gillon Associates
Traffic & Parking Specialists



MORNING PEAK HOUR

Existing Peak Hour Traffic Volumes

Figure 3

Gillon Associates
Traffic & Parking Specialists

Source of Data
ITE Report (10th Edition)
Land Use Code: 565
Volume 2, Pages 224 – 245
Day Care Center

Trips Based On Building Size	AM			PM		
Peak Hour Trips	IN	OUT	TOTAL	IN	OUT	TOTAL
Trips per Unit	T = 11.00 (x)			T = 11.12 (x)		
Directional Split	53%	47%		47%	53%	
Trips Based on 9.941 KGSF	58	51	109	52	58	110

Trips Based On Students	AM			PM		
Peak Hour Trips	IN	OUT	TOTAL	IN	OUT	TOTAL
Trips per Unit	T = 0.66 (x) + 8.42			Ln(T) = 0.87 Ln(x) + 0.29		
Directional Split	53%	47%		47%	53%	
Trips Based on 80 Students	32	29	61	28	32	60
AVERAGE	45	40	85	40	45	85

Trips per Weekday
Trips per Student ITE
T = 47.62 (x) **Trips Based on 9.941 KGSF = 473 Trips per Weekday**
T = 4.09 (x) **Trips Based on 80 Students = 327 Trips per Weekday**
Average = 400 Trips / Weekday (= 200 Inbound & 200 Outbound)

Based on Proponent's Student Drop-off & Pick-up Program

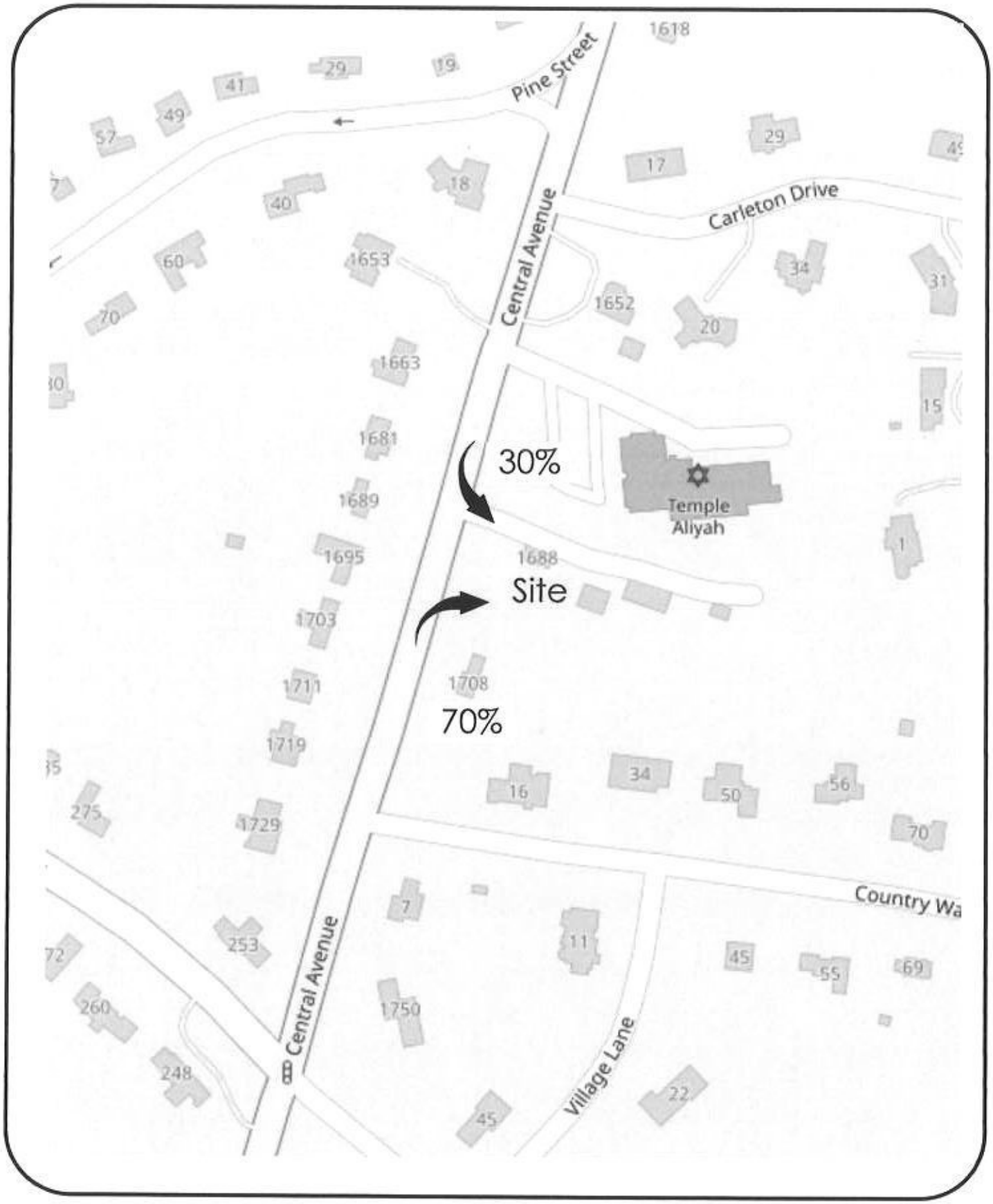
AM	7:30-8:00	16	PM	2:45-3:00	10	
	8:00-8:15	9		4:00-4:30	10	
	8:15-8:30	10		4:45-5:15	25	
	8:30-8:45	16		5:15-5:45	25	Peak Hr. = 50
	8:45-9:00	19		5:54 +	10	
	9:00-9:15	10	Peak Hr. = 55			

Trips Based On Student Groups	AM			PM		
Peak Hour Trips	IN	OUT	TOTAL	IN	OUT	TOTAL
Directional Split	53%	47%		47%	53%	
Trips Based on 80 Students	55	49	104	44	50	94

Trip Generation Summary

Figure 4

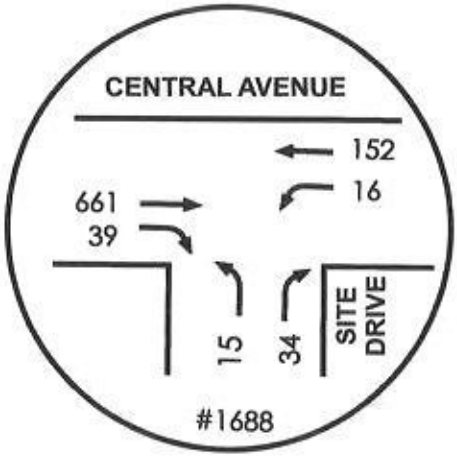
Gillon Associates
Traffic & Parking Specialists



Directional Distribution

Figure 5

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MORNING PEAK HOUR

Projected 2022 Peak Hour Traffic Volumes

Figure 6

Gillon Associates
Traffic & Parking Specialists

	Projected LOS AM
Central Avenue at Site Driveway	
Stop Sign Controlled	
Central Ave. Northbound (All Moves)	A
Central Ave. Southbound	
Through Movement	A
Left-Turn Movement	A
Site Drive West Bound (All Moves)	C

Intersection Levels of Service

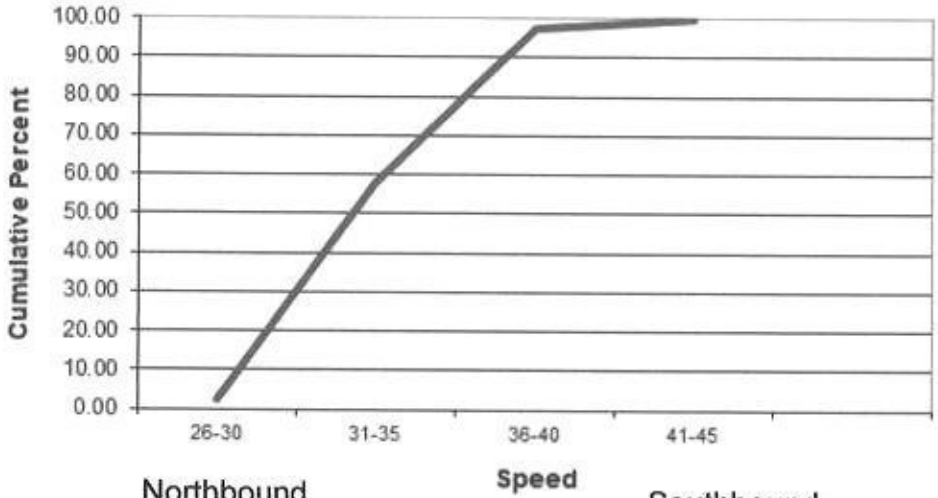
Figure 7

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Speed Data

	26-30	31-35	36-40	41-45	Total
Northbound	1	16	8	0	25
Southbound	0	8	9	1	18
	1	24	17	1	43

Speed	Cum. %
26-30	2.33
31-35	58.14
36-40	97.67
41-45	100.00



Northbound

SPEED	Percent	Cum %
28	3.26%	3.26%
31	3.61%	6.87%
32	3.73%	10.59%
32	3.73%	14.32%
33	3.84%	18.16%
33	3.84%	22.00%
33	3.84%	25.84%
33	3.84%	29.69%
34	3.96%	33.64%
34	3.96%	37.60%
34	3.96%	41.56%
34	3.96%	45.52%
34	3.96%	49.48%
35	4.07%	53.55%
35	4.07%	57.63%
35	4.07%	61.70%
35	4.07%	65.77%
36	4.19%	69.97%
36	4.19%	74.16%
36	4.19%	78.35%
37	4.31%	82.65%
37	4.31%	86.96%
37	4.31%	91.27%
37	4.31%	95.58%
38	4.42%	100.00%
Avg.=	34	85th % = 37 mph

Southbound

SPEED	Percent	Cum %
31	4.73%	4.73%
33	5.03%	9.76%
34	5.18%	14.94%
35	5.34%	20.27%
35	5.34%	25.61%
35	5.34%	30.95%
35	5.34%	36.28%
35	5.34%	41.62%
36	5.49%	47.10%
36	5.49%	52.59%
37	5.64%	58.23%
37	5.64%	63.87%
38	5.79%	69.66%
39	5.95%	75.61%
39	5.95%	81.55%
39	5.95%	87.50%
40	6.10%	93.60%
42	6.40%	100.00%
Avg.=	36	85th % = 39 mph

Central Avenue Speed Characteristics

Figure 8

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From Site Driveway Looking South (Left)



From Site Driveway Looking North (Right)

Central Avenue Stopping Sight Distance

Figure 9

Gillon Associates
Traffic & Parking Specialists

APPENDIX

Signalized Intersections

LOS	Control Delay per Vehicle (s/veh)
A	≤ 10
B	> 10–20
C	> 20–35
D	> 35–55
E	> 55–80
F	> 80

Un-Signalized Intersections

Level of Service	Average Control Delay (s/veh)
A	0–10
B	> 10–15
C	> 15–25
D	> 25–35
E	> 35–50
F	> 50

Intersection Levels of Service

Intersection	
Int Delay, s/veh	1.1

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	15	34	661	39	16	152
Future Vol, veh/h	15	34	661	39	16	152
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	89	89	89	89	89	89
Heavy Vehicles, %	0	0	2	0	0	2
Mvmt Flow	17	38	743	44	18	171

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	972	765	0	0	787	0
Stage 1	765	-	-	-	-	-
Stage 2	207	-	-	-	-	-
Critical Hdwy	6.4	6.2	-	-	4.1	-
Critical Hdwy Stg 1	5.4	-	-	-	-	-
Critical Hdwy Stg 2	5.4	-	-	-	-	-
Follow-up Hdwy	3.5	3.3	-	-	2.2	-
Pot Cap-1 Maneuver	282	406	-	-	841	-
Stage 1	463	-	-	-	-	-
Stage 2	832	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	275	406	-	-	841	-
Mov Cap-2 Maneuver	275	-	-	-	-	-
Stage 1	463	-	-	-	-	-
Stage 2	812	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	17	0	0.9
HCM LOS	C		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	354	841	-
HCM Lane V/C Ratio	-	-	0.156	0.021	-
HCM Control Delay (s)	-	-	17	9.4	0
HCM Lane LOS	-	-	C	A	A
HCM 95th %tile Q(veh)	-	-	0.5	0.1	-

STORM WATER REPORT
PROPOSED DAYCARE BUILDING
1688 CENTRAL AVENUE
NEEDHAM, MA
JUNE 22, 2020



OWNER/APPLICANT
NEEDHAM ENTERPRISES
105 CHESTNUT STREET SUITE 28
NEEDHAM, MA 02492

ENGINEER: GLOSSA ENGINEERING INC
46 EAST STREET
EAST WALPOLE, MA 02032

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NARRATIVE

APPENDIX I

NARRATIVE SUMMARY

GLOSSA ENGINEERING INC
46 EAST STREET
EAST WALPOLE,MA 02032
PHONE 508-668-4401
FAX 508-668-4406
EMAIL glossaeng@AOL.com

June 22, 2020

1688 Central Avenue
Nedham, MA

STORM WATER REPPORT NARRATIVE

The applicant would like to remove the existing buildings and replace those buildings with a Child Daycare center building at 1688 central Avenue in Needham, MA. One building will remain and will be used in conjunction with the Daycare operation. The existing and proposed conditions are shown on the attached plans.

Currently there is no formal storm water management system at the site. The storm water runs off onto abutting properties and to Central Avenue.

The proposal is to capture all of the runoff from the building rooftops and most of the runoff from the proposed paved area and direct the runoff to an underground infiltration basin. The design and analysis is patterned after the MA DEP Storm Water Management regulations. The design includes mitigation of the rates of runoff, TSS removal, recharge calculation, drawdown calculation, an O and M plan, a Construction Period plan, a Long Term Pollution plan and hydrocad analysis.

STANDARD #2 – PEAK RATE ATTENUATION:

EXISTING CONDITIONS:

	Stormwater Runoff Summary			
Subarea	Storm Event			
Pre-development.	2-yr	10-yr	25-yr	100-yr
E1 (cfs)	0.14	0.66	1.03	1.78
E1 (ac-ft.)	0.020	0.055	0.081	0.133
E2 (cfs)	0.01	0.25	0.55	1.33
E2 (ac-ft.)	0.009	0.047	0.079	0.150
E3 (cfs)	0.0	0.0	0.01	0.04
E3 (ac-ft.)	0.0	0.0	0.004	0.027
Total Area 146,012 sf 3.352 ac				
Total to Central Ave (cfs)	0.0	0.0	0.0	0.22
Total to Central Ave (ac-ft)	0.0	0.0	0.0	0.010
Low Area Northwest				
Qout (cfs)	0.0	0.0	0.0	0.22
Vout (ac-ft.)	0.0	0.0	0.0	0.010
Qout infiltrated (cfs)	0.05	0.11	0.15	0.19
Vout infiltrated (ac-ft.)	0.020	0.055	0.081	0.123
Peak Elevation (ft.)	199.87	200.30	200.53	200.82
Low Area Southwest				
Qout (cfs)*	0.0	0.0	0.0	0.0
Vout (ac-ft.)*	0.0	0.0	0.0	0.0
Qout infiltrated (cfs)	0.01	0.15	0.26	0.44
Vout infiltrated (ac-ft.)	0.009	0.047	0.079	0.15
Peak Elevation (ft.)	198.62	198.75	198.84	199.01
* No discharge from low area southwest to Central Ave				

PROPOSED CONDITIONS:

	Stormwater Runoff Summary			
Subarea	Storm Event			
Post-development.	2-yr	10-yr	25-yr	100-yr
CB1 (cfs)	0.65	0.98	1.17	1.50
CB1 (ac-ft.)	0.050	0.077	0.093	0.121
CB2 (cfs)	0.33	0.65	0.84	1.19
CB2 (ac-ft.)	0.025	0.047	0.061	0.087
CB3 (cfs)	0.22	0.32	0.38	0.49
CB3 (ac-ft.)	0.018	0.027	0.032	0.041
Existing Building (cfs)	0.17	.25	0.29	0.37
Existing Building (ac-ft)	0.014	0.020	0.024	0.031
Proposed Building (cfs)	0.70	1.02	1.21	1.55
Proposed Building (ac-ft)	0.057	0.085	0.101	0.130
P1 (cfs)	0.16	0.48	0.70	1.12
P1 (ac-ft.)	0.015	0.037	0.052	0.082
P1A (cfs)	0.0	0.0	0.01	0.06
P1A (ac-ft.)	0.0	0.002	0.004	0.009
P2 (cfs)	0.0	0.01	0.05	0.26
P2 (ac-ft.)	0.0	0.007	0.018	0.047
P3 (cfs)	0.0	0.0	0.01	0.04
P3 (ac-ft.)	0.0	0.0	0.004	0.027
Total Area 156,483 sf, 3.592 ac				
Total to Central Ave (cfs)	0.0	0.0	0.01	0.11
Total to Central Ave (ac-ft)	0.0	0.002	0.004	0.011
Low Area Northwest				
Qout (cfs)	0.0	0.0	0.0	0.09
Vout (ac-ft.)	0.0	0.0	0.0	0.002
Qout infiltrated (cfs)	0.04	0.08	0.11	0.14
Vout infiltrated (ac-ft.)	0.015	0.037	0.052	0.080
Peak Elevation (ft.)	199.99	200.34	200.52	200.77
Subsurface System				
Qout infiltrated (cfs)*	0.49	0.57	0.62	0.74
Vout infiltrated (ac-ft.)*	0.164	0.256	0.311	0.410
Peak Elevation (ft.)	186.69	187.70	188.37	190.02
Low Area Southwest				
Qout infiltrated (cfs)*	0.0	0.01	0.04	0.14
Vout infiltrated (ac-ft.)*	0.0	0.007	0.018	0.047
Peak Elevation (ft.)	198.74	198.76	198.79	198.93
* No discharge from low area southwest to Central Ave or from Subsurface system				

APPENDIX II

CONSTRUCTION PERIOD PLAN
OPERATION AND MAINTENANCE PLAN
TSS REMOVAL WORKSHEET
RECHARGE CALCULATION
DRAINAGE WORKS INSPECTION FORM

CONSTRUCTION PERIOD
POLLUTION PLAN

Given the proximity of a drainage catch basins and other drain inlets, care shall be taken to assure that eroded soil will not be deposited into the drain system.

The entity for the construction period pollution prevention and erosion and sedimentation control plan is Needham Enterprises, their successors and assigns, 105 Chestnut Street, Needham, MA 02492. Construction period pollution control measures shall include a siltation barrier (compost filled sock and orange colored construction fence). A designated materials stockpile area and a construction staging area has also been depicted on the plans. Construction sequencing shall be as follows:

1) Installation of silt barriers as shown on the plans
2) Installation of stabilized construction entrance
3) Establishment of a construction staging area
4) Establishment of a materials stockpile area
5) Clearing and grubbing
6) Removal and stockpiling of top and subsoils.
7) Removal of sand and gravel to bring the site to subgrade
8) Establishing and stabilizing with loam and seed all cut and fill side slopes
9) Install gravel driveway in the location of the final asphalt driveway
10) Construction of the building
11) Installation of underground detention basin
12) Installation of underground utilities, drainage, water, electric, CATV and telephone
13) Installation of sewer lines
14) Installation of binder course for driveway, landscaping and planting of grass areas
15) Final course of asphalt for driveways
16) Cleanup and demobilize

VEGETATION PLANNING

Vegetation shall be installed per the approved plans in accordance with the construction sequencing plan

EROSION AND SEDIMENTATION CONTROLS

The operation and maintenance of the erosion and sedimentation controls shall be the responsibility of the site contractor, who will report to Needham Enterprises their successors and assigns. The erosion and sedimentation controls shall be inspected daily by the site contractor. Repairs as needed shall be made immediately. The inspection of erosion and sedimentation controls shall also be done weekly and after every 1" or more rain event by an independent person trained in erosion control practices at construction sites. This independent person shall file weekly reports with Needham Enterprises, their successors and assigns. These reports shall be made available to the Needham Director of Public Works, Mass DEP and the EPA.

PROPOSED DAYCARE BUILDING
1688 CENTRAL AVENUE
NEEDHAM, MA

OPERATION AND MAINTENANCE PLAN

STORM WATER CONTROL AND MITIGATION SYSTEM

The entity responsible for the implementation of the operation and maintenance plan for the storm water management system is:

Needham Enterprises
Their successors and assigns
105 Chestnut Street, Suite 28
Needham, MA 02492

The storm water system is shown on an as built plan on file with the with the Needham Building Inspector. The system consists of the following components:

1) Drainage catch basins (3)
2) Drainage piping
3) Drainage manholes (2)
4) Stormceptor (1)
5) Below ground infiltration basin (1)
6) Rooftop drainage piping

INSPECTIONS

1) Storm water system components shall be inspected every three months during the first year of operation. Inspection reports shall be submitted to the Planning Board within 30 days of the inspection. These inspections shall be conducted Needham Enterprises, their successors and assigns.

2) The drainage infiltration basins shall be inspected twice per year by the property owner. Any repairs shall be made within 30 days of the inspection. The property owner shall consult with a Registered Professional Engineer regarding any anticipated repairs. The owner shall notify the Needham Director of Public Works prior to the undertaking of any repairs.

3) The drainage infiltration basins shall be inspected every five years by a Massachusetts Registered Professional Engineer. Inspection reports shall be submitted to the Needham Director of Public Works within 30 days of the inspection

4) Any repairs deemed to be critical shall be made immediately. Any other repairs shall be made within 30 days of the inspection.

5) Any proposed changes to the drainage system shall be approved in writing by the Needham Director of Public Works.

6) Needham Enterprises shall have on hand at all times $1,000 (2020 dollar value) for inspections and emergency repairs.

MAINTENANCE

1) Driveways and parking areas shall be swept twice per year, once in the Spring and once in the Fall by Needham Enterprises, their successors and assigns.

2) Catch basins shall be cleaned by Needham Enterprises their successors and assigns once per year in the Spring.

3) Mowing of the grass and care of any planned shrubs within the site shall be routinely done by Needham Enterprises, their successors and assigns.

4) Needham Enterprises their successors and assigns shall have a revolving fund with money on hand at all times to perform their required tasks.

REPLACEMENT

1) Needham Enterprises their successors and assigns shall create and maintain a replacement fund for the infiltration basin and infiltration trenches. The amount of money needs to be $8,000 (in 2020 value) within 50 years of the start of construction.

LONG TERM POLLUTION PLAN

The use of the property and the responsibility of the owners to implement and carry out a Long Term Pollution Prevention Plan will be subject to this document and shall include the following provisions:

1) Good housekeeping practices shall be implemented at all times.

2) Storage of materials shall be done in a manner that will prevent the migration of loose soil, silt or clay or other unwanted material, in order to prevent such material from entering the storm water management system. The shall be no outdoor storage of waste products at that site at any time.

3) Routine inspections and maintenance of Storm water best management practices shall be carried out in compliance with the Operation and Maintenance plan.

4) There may be heating oil deliveries to the site. Spill prevention and response plans shall be the responsibility of the delivery companies. Spill prevention and response plans for other hazardous materials shall be the responsibility of those individual handlers.

5) Lawns, gardens and other landscaped areas within the site shall be maintained by the owner at the expense of the owner.

6) There shall be no outdoor storage of fertilizers, herbicides, and/or pesticides at the site. Indoor storage of fertilizers, herbicides and/or pesticides shall be done in a safe and dry location. Any spill

of these materials shall be cleaned up immediately. The use of fertilizers, herbicides, and pesticides at the site shall be limited to amounts allowed by regulations issued by the Needham Director of Public Works and / or other governing bodies. Pet waste deposited at the site shall be immediately picked up and removed. Pet waste to be disposed of through solid waste containers.

8) There shall be no on site septic systems installed at the site unless allowed by other governing bodies.

9) Solid waste shall be stored in closed containers and removed by a licensed hauler at least once per week. Any solid waste not in closed containers found at that site shall be removed immediately by the owner.

10) Snow shall be plowed in to wind rows at the edge of the paved areas. Excess snow shall be removed from the site and deposited in approved snow farms.

11) Road salt and sand shall be used in accordance with rules, regulations and laws in force at that time. There shall be no storage of sand or salt at the site.

12) There shall be no illicit discharges to the storm water system.

13) The owners shall become familiar with the rules and regulations and restrictions of this document.

14) In case of an emergency, the owner shall notify the following organizations

1) Needham Fire Dept.
2) Needham Board of Health
3) Needham Conservation Commission
4) Needham Building Department
5) Needham Dept. Of Public Works
6) Massachusetts DEP

Traffic Impact Assessment

For:

Child Care Facility

At:

1688 Central Avenue

In:

Needham, Massachusetts

Prepared For:

Glossa Engineering, Inc.
Walpole, Mass.

Prepared By:

Gillon Associates
Traffic & Parking Specialists

Revised March 2021

Child Care Facility

1688 Central Avenue
Needham, Massachusetts

Gillon Associates Co.
111 River Street, Weymouth, MA 02191-2104
Telephone (781) 762-8856
E-mail: jt.gillon@comcast.net

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EXECUTIVE SUMMARY

- **Central Avenue carried approximately 16,000 vehicles per day in the vicinity of the site in 2016. About eight percent of this daily volume occurs during the morning peak hour.**

- **Based on the proponent's projected arrivals and departures, the morning peak hour will have more site generated trips than the evening peak hour. This project is expected to generate approximately 76 new morning peak hour trips with 40 inbound and 36 outbound.**

  The proponent will have staff assist children both arriving and leaving the day care to ensure the drop-off/pick-up circulation line of vehicles keep moving and do not stack back down the 200-foot long driveway.

- **All through traffic on Central Avenue in each direction will continue to experience a calculated "A" level of service with little delay during the weekday morning commuting peak hour. The Central Avenue southbound left-turn through lane utilized into the Site Driveway, will operate at a "B" level resulting in no turbulence on Central Avenue during the morning peak hour. The Site Driveway itself will have an acceptable "D" level with longer delay during the morning peak hour.**

- **The required stopping sight distance at the Central Avenue / Site Driveway intersection is provided.**

INTRODUCTION

Gillon Associates has evaluated the anticipated traffic impacts resulting from the proposed development of a Child Care Facility. The site is located on Central Avenue, just north of Charles River Street in Needham, Massachusetts (Figure 1).

The purpose of this report is to evaluate potential traffic impacts, which may be created by the expected addition of vehicular traffic either originating from or destined to the site. Specifically, this report assesses traffic operational characteristics of the Central Avenue intersection at the site access roadway due to any additional traffic. Based on the proponent's projected arrivals and departures, the morning peak hour will have more site generated trips than the evening peak hour and, thus, was chosen for analysis purposes.

This report provides an identification of the expected traffic generated by the project along with an assessment of projected traffic operating characteristics. Existing traffic volumes were obtained by manually observing and recording Central Avenue traffic volumes in fifteen-minute increments during the morning peak hour. In addition, historical counts were requested and supplied by the Town of Needham.

PROJECT DESCRIPTION

The project site area is 146,003 square feet or just over three acres and includes constructing a 9,941 square-foot child care facility building. An out-building currently used as a barn will be retained for storage and ancillary purposes. The project will have a total of approximately 24 off-street surface parking spaces. The access to this school at #1688 Central Avenue uses a 200 foot-long, 24-foot wide access drive to Central Avenue (Figure 2).

EXISTING TRAFFIC CONDITIONS

Regional Roadway Network

Central Avenue will continue to serve the site and provide access to both local and regional roadway facilities. To the south, Central Avenue provides linkage between the site and Charles River Street and Dover as well as other points to the south. Central Avenue also provides access to the north with linkage to Route 135 and easterly to Needham Center.

Traffic Setting

The project is situated on the easterly side of Central Avenue. This roadway is a two-lane roadway with one lane in each direction. Central Avenue has a roadway pavement width of approximately 25 feet with a bituminous concrete sidewalk on the easterly side of the roadway.

Existing Traffic Volumes

Existing traffic volumes were obtained by manually observing and recording Central Avenue traffic volumes in fifteen-minute increments during the morning peak hour. Morning peak hour traffic volumes on Central Avenue at the site driveway as collected on February 4th are provided on Figure 3.

With considerable feedback from the neighborhood, historical and pre-covid traffic volumes were subsequently obtained from the Town of Needham Engineering Division. Of the various forms of counts provided, an Automatic Traffic Recorder (ATR) count obtained in 2016 just south of the Needham Recycling and Transfer Station proved to be the most useful. However, other counts indicated that Central Avenue experienced a normal, or annual, growth rate of 1.6% per year. Therefore, Central Avenue morning peak hour volumes obtained in 2016 from the Town were increased by 1.6% per year over five years to bring the 2016 traffic volumes to 2021, had the Covid-19 pandemic not influenced daily operation. These extrapolated morning peak hour traffic volumes are provided on Figure 4.

FUTURE TRAFFIC CONDITIONS

Trip Generation and Distribution

It is expected that the proposed child care facility will exhibit the same general trip generating characteristics as in other urban and suburban residential communities. In addition to local rates observed and compiled by this firm, the Institute of Transportation Engineers (ITE) provides data on a variety of land uses and there is a considerable amount of empirical data available. In addition, the proponent has found by assigning pick-up and drop-off windows for parents, there is less congestion within the site and they will employ that technique at this site as well. Figure 5 provides a trip generation summary listing the ITE equations along with the resulting trip generation values for the school.

Based on the proponent's projected arrivals and departures as shown in the Appendix of this report, the morning peak hour will have more site generated trips than the evening peak hour. This project is expected to generate approximately 76 new morning peak hour trips with 40 inbound and 36 outbound. This project is also expected to generate approximately 72 new evening peak hour trips with 34 inbound and 38 outbound.

Moreover, the Proponent has researched various Child Care locations to gain a higher level of confidence in our projected drop-off/pick-up vehicle trips. Over time, this location could accommodate between 80 and 100 students.

In September 0f 2019, at a day care with 87 children there was a total of 51 vehicles during the morning peak hour. At the same location this winter there were 60 children in 30 cars on Monday and Friday and 76 children in 45 to 48 cars between Tuesdays and Thursdays.

This data also suggests this child care facility could quite easily accommodate 100 children without creating on-site grid lock providing staff is available to assist children into the building where other staff members get that child settled and the initial staff member return to bring in the next vehicle's child.

If a parent insists on entering the facility they will be directed to park in an un-occupied parking stall or enter the site all the way to the end by the playground to block a staff member's car who is parked for the day. This operation will keep the drop-off / pick-up line circulating without disruption.

Directional distribution reflects the existing Central Avenue directional split as adjusted to account for residential local attributes during the morning and peak hour as shown on Figure 6. Site generated and projected traffic volumes at the Central Avenue / Site Driveway intersection during the morning peak commuting hour is provided on Figure 7.

TRAFFIC OPERATIONAL ANALYSIS

This section of the report provides a quantitative analysis of anticipated traffic operational characteristics for the build scenario. These series of capacity analyses were conducted for the weekday morning peak hour to determine the potential impact of the proposed day care facility project.

Analysis Methodology and Findings

The analysis is based on the "Highway Capacity Manual" for non-signalized intersections. This manual has been published by the Transportation Board of the National Research Council and approved by the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine. The most recent Synchro Software version 10.1 was utilized in the assessment.

At un-signalized intersections and driveways the manual assumes that the through and right-turn movements along any main street will operate unrestricted but conflicting movements will be subjected to various periods of delay depending primarily on the frequency of adequate safe gaps to complete these movements. These periods of delay are generally categorized in "Levels of Service" (LOS) ranging from "A" for very short or no delays through "F" for extensive delays. The Massachusetts Highway Design Manual indicates that a "D" Level of Service is acceptable on roadways such as those in the study area. A table comparing levels of service and seconds of delay is provided in the Appendix of this report.

As can be seen on Figure 8, all through traffic on Central Avenue in each direction will continue to experience a calculated "A" level of service with little delay during the weekday commuting peak hour. As can be seen in the capacity calculations included in the Appendix of this report, the Central Avenue southbound left-turn through-lane utilized into the Site Driveway will operate at a "B" level with about 11 seconds of delay due to opposing traffic resulting in no turbulence on Central Avenue during this peak hour. The Site Driveway itself will have an acceptable "D" level with average delay during the morning peak hour.

SIGHT DISTANCE EVALUATION

The approaching vehicle on Central Avenue must be able to stop in time to avoid making contact with a vehicle emerging from the reconfigured site driveway. The required stopping sight distance from either a minor street or driveway is obtained from "A Policy on Geometric Design of Highways and Streets" as published by the American Association of State Highway and Transportation Officials (AASHTO) 6th Edition published in 2011.

Unlike the minimum safe stopping distance (MSSD) along a section of roadway, stopping sight distance at a driveway is not measured along either the center line or gutter line of a roadway. On page 9-29 of the American Association of State Highway and Transportation Officials (AASHTO) manual, it is stated "If the available sight distance for an entering or crossing vehicle (at an intersection corner) is at least equal to the appropriate stopping sight distance for the major road, then drivers have sufficient sight distance to anticipate and avoid collisions."

The motorist leaving the minor roadway or driveway has an eye height of 3.5 feet and he must be able to see another object (approaching vehicle) with a height of 3.5 feet from a point 14.5 feet back from the travel way. This dimension is based on most motorists stopping 6.5 feet or less from the intersecting roadway plus the eighty-fifth percentile distance of 8.0 feet from a front bumper of a vehicle to the motorist eye, thus, totaling 14.5 feet. The required stopping distance for each minor roadway is based on the formula on the following page:

$$d = 1.47\,Vt + 1.075\,\frac{V^2}{a}$$

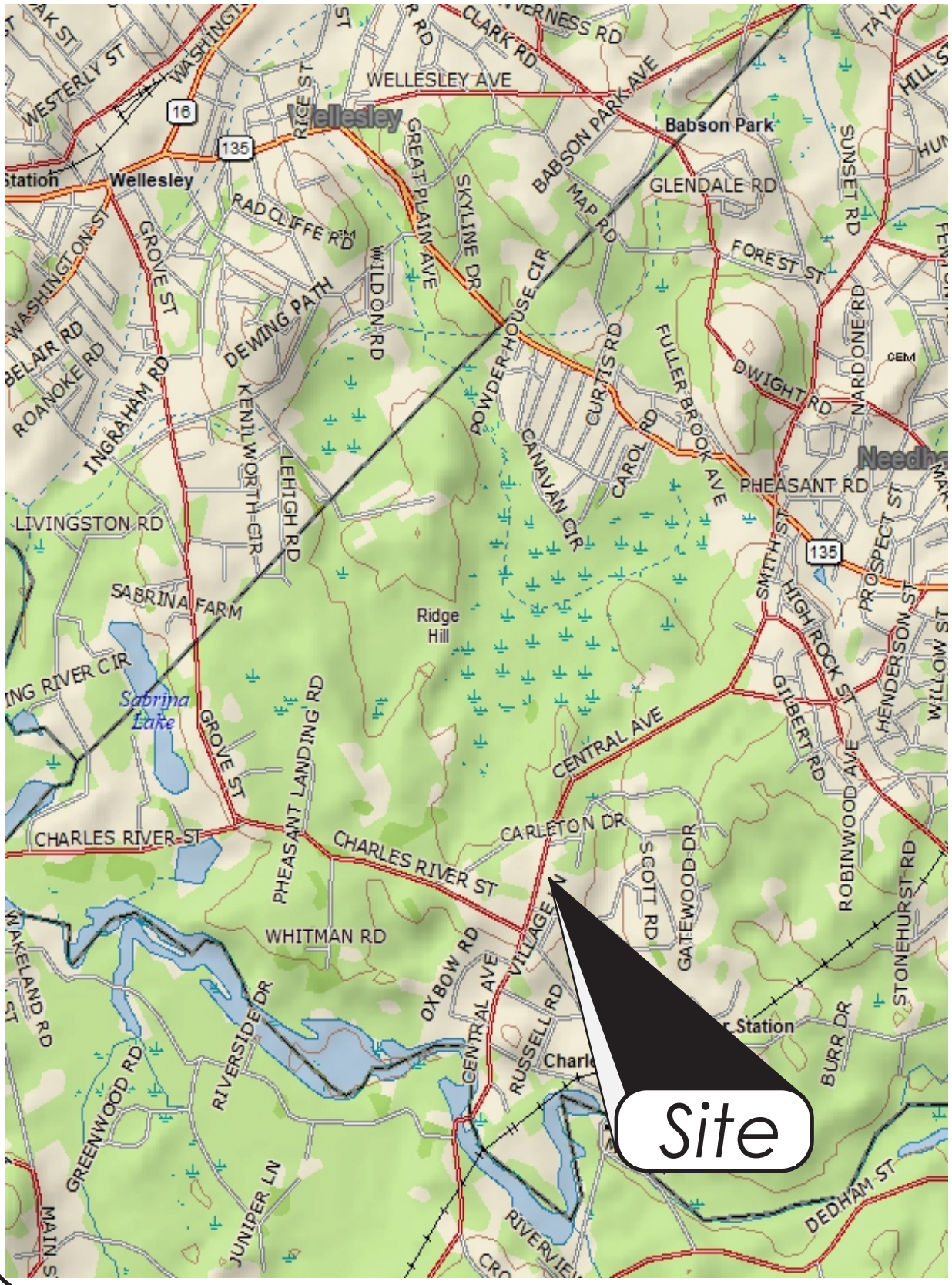
Where: V = Speed (mph)
t = perception & Reaction time (2.5 seconds)
a = deceleration of vehicle (11.2 ft/sec.2)

A speed survey revealed the 85th percentile speed on Central Avenue was 39 mph southbound and 37 mph northbound at the site driveway (Figure 9). Therefore, the required stopping sight distance for Central Avenue at the driveway is computed as shown below:

$$d = 1.47*39*2.5 + 1.075 * \frac{(39)^2}{11.2}$$

d = 143 + 146 = 289 feet

A field review showed that this section of Central Avenue is both straight and flat. As can be seen on Figure 10, there is well over 350 feet of stopping sight distance in both directions on Central Avenue and the stopping sight distance and is safe.



General Location Map

Figure 1

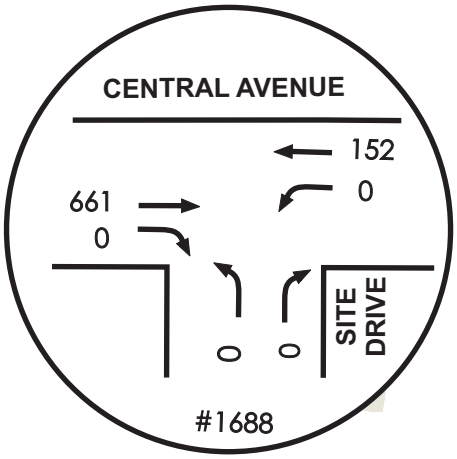
Gillon Associates
Traffic & Parking Specialists



Locus Map

Figure 2

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2021 MORNING PEAK HOUR As Counted February 4th

Existing (2021) Peak Hour Traffic Volumes

Figure 3

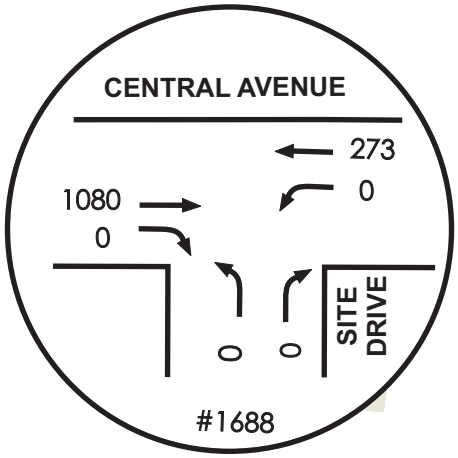
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2016 Town of Needham MORNING PEAK HOUR

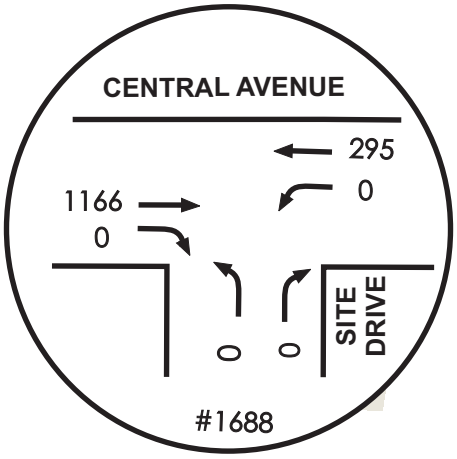
Town 2006South of RTS Entrance

5/10/2016	06:00 AM	118	8	
5/10/2016	06:15 AM	167	11	
5/10/2016	06:30 AM	227	23	
5/10/2016	06:45 AM	261	27	
5/10/2016	07:00 AM	278	47	
5/10/2016	07:15 AM	265	48	313
5/10/2016	07:30 AM	292	71	363
5/10/2016	07:45 AM	279	59	338
5/10/2016	08:00 AM	232	79	311
5/10/2016	08:15 AM	277	64	341
5/10/2016	08:30 AM	175	61	
5/10/2016	08:45 AM	244	73	
Morning Peak Hour		1080 NB	273 SB	1353 TOTAL

PM Peak Hour	
Central Ave North Bd	336
Central Ave South Bd	696
TOTAL	1032



2016 MORNING PEAK HOUR



EXPANDED MORNING PEAK HOUR FROM 2016 t0 2021
WITHOUT DISCOUNTING FOR COVID MORNING PEAK HOUR
Assumes INCREASE BY 1.6% PER YEAR over five years

Existing (Adjusted from Town of Needham)
Morning Peak Hour Traffic Volumes

Figure 4

Gillon Associates
Traffic & Parking Specialists

Source of Data
ITE Report (10th Edition)
Land Use Code: 565
Volume 2, Pages 224 – 245
Day Care Center

Trips Based On Students	AM			PM		
Peak Hour Trips	IN	OUT	TOTAL	IN	OUT	TOTAL
Trips per Unit	T = 0.66 (x) + 8.42			Ln(T) = 0.87 Ln(x) + 0.29		
Directional Split	53%	47%		47%	53%	
Trips Based on 97 Students	38	34	72	34	38	72

Trips per Weekday
Trips per Child ITE
T = 4.09 (x) **Trips Based on 97 Students = 397 Trips per Weekday**
(= 218 Inbound & 218 Outbound)

Based on Proponent's Child Drop-off & Pick-up Program on Tuesdays thru Thursdays 68 cars

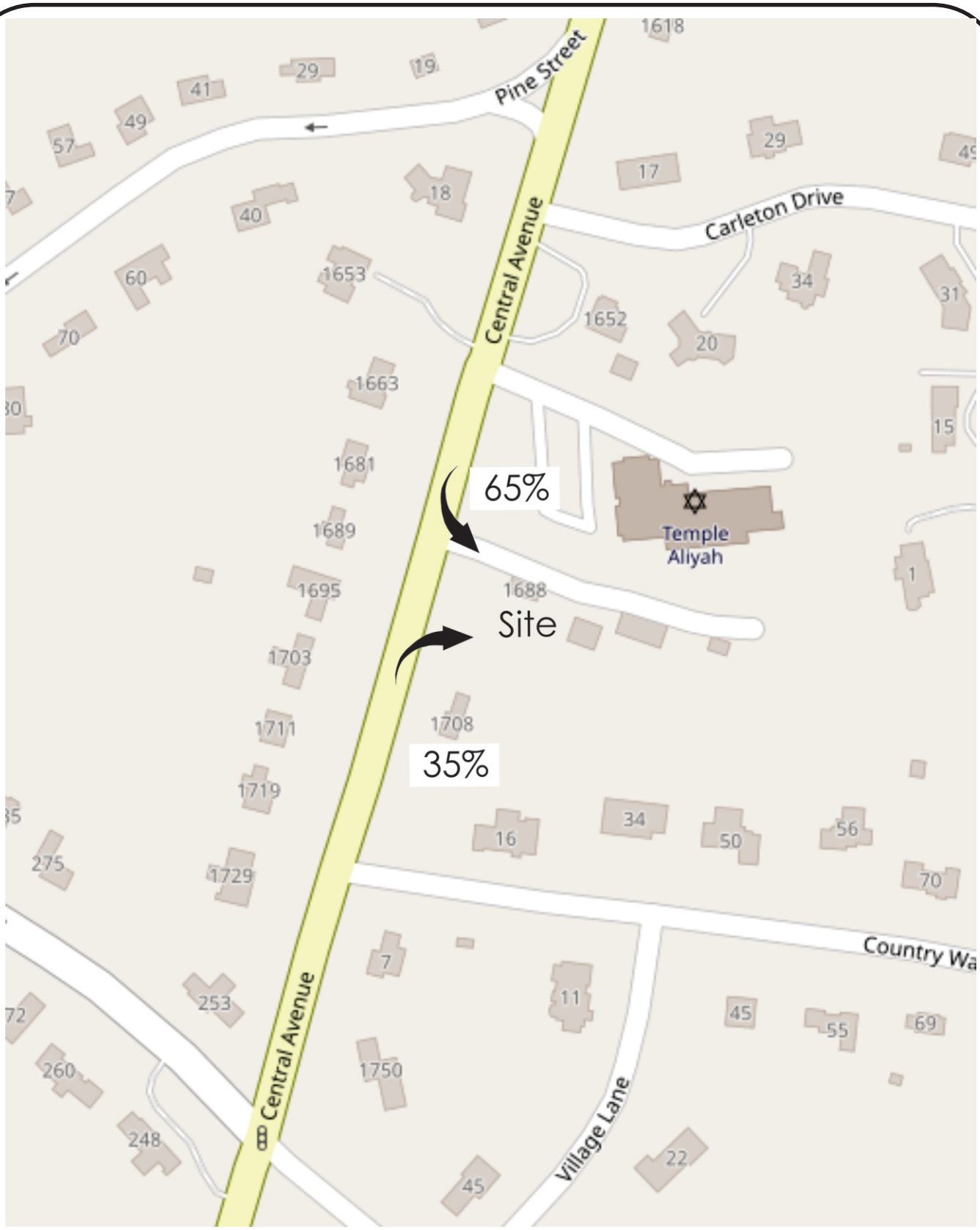
AM	7:30-8:00	10 cars	PM	2:30-2:50	10 cars
	8:00-8:30	15 cars		4:15-5:00	10 cars
	8:30-8:50	15 cars		5:00-5:30	20 cars
	8:50-9:00	10 cars		5:30-5:50	10 cars
	AM Peak Hr. = call 40 cars			PM Peak Hr. = call 34 cars	

Trips Based On Child Groups Or Families	AM			PM		
Peak Hour Trips	IN	OUT	TOTAL	IN	OUT	TOTAL
Directional Split	53%	47%		47%	53%	
Trips Based on 97 Children	40	36	76	34	38	72

Trip Generation Summary

Figure 5

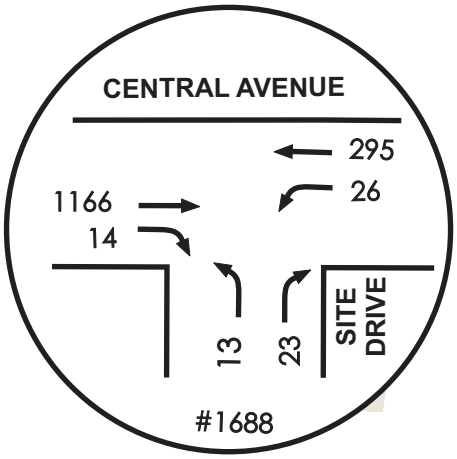
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Directional Distribution

Figure 6

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IN	OUT	TOTAL
40	36	76

MORNING PEAK HOUR

Projected 2022 Peak Hour Traffic Volumes

Figure 7

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Traffic & Parking Specialists

	Projected LOS AM
Central Avenue at Site Driveway	
Stop Sign Controlled	
Central Ave. Northbound (All Moves)	A
Central Ave. Southbound	
Through Movement	A
Left-Turn Movement	B
Site Drive West Bound (All Moves)	D

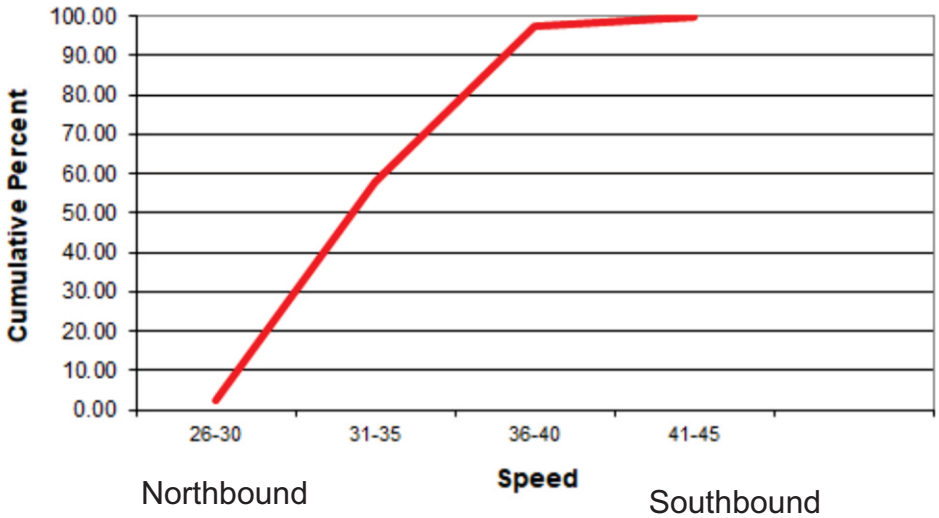
Intersection Levels of Service

Figure 8

Gillon Associates
Traffic & Parking Specialists

Speed Data					
	26-30	31-35	36-40	41-45	Total
Northbound	1	16	8	0	25
Southbound	0	8	9	1	18
	1	24	17	1	43

Speed	Cum. %
26-30	2.33
31-35	58.14
36-40	97.67
41-45	100.00



Northbound

	SPEED	Percent	Cum %
	28	3.26%	3.26%
	31	3.61%	6.87%
	32	3.73%	10.59%
	32	3.73%	14.32%
	33	3.84%	18.16%
	33	3.84%	22.00%
	33	3.84%	25.84%
	33	3.84%	29.69%
	34	3.96%	33.64%
	34	3.96%	37.60%
	34	3.96%	41.56%
	34	3.96%	45.52%
	34	3.96%	49.48%
	35	4.07%	53.55%
	35	4.07%	57.63%
	35	4.07%	61.70%
	35	4.07%	65.77%
	36	4.19%	69.97%
	36	4.19%	74.16%
	36	4.19%	78.35%
	37	4.31%	82.65%
	37	4.31%	86.96%
	37	4.31%	91.27%
	37	4.31%	95.58%
	38	4.42%	100.00%
Avg.=	34		85th % = 37 mph

Southbound

	SPEED	Percent	Cum %
	31	4.73%	4.73%
	33	5.03%	9.76%
	34	5.18%	14.94%
	35	5.34%	20.27%
	35	5.34%	25.61%
	35	5.34%	30.95%
	35	5.34%	36.28%
	35	5.34%	41.62%
	36	5.49%	47.10%
	36	5.49%	52.59%
	37	5.64%	58.23%
	37	5.64%	63.87%
	38	5.79%	69.66%
	39	5.95%	75.61%
	39	5.95%	81.55%
	39	5.95%	87.50%
	40	6.10%	93.60%
	42	6.40%	100.00%
Avg.=	36		85th % = 39 mph

Central Avenue Speed Characteristics

Figure 9

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Traffic & Parking Specialists



From Site Driveway Looking South (Left)



From Site Driveway Looking North (Right)

Central Avenue Stopping Sight Distance

Figure 10

Gillon Associates
Traffic & Parking Specialists

APPENDIX

Signalized Intersections

LOS	Control Delay per Vehicle (s/veh)
A	≤ 10
B	> 10–20
C	> 20–35
D	> 35–55
E	> 55–80
F	> 80

Un-Signalized Intersections

Level of Service	Average Control Delay (s/veh)
A	0–10
B	> 10–15
C	> 15–25
D	> 25–35
E	> 35–50
F	> 50

Intersection Levels of Service

Intersection	
Int Delay, s/veh	1

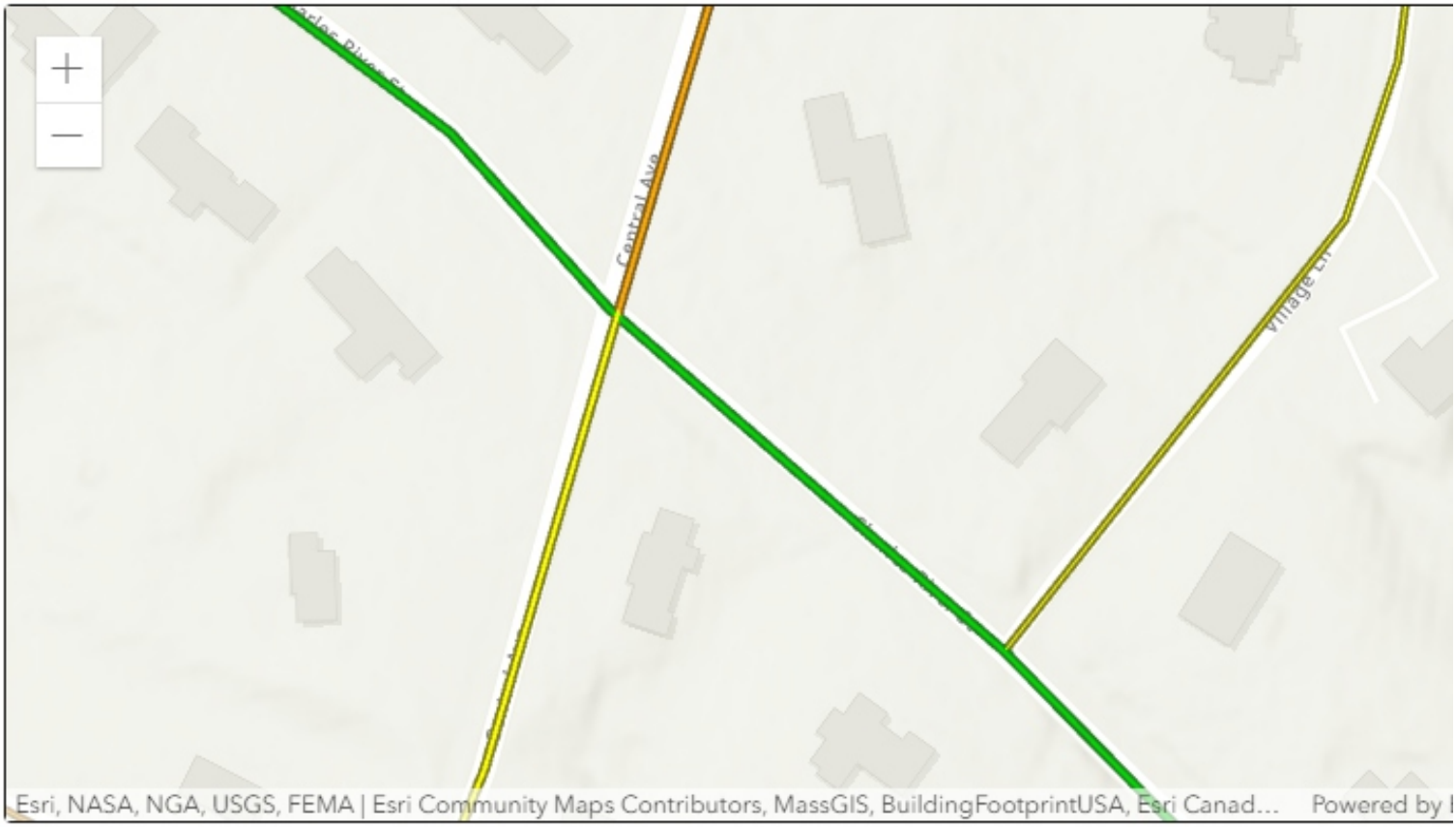
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	13	23	1166	14	26	295
Future Vol, veh/h	13	23	1166	14	26	295
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	95	95	95	95	95	95
Heavy Vehicles, %	0	0	2	0	0	2
Mvmt Flow	14	24	1227	15	27	311

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1600	1235	0	0	1242	0
Stage 1	1235	-	-	-	-	-
Stage 2	365	-	-	-	-	-
Critical Hdwy	6.4	6.2	-	-	4.1	-
Critical Hdwy Stg 1	5.4	-	-	-	-	-
Critical Hdwy Stg 2	5.4	-	-	-	-	-
Follow-up Hdwy	3.5	3.3	-	-	2.2	-
Pot Cap-1 Maneuver	118	217	-	-	568	-
Stage 1	277	-	-	-	-	-
Stage 2	707	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	111	217	-	-	568	-
Mov Cap-2 Maneuver	111	-	-	-	-	-
Stage 1	277	-	-	-	-	-
Stage 2	667	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	34.1	0	0.9
HCM LOS	D		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	161	568	-
HCM Lane V/C Ratio	-	-	0.235	0.048	-
HCM Control Delay (s)	-	-	34.1	11.7	0
HCM Lane LOS	-	-	D	B	A
HCM 95th %tile Q(veh)	-	-	0.9	0.2	-

Needham Traffic Map

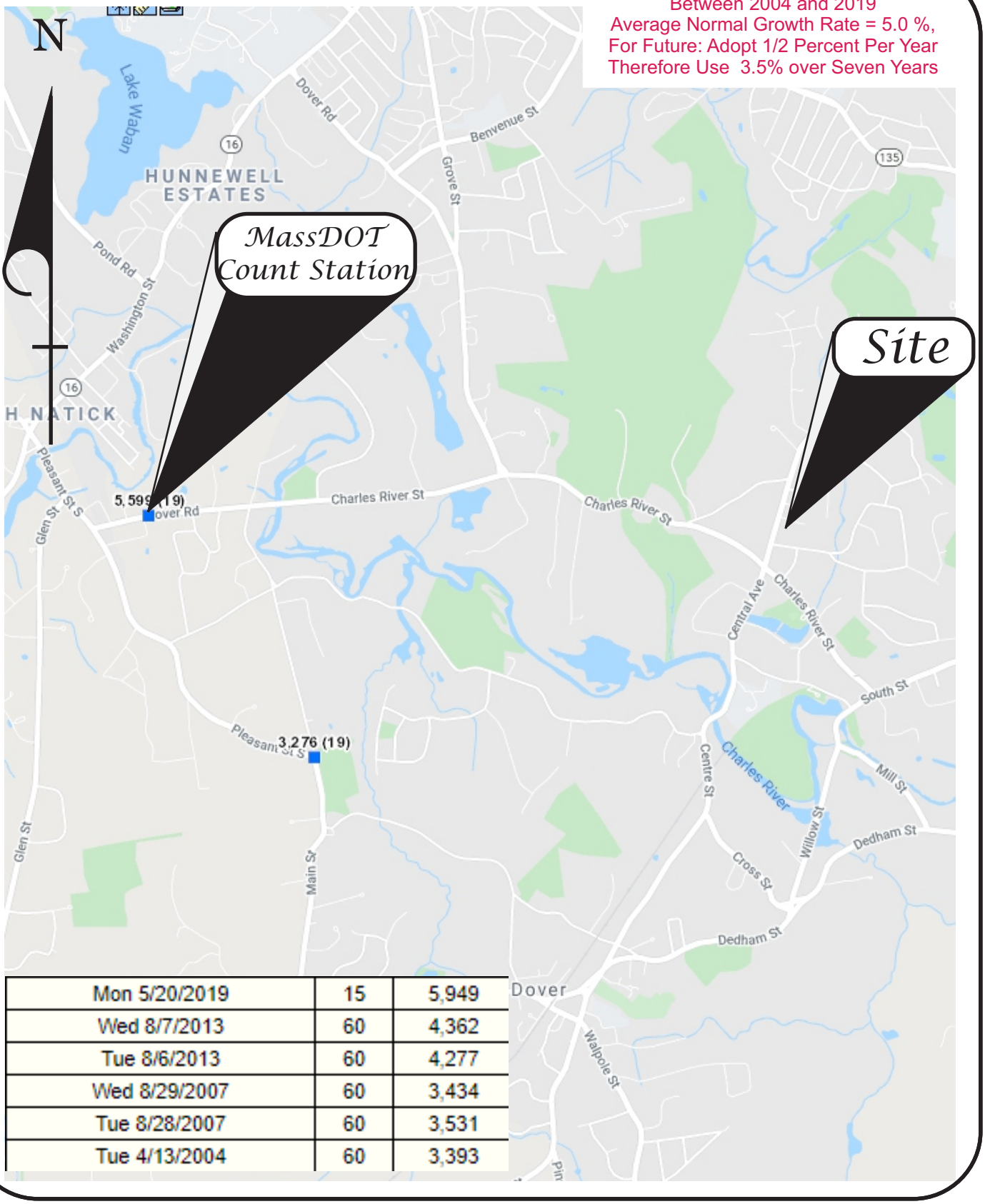


No Traffic Flow? Zoom in Closer or Refresh

How to use the Needham Traffic Map

Traffic flow lines: **Red** lines = Heavy traffic flow, **Yellow/Orange** lines = Medium flow and **Green** = normal traffic. Black lines or No traffic flow lines could indicate a closed road, but in most cases it means that either there is not enough vehicle flow to register or traffic isn't monitored. Also, If you do not see traffic flow, you can zoom in closer to reveal localized data. If you are unable to pan the map, **press here** (to focus off of the map) and try again.

Between 2004 and 2019
Average Normal Growth Rate = 5.0 %,
For Future: Adopt 1/2 Percent Per Year
Therefore Use 3.5% over Seven Years



Mon 5/20/2019	15	5,949
Wed 8/7/2013	60	4,362
Tue 8/6/2013	60	4,277
Wed 8/29/2007	60	3,434
Tue 8/28/2007	60	3,531
Tue 4/13/2004	60	3,393

MassDOT Normal Growth Rate (Location ID # 4026)

Appendix

Gillon Associates
Traffic & Parking Specialists

Charles River Street West of Central Avenue
CHARLES RIVER STREET WEST OF CENTRAL AVENUE
11/2-11/6/2006 TRAFFIC COUNT SUMMARY TOWN OF NEEDHAM

ADT

WESTBOUND	1656
EASTBOUND	2811
TOTAL	4467

Charles River Street West of Central Avenue
MassDOT 2019 ID# 4026

ADT

WESTBOUND	3007
EASTBOUND	2593
TOTAL	5600

Central Avenue Town of Needham

CENTRAL AVENUE NORTH OF CHARLES RIVER STREET Town
11/2-11/6/2006
TRAFFIC COUNT SUMMARY

ADT

NORTHBOUND	5831
SOUTHBOUND	4450
TOTAL	10,281

Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham

This letter sets forth some of the concerns of the surrounding neighbors and neighborhoods to the proposed project at 1688 Central Avenue, Needham MA.

We learned in mid-January 2021 that Needham Town Selectman and Developer Mr. Matt Borrelli plans to build a 9,960 sq ft. building to use as a day care facility at 1688 Central Avenue. We have several concerns regarding the impact this will have on Central Avenue and the surrounding neighborhoods.

As the Town undertakes the required reviews, we ask that these serious safety and other issues be considered and addressed.

***This is a "Major Project." ***

First, we believe this project should be treated as a "Major Project" and undergo the full review required of Major Projects under Section 7.4.3 of the Needham Zoning ByLaws (NZBL).

That section requires that Major Projects receive a special permit and undergo the notice and hearing requirements of Chapter 40A.

The NZBL defines as a Major Project "[a]ny construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces."

The proponent obviously tried to design the project to fall outside the Major Project category by claiming to fall just short of these thresholds (9960 sq ft and 24 parking spaces). However, in reality, more than the threshold 25 parking spaces are likely to be needed.

The proponent's March 12, 2021 letter to the Planning Board notes that the Town's formula requires "8 spaces plus 1 space for each 40 children, plus one space for each staff member." The facility plans for the possibility of increasing to 120 children (according to its traffic study). With a staff of 13, the proponent claims its parking needs fall just under the 25-space threshold. We believe the Planning Board should conclude that the parking needs are, in fact, likely to be at least 25 spaces for several reasons.

First, with the traffic congestion in exiting the facility during morning rush hour, it is likely more parking spaces will be needed to accommodate drop offs, particularly if the facility is open to larger numbers of children.

Second, we do not believe that the childcare facility can effectively operate with only 13 staff members (to include administrative staff) with 120 children and the adult to children ratios required. The proponent must, at the very least, explain how 13 staff were arrived at.

Third, other childcare facilities in the area of similar sizes operate with more than 25 parking spaces (e.g., the Goddard School in Medfield, mentioned in the proponents traffic study, had 36 spaces per satellite imaging.
The Medfield Children's Center has 40 (smaller building but bigger student population)).

Finally, the significant change in use and impact of the proposal over existing use strongly suggests that the Planning Board treat the proposal with the full level of review.

Traffic Concerns

We are deeply concerned about the impact the project will have on safety and traffic on Central Avenue and the surrounding streets.

In normal, non-COVID, times, morning weekday traffic along Central Avenue in this area is extremely heavy and backed up. The morning rush hour extends from approximately 6:30 to 8:30 AM and regularly causes solid backups from the RTS to Temple Aliyah, and often from Newman School back to Temple Aliyah.

To be blunt, during the weekday morning commute, Central Avenue is often an intermittent parking lot all the way to Cedar Street. Evening traffic congestion begins with the release of school and extends through approximately 6:30. Adding the additional vehicles in and out of the facility parking lot –whether coming from the south and joining the backed up traffic before entering the facility's driveway or coming from the north and needing to make a left turn across the backed up northbound traffic and exiting the facility to again add to the backed up traffic -- will make a bad situation much worse and severely impact the ability of neighboring residents to get into and out of their homes and as pedestrians attempt to safely try and cross Central Avenue at Charles River Street and elsewhere.

In addition, Carleton Drive, Pine Street, Country Way, Charles River Street, Fisher Street, Village Lane, Russell Road, Walker Lane, and South Street will all be negatively impacted by the proposed facility, either trying to maneuver into an even denser traffic line on Central Avenue or trying to escape the traffic by cutting through roads not designed to handle heavy commuter traffic.

The ability of the fire department, ambulances and police to respond in a timely manner to an emergency in the neighborhood, especially during rush hours, could also well be impacted by traffic in and out of the facility.
Afterschool programming and mid-day drop offs, which may include the use of busses, must also be accounted for.

The current schedule of activities at Temple Aliyah includes preschool and after school programs, and the existing traffic patterns connected to these programs should be considered as the day care facility is reviewed.
With all of these concerns, we would have hoped to see a realistic, thorough traffic study by the proponents. Instead, we are deeply disappointed to see a wholly inadequate study which fails to address any of these concerns in a realistic manner.

• Unlike typical traffic studies, this one does not identify when the field work was done. We are told the study was conducted in February, 2021, during the Covid pandemic, when traffic on Central Avenue is a fraction of what it was before and will be after. So too, Needham public schools are remote-only on Wednesday -- if the study was done on a Wednesday it is entirely unreliable.

The Massachusetts Department of Transportation stated last April that "[t]raffic counts are currently at historic lows and may underrepresent a realistic existing condition" and issued guidance on how to correct for undercounting. https://www.mass.gov/doc/massdot-guidance-on-traffic-count-data/download. As far as we can tell, the proponent's study takes none of this into consideration and instead reaches a conclusion that every resident and morning rush hour traveler on Central Avenue knows to be wrong -- that Central Avenue currently enjoys an "A" level of service.

• Given the traffic line that occurs during normal weekday rush hour, the level of service for a turn into or out of the facility driveway and along Central Avenue itself, is likely an "E" or "F" without the childcare facility and will be made even worse with it. We are not traffic experts, but a short google search of conditions defining different roadway levels of service, seems instructive: (Graphic source:
https://policymanual.mdot.maryland.gov/mediawiki/index.php?title=Roadways:_Facility_Selec tio n).
The illustration of Levels of Service E and F are what typifies the morning rush hour on Central Avenue in the vicinity of the facility during normal times.

We note also that the field work seems to consist of a single morning's observation. No analysis has been offered of afternoon and evening traffic impact and no attempt has been made to provide the date or day of the week (or school schedule that day) when this data was obtained.

• The report assumes a traffic distribution of 70% from the south and 30% from the north without any explanation of this assumption. We understand the building will be occupied by a childcare operation currently operating in the center of Needham which would suggest that the traffic percentages should be reversed, with more users coming into the facility from the north, requiring more traffic to cut across the northbound lane to enter the driveway. However, It is important to note that each car will both enter and exit the driveway, doubling the number of trips impacting the neighborhood.

• The report relies on the proponent's description of the drop off and pick up practices of the facility used at its current location. There is no provision for what happens if the facility finds that the new location requires adjustments in its drop off procedure, nor is there any provision for changes should a different entity operate the facility. No explanation is given for the queuing this process will involve, especially if cars are delayed in returning to Central Avenue.

• The report wholly fails to examine the impact of the project on the adjacent streets or intersections (or, for that matter, traffic along Central Avenue itself). It focuses solely on the driveway entrance and exit from the proposed building.

• It does not consider the safety ramifications of the proposed increase in traffic. While traffic studies usually reference recent accidents in the area, this report does not. Just last week, a four car accident which happened at Pine Street and Central Avenue, approximately 350 feet from the site. Over the years, neighbors have repeatedly sought to increase the safety of Central Avenue.

Recently, residents of Oxbow Road asked for the installation of crosswalks to enable children to safely cross the street. Adding a commercial project to the area heightens these concerns. Pedestrian, as well as vehicular safety, is a critical issue and must be addressed (including the lack of sidewalks and how that impacts pedestrian options). Residents previously requested the Town provide sidewalks in the area and the dangers to pedestrians in this area have long been a topic of discussion. The town's Traffic Management Advisory Committee (TMAC) recently held a meeting with three community agenda items -- and all three related to this neighborhood. TMAC recommended a pedestrian system, including crosswalk, be added at the intersection of Charles River Street and Central Avenue (where none exists now) be added to the community plan but given other projects on the list in town, it is unlikely the project will be authorized or take place for decades.

The Planning Board's site review process must include consideration of "[c]onvenience and safety of vehicular movement within the site and on adjacent streets…." A real traffic study, using realistic traffic counts and addressing all the relevant issues should be completed and analyzed before allowing the project to proceed.

Setback Concerns

The proponent acknowledges that the site review process must address "[t]he relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area…." The proposal is for the main building to have a setback from Central Avenue of only 35 feet. The immediate south side abutter, at 1708 Central Avenue, has a set back of approximately 70 feet, Temple Aliyah is set back approximately 200 feet from to the front corner of the building, and 1652 Central Avenue is set back approximately 109 feet. Every other home on this section of Central Avenue has a setback of at least 90 feet. At 35 feet from the road, this building will be completely inconsistent with the neighborhood.

There is no sound reason why the setback cannot be in accord with the existing buildings in the neighborhood. It is a commercial building proposed for a residential zone, and assuring that it is in harmony with the surrounding area is required by Section 7.4.1 of the Needham by laws. This may limit any potential further development of the other parts of the property (the proponent has not revealed whether that is his intention), but that is irrelevant to the requirements of site review.

Lighting Concerns

The proponent recognizes that the site review process must include "protection of adjoining premises against seriously detrimental uses by … sound and sight buffers…." We request that the proposed plan include sound and sight buffers, as well as lighting measures which will limit the impact of the building and its operation on the surrounding homes.

The proponent notes that the lighting will be adjacent to Temple Aliyah, but does not address lighting impacts on the abutter at 1652 Central Ave, on the other side of the Temple parking lot and with a clear line of site to the project parking lot and anticipated light poles, nor does the proponent address concerns of those across from the project. This lighting impact must be mitigated for all of the neighbors.

Road Reconstruction After Sewer Installation

We have been informed town sewer service will be extended from the tie in at Country Way down to 1688 Central Ave. Based upon what Needham has experienced with the South Street project, we ask that should the project be allowed to proceed, road repairs return the streets to the safest and most drivable condition in a timely manner.

Environmental and Conservation Concerns

Several neighbors have concerns about the potential of soil contamination at the site due to the previous uses of the property. We seek to make sure the property is safe for the proposed use and that any necessary mitigation measures be taken.

Conclusion

In sum, we request the following steps be taken:

• This letter be distributed to all Town bodies and officials who will consider this project. We ask that distribution include the Traffic Management Committee, which may have expertise to offer concerning the traffic conditions on Central Avenue.

• The project be treated as a Major Project, with the full review process required.

• The public be afforded a public and transparent process, including the ability to comment and be heard.

• A new traffic study be done, and full consideration be given to whether the traffic degradation and safety issues can be mitigated and, if so, how.

• If the project proceeds, the setback be increased.

• If the project proceeds, the lighting, road construction, sidewalk, crosswalk, landscape, and environmental concerns be mitigated.

• Finally, the Developer is a member of the Needham Select Board, which raises concerns about conflict of interest and ensuring that the process is without improper influence. For transparency sake, we ask that all project-related communications between the Developer and the Planning Board and the Developer and other members of the Select Board be fully disclosed.

Sincerely,

Neighbors & Neighborhoods of 1688 Central Avenue

(submitted electronically due to dangers due to COVID-19 of door-to-door canvassing)

Timestamp	Email Address	Name (please submit a separate form for each adult responding)	Street Name and Town	Do you join in the above-letter regarding the Development of 1688 Central Avenue?	Do you live in 02492?	Do you live on Belle Lane, Bridle Trail Road, Carleton Drive, Central Avenue between the town transfer station and Dover, Charles River Street, Country Way, Cranberry Lane, Cutler Road, Fisher Street, Gatewood Drive, Moseley Ave., Oxbow Road, Pheasant Landing Road, Pine Street, Russell Road, Scott Road, Stratford Road, South Street between the Dover-line and Chestnut Street Starr Ridge, Village Lane, Walker Lane, Whitman Road, Windsor Road, White Pine Road, Wilson Lane or Woods End?	Are you registered to vote in Needham (useful information for town meeting Warrant requirement purposes)?
3/19/2021 9:44:10	david.lazarus@gmail.com	David Lazarus	Oxbow Road, Needham	Yes	Yes	Yes	Yes
3/19/2021 9:50:15	mbmcfarland4@icloud.cor	Marybeth McFarland	99 Oxbow Road Needham	Yes	Yes	Yes	Yes
3/19/2021 9:52:15	bernie.j.mcf@gmail.com	Bernard McFarland	99 Oxbow Rd Needham	Yes	Yes	Yes	Yes
3/19/2021 9:56:32	sjfjohnson@gmail.com	Suzette Johnson	65 Oxbow Road, Needhan	Yes	Yes	Yes	Yes
3/19/2021 9:57:19	Dave.Johnson@bain.com	Dave Johnson	65 Oxbow Road, Needhan	Yes	Yes	Yes	Yes
3/19/2021 9:58:12	debby@catslystdg.com	Debby chaoman	1843 Central Ave Needha	Yes	Yes	Yes	Yes
3/19/2021 10:03:19	julielazarus@yahoo.com	Julie Lazarus	Oxbow Rd. Needham	Yes	Yes	Yes	Yes
3/19/2021 10:08:26	carrieclosuit@gmail.com	Caroline Closuit	120 Oxbow Road, Needha	Yes	Yes	Yes	Yes
3/19/2021 10:15:39	rhammer622@rcn.com	Randy B. Hammer	Needham	Yes	Yes	Yes	Yes
3/19/2021 10:15:51	KrissyWolff@gmail.com	Krissy Wolff	76 oxbow road, needham	Yes	Yes	Yes	Yes
3/19/2021 10:22:28	eytan.shamash@gmail.co	Eytan Shamash	Oxbow Road, Needham	Yes	Yes	Yes	Yes
3/19/2021 10:29:18	debspielman@comcast.ne	Deborah Spielman	Oxbow Road Needham	Yes	Yes	Yes	Yes

3/19/2021 10:38:02	lynch.katie23@gmail.com	Katie Lynch	Mayflower Road, Needhan	Yes	Yes	No	Yes
3/19/2021 10:39:13	jenmren@gmail.com	Jennifer Reynolds	159 Marked Tree Road, N	Yes	Yes	No	Yes
3/19/2021 10:43:55	dashisolis@gmail.com	Dagmar Solis	82 Charles River Street	Yes	Yes	Yes	Not Sure
3/19/2021 10:49:57	nvborisov@gmail.com	Natasha Kuper	Pheasant Landing rd, Nee	Yes	Yes	Yes	Yes
3/19/2021 11:00:46	annsherman50@gmail.cor	Ann Sherman	53 Oxbow Rd	Yes	Yes	Yes	Yes
3/19/2021 11:15:33	bernie.j.mcf@gmail.com	Bernard McFarland	99 Oxbow Rd Needham	Yes	Yes	Yes	Yes
3/19/2021 11:17:06	abmabardy@yahoo.com	Anita Mabardy	1663 Central Avenue, Ne	Yes	Yes	Yes	Yes
3/19/2021 11:20:10	philmabardy@yahoo.com	Philip Mabardy	1663 Central Avenue, Ne	Yes	Yes	Yes	Yes
3/19/2021 11:24:55	abmabardy@yahoo.com	Anita Mabardy	1663 Central Avenue, Ne	Yes	Yes	Yes	Yes
3/19/2021 12:11:21	lindasiegal@aol.com	Linda Seigal	Oxbow st Needham	Yes	Yes	Yes	Yes
3/19/2021 12:18:16	lindsay614@gmail.com	Lindsay Jabbawy	40 Windsor road needham	Yes	Yes	Yes	Yes
3/19/2021 12:41:49	Dave.Johnson@bain.com	Dave Johnson	65 Oxbow Road, Needhan	Yes	Yes	Yes	Yes
3/19/2021 12:41:49	sjfjohnson@gmail.com	Suzette Johnson	65 Oxbow Road, Needhan	Yes	Yes	Yes	Yes
3/19/2021 12:48:46	abbeasen@gmail.com	Abbe Asen	Stratford Rd, Needham	Yes	Yes	Yes	Yes
3/19/2021 12:53:52	mjabbawy@gmail.com	Mike Jabbawy	40 Windsor Rd Needham	Yes	Yes	Yes	Yes
3/19/2021 12:56:54	kmaranca@yahoo.com	Koren	White pine road Needham	Yes	Yes	Yes	Yes
3/19/2021 13:11:28	pattyo8818@yahoo.com	Patty O'Neill	Charles River Street Need	Yes	Yes	Yes	Yes
3/19/2021 13:15:26	oconnor0604@yahoo.com	Nicole O'Connor	50 Country Way Needham	Yes	Yes	Yes	Yes
3/19/2021 13:17:01	joconnor@ocventures.net	Jeremy OConnor	50 Country Way Needham	Yes	Yes	Yes	Yes
3/19/2021 13:33:05	toriconstantino@gmail.con	Tori Constantino	Beard Way, Needham	Yes	Yes	No	Yes
3/19/2021 13:33:11	samanthafeisenberg@gma	Samantha Eisenberg	88 Stratford road. Needha	Yes	Yes	Yes	Yes
3/19/2021 13:34:11	sandyjordan@comcast.ne	Sandra Jordan	Stratford Road, Needham	Yes	Yes	Yes	Yes
3/19/2021 13:35:47	jason.freedman@yahoo.cc	Jason Freedman	218 Bridle Trail Rd Needh	Yes	Yes	Yes	Yes
3/19/2021 13:36:09	lbrodsky04@yahoo.com	Lauren Brodsky	Pheasant Landing Rd, Ne	Yes	Yes	Yes	Yes
3/19/2021 13:37:22	kblangsner@gmail.com	Karen Langsner	30 Windsor Road needhar	Yes	Yes	Yes	Yes
3/19/2021 13:42:05	michaela.mendelsohn@gr	Michaela Mendelsohn	210 Charles River St., Ne	Yes	Yes	Yes	Yes
3/19/2021 13:49:00	rmsoble@aol.com	Risa Carp	169 fairfield St. Needham	Yes	Yes	No	Yes
3/19/2021 14:04:26	emilydaughters@yahoo.cc	Emily Hunsicker	Charles River Needham	Yes	Yes	Yes	Yes
3/19/2021 14:05:34	stephanie.walt@gmail.com	Stephanie Walt	Pheasant landing road ne	Yes	Yes	Yes	Yes
3/19/2021 14:10:33	abigail.wilk@gmail.com	Abigail Wilk	100 Windsor Road, Needh	Yes	Yes	Yes	Yes
3/19/2021 14:13:26	niffer33@gmail.com	Jennifer Peterson-Eacott	157 Stratford Road	Yes	Yes	Yes	Yes
3/19/2021 14:17:27	joconnor@ocventures.net	Jeremy OConnor	50 Country Way Needham	Yes	Yes	Yes	Yes
3/19/2021 14:18:14	jcohen527@gmail.com	Jenna	Virginia Road, Needham	Yes	No, but I regular	No	Yes

3/19/2021 14:48:35	dubin.emma@gmail.com	Emma Dubin	Lantern lane, Medfield	Yes	No, but I regular	No	No
3/19/2021 14:55:02	khristy17078@yahoo.com	Khristy Thompson	Windsor Road Needham	Yes	Yes	Yes	Yes
3/19/2021 14:57:09	micstein@gmail.com	Michelle Murray	Eliot Road needham	Yes	No, but as a con	No	Yes
3/19/2021 15:11:16	jessica.kritzman@gmail.cc	Jessica Kritzman	Bridle Trail Needham	Yes	Yes	Yes	Yes
3/19/2021 15:15:45	joditraub@comcast.net	Jodi Traub	232 Bridle Trail Road Nee	Yes	Yes	Yes	Yes
3/19/2021 15:18:17	abutmi@gmail.com	Alexandra Gordon	Bridle Trail Needham	Yes	Yes	Yes	Yes
3/19/2021 15:23:03	ledric@mac.com	Ricki Nickel	Stratford Rd, Needham	Yes	Yes	Yes	Yes
3/19/2021 15:29:22	jskoler@comcast.net	Jennifer skoler	165 Bridle Trail Road	Yes	Yes	Yes	Yes
3/19/2021 15:46:37	sally@tyrie.com	Sally Tyrie	Bridle Trail Rd, Needham	Yes	Yes	Yes	Yes
3/19/2021 15:48:54	imichelow@lifespan.org	Ian Michelow	Charles River St	Yes	Yes	Yes	Yes
3/19/2021 15:58:35	aesouliere@aol.com	Adam Souliere	Pheasant Landing Rd, Nee	Yes	Yes	Yes	Not Sure
3/19/2021 16:02:58	jzelfand@gmail.com	jessica zelfand	80 country way needham	Yes	Yes	Yes	Not Sure
3/19/2021 16:07:44	zacharypdubin@gmail.con	Zach Dubin	Lantern ln, Medfield	Yes	No, but I regular	No	No
3/19/2021 16:24:41	john@dwell360.com	John Lynch	Mayflower needham	Yes	Yes	No	Yes
3/19/2021 16:25:01	stacyjhill@gmail.com	Stacy Hill	157 Bridle Trail Rd Needh	Yes	Yes	Yes	Yes
3/19/2021 16:47:50	ardim@comcast.net	Andrew DiMatteo	290 Bridle Trail Road Nee	Yes	Yes	Yes	Yes
3/19/2021 16:48:38	adimatteo@comcast.net	Debi DiMatteo	290 Bridle Trail Road Nee	Yes	Yes	Yes	Yes
3/19/2021 16:53:55	kmaranca@yahoo.com	Koren	White pine road Needham	Yes	Yes	Yes	Yes
3/19/2021 17:18:38	ardim@comcast.net	Andrew DiMatteo	290 Bridle Trail Road Nee	Yes	Yes	Yes	Yes
3/19/2021 17:48:10	asyellin@gmail.com	Adam Yellin	109 Henderson St	Yes	Yes	No	Yes
3/19/2021 18:12:24	jconlon01@gmail.com	Joshua Co lon	22 Oakhurst Circle Needh	Yes	Yes	No	Yes
3/19/2021 18:19:46	jrgreenfield1@gmail.com	Josh Greenfield	Moseley needham	Yes	Yes	No	Yes
3/19/2021 19:41:40	michaela.mendelsohn@gr	Michaela Mendelsohn	210 Charles River St., Nee	Yes	Yes	Yes	Yes
3/19/2021 19:44:55	jbmorris@gmail.com	Julian B Morris	112 Birds Hill Ave	Yes	Yes	No	Yes
3/19/2021 19:51:34	toriconstantino@gmail.con	Tori Constantino	Beard Way, Needham	Yes	Yes	No	Yes
3/19/2021 19:59:22	dianelunder@comcast.net	Diane LUNDER	189 Bridle Trail Rd	Yes	Yes	Yes	Yes
3/19/2021 20:01:34	bourds@gmail.com	Stephen Bourdeau	Sylvan Rd	Yes	Yes	No	Yes
3/19/2021 21:00:30	susanabraham135@gmail	Susan Abraham	Country Way, Needham, M	Yes	Yes	Yes	Yes
3/19/2021 21:01:52	aabraham@kexheslaw.co	Andrew Abraham	Country Way, Needham, M	Yes	Yes	Yes	Yes
3/19/2021 21:06:49	nheideman328@gmail.cor	Nicole Heideman	1708 Central Avenue Nee	Yes	Yes	Yes	Yes
3/19/2021 21:15:08	jonasclarke@verizon.net	Holly Clarke	1652 Central Ave	Yes	Yes	Yes	Yes
3/19/2021 21:55:03	famhaus@comcast.net	Barbara Hauschka	105 Walker Lane, Needha	Yes	Yes	Yes	Yes
3/19/2021 22:04:30	lionel.desrosiers@gmail.cc	Lionel Desrosiers	117 Linden St, Needham,	Yes	Yes	No	Yes
3/19/2021 22:08:05	martin.tomjr@gmail.com	Thomas Martin	138 sylvan road, Needhan	Yes	Yes	No	Yes
3/19/2021 22:23:32	rpkamani@gmail.com	Rushit Kamani	Hillside Ave needham	Yes	No, but as a con	No	Yes
3/19/2021 22:41:46	jberkowitz@gmail.com	Joshua Davidson	73 Linden St Needham, M	Yes	Yes	No	Yes
3/19/2021 22:50:13	pwrenn201@gmail.com	Patrick Wrenn	Blacksmith Dr, Needham	Yes	Yes	No	Yes
3/19/2021 22:57:38	jconlon01@gmail.com	Joshua Co lon	22 Oakhurst Circle Needh	Yes	Yes	No	Yes
3/19/2021 23:17:56	brent.poliquin@gmail.com	Brent Poliquin	148 Sylvan Rd, Needham	Yes	Yes	No	Yes

3/20/2021 6:43:30	martin.tomjr@gmail.com	Thomas Martin	138 sylvan road, Needham	Yes	Yes	No	Yes
3/20/2021 7:19:48	amyskolnick15@gmail.cor	Amy Skolnick	Oxbow rd needham	Yes	Yes	Yes	Yes
3/20/2021 7:32:59	adsaide@gmail.com	Amy Saide	99 Richardson Drive, Nee	Yes	Yes	No	Yes
3/20/2021 7:42:52	chjoncorp@verizon.net	Carl H Jonasson	1729 CENTRAL AVENUE	Yes	Yes	Yes	Yes
3/20/2021 8:28:15	jberkowitz@gmail.com	Joshua Davidson	73 Linden St Needham, M	Yes	Yes	No	Yes
3/20/2021 8:53:25	matthew.heideman@gmai	Matthew Heideman	1708 Central Ave, Needha	Yes	Yes	Yes	Yes
3/20/2021 9:09:09	etj98@yahoo.com	Everette Jordan	219 Stratford Road Needh	Yes	Yes	Yes	Yes
3/20/2021 9:23:42	grcavanagh@gmail.com	Greg Cavanagh	17 Carleton Dr Needham,	Yes	Yes	Yes	Not Sure
3/20/2021 9:34:55	lgere@hotmail.com	Laura Gere	Stratford road needham	Yes	Yes	Yes	Yes
3/20/2021 9:37:12	rob.dimase@verizon.net	Robert DiMase	1681 Central Avenue Nee	Yes	Yes	Yes	Yes
3/20/2021 9:50:40	brigettedinicola@gmail.cor	Brigette DiNicola	South Street, Needham	Yes	Yes	Yes	Yes
3/20/2021 10:02:48	egazmui@comcast.net	Elizabeth Gazmuri	245 Stratford Rd., Needha	Yes	Yes	Yes	Yes
3/20/2021 10:08:03	khristy17078@yahoo.com	Khristy Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 10:15:39	khristy17078@yahoo.com	Khristy Thompson	Windsor Road Needham	Yes	Yes	Yes	Yes
3/20/2021 10:26:22	nathansonmichaelj@gmail	Michael Nathanson	Country Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 10:32:24	zchjonas@gmail.com	Zach Jonas	1652 Central Ave, Needha	Yes	Yes	Yes	Yes
3/20/2021 10:33:13	jack.dinicola@dinicolalaw	John W DiNicola II	1115 South St, Needham,	Yes	Yes	Yes	Yes
3/20/2021 10:33:16	stephenjonas@wilmerhale	Stephen Jonas	1652 Central Ave	Yes	Yes	Yes	Yes
3/20/2021 10:58:07	nccavanagh@gmail.com	Nikki Cavanagh	Carleton Drive, Needham	Yes	Yes	Yes	Yes
3/20/2021 11:07:39	sallymck@mac.com	Sarah (Sally) McKechnie	1703 Central Ave	Yes	Yes	Yes	Yes
3/20/2021 11:09:22	mariejon13@verizon.net	Carl H Jonasson	1729 CENTRAL AVENUE	Yes	Yes	Yes	No
3/20/2021 11:21:14	jturk@tqlawfirm.com	Jeffrey Turk	312 Country way	Yes	Yes	Yes	Yes
3/20/2021 11:30:44	andee614@me.com	Andrea K. Shuman	Belle Lane; Needham, Ma	Yes	Yes	Yes	Yes
3/20/2021 11:31:54	nccavanagh@gmail.com	Nikki Cavanagh	Carleton Drive, Needham	Yes	Yes	Yes	Yes
3/20/2021 11:33:49	dryicemarc1@aol.com	Marc Savenor	27 belle ln	Yes	Yes	Yes	Yes
3/20/2021 12:30:27	msgillespie@comcast.net	Sharon Gillespie	210 Stratford Road	Yes	Yes	Yes	Yes
3/20/2021 12:51:32	clairecdavison@gmail.com	Claire Davison	1011 South Street	Yes	Yes	Yes	Yes
3/20/2021 12:52:39	tkdavison@gmail.com	Timothy Davison	1011 South Street needha	Yes	Yes	Yes	Yes
3/20/2021 13:06:06	turkbj@yahoo.com	Barbara Turk	Country way Needham	Yes	Yes	Yes	Yes
3/20/2021 13:12:52	ccthompson.hms@gmail.c	Christopher Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:13:57	thompson3.1415@gmail.c	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:17:22	thompson3.1415@gmail.c	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:17:27	thompson3.1415@gmail.c	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:24:02	macleod41@aol.com	Norman MacLeod	41 Pine St, Needham, M 0	Yes	Yes	Yes	Yes
3/20/2021 13:27:49	macleod41@aol.com	Janet MacLeod	41 Pine Street, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:40:42	briano1055@yahoo.com	Brian ONeill	149 Charles River St	Yes	Yes	Yes	Yes
3/20/2021 13:46:42	jturk@tqlawfirm.com	Jeffrey Turk	312 Country way	Yes	Yes	Yes	Yes
3/20/2021 13:47:27	kevinpkilleen@yahoo.com	Kevin Killeen	339 Country Way	Yes	Yes	Yes	Yes
3/20/2021 14:08:54	tkdavison@gmail.com	Timothy Davison	1011 South Street needha	Yes	Yes	Yes	Yes
3/20/2021 14:11:17	stanley.keller@lockelord.c	stanley keller	Country Way, Needham	Yes	Yes	Yes	Yes

3/20/2021 14:12:17	sandykell@aol.com	Sandra Keller	Country Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 14:24:14	danielledarish@gmail.com	Danielle Darish	Country Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 15:35:11	tkdavison@gmail.com	Timothy Davison	1011 South Street needha	Yes	Yes	Yes	Yes
3/20/2021 15:45:24	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/20/2021 16:41:59	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/20/2021 17:29:35	rachnjim@gmail.com	Rachel Flanagan	863 Webster Street	Yes	Yes	No	Yes
3/20/2021 18:01:34	jabruzese@yahoo.com	Joseph Abruzese	30 Bridle Trail Road, Need	Yes	Yes	Yes	Yes
3/20/2021 18:25:45	turkbj@yahoo.com	Barbara Turk	Country way Needham	Yes	Yes	Yes	Yes
3/20/2021 19:45:33	thompson3.1415@gmail.c	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 20:08:19	ericsockol@gmail.com	Eric Sockol	324 Country Way, Needha	Yes	Yes	Yes	Yes
3/20/2021 20:09:25	judysockol@gmail.com	Judy Sockol	324 Country Way, Needha	Yes	Yes	Yes	Yes
3/20/2021 20:31:47	seaniemo22@yahoo.com	Sean Morris	48 Scott Rd, Needham	Yes	Yes	Yes	Not Sure
3/20/2021 20:32:26	marinazmorris@gmail.com	Marina Morris	48 Scott Rd, Needham	Yes	Yes	Yes	Not Sure
3/20/2021 21:12:51	mshillback@aol.com	Marjorie S Hillback	34 Wilson Ln	Yes	Yes	No	Yes
3/20/2021 21:52:39	adampatti@gmail.com	Adam Patti	257 Country Way	Yes	Yes	Yes	Yes
3/20/2021 21:53:22	stephpos@gmail.com	Stephanie Patti	257 Country Way needhar	Yes	Yes	Yes	Yes
3/20/2021 22:06:35	33hila@gmail.com	Hila Krikov	Fisher St. Needham	Yes	Yes	Yes	Yes
3/20/2021 22:09:17	nkrikov@gmail.com	Niv Krikov	Fisher St. Needham	Yes	Yes	Yes	Yes
3/20/2021 22:22:45	sjavaheri@mac.com	Stephaniejavaheri	1886 Central Ave	Yes	Yes	Yes	Yes
3/21/2021 0:21:05	stephpos@gmail.com	Stephanie Patti	257 Country Way needhar	Yes	Yes	Yes	Yes
3/21/2021 0:27:17	stephpos@gmail.com	Stephanie Patti	257 Country Way needhar	Yes	Yes	Yes	Yes
3/21/2021 6:27:56	petelyons28@gmail.com	Pete Lyons	1689 Central Ave, Needha	Yes	Yes	Yes	Yes
3/21/2021 7:51:22	brosen@thenorfolkcompa	Benjamin David Rosen	20 Stratford Rd.	Yes	Yes	Yes	Yes
3/21/2021 9:58:59	sbentsman@gmail.com	Sophia Bentsman	Country Way, Needham	Yes	Yes	Yes	Yes
3/21/2021 10:01:16	lbentsman@gmail.com	Lev Bentsman	Country Way, Needham	Yes	Yes	Yes	Yes
3/21/2021 10:10:31	turkbj@yahoo.com	Barbara Turk	Country way Needham	Yes	Yes	Yes	Yes
3/21/2021 10:40:37	mikeg80pc@yahoo.com	Michael Gillespie	210 Stratford Road, Needh	Yes	Yes	Yes	Yes
3/21/2021 11:41:21	crllintz22@gmail.com	Carol R Lintz	49 Carleton Dr	Yes	Yes	Yes	Yes
3/21/2021 13:07:54	elwallack@gmail.com	edward wallack	8 stratford road	Yes	Yes	Yes	Yes
3/21/2021 13:38:17	arvedon@verizon.net	ANDREW ARVEDON	29 PINE STREET	Yes	Yes	Yes	Yes
3/21/2021 14:01:17	alangsner70@gmail.com	Alan Langsner	30 Windsor Road	Yes	Yes	Yes	Yes
3/21/2021 14:55:04	mhwallack@comcast.net	Margo Wallack	8 Stratford Rd	Yes	Yes	Yes	Yes
3/21/2021 17:05:32	taraleekilleen@yahoo.com	Tara Killeen	339 Country Way Needhar	Yes	Yes	Yes	Yes
3/21/2021 17:30:36	ashleybrosen@gmail.com	Ashley Rosen	Stratford Road, Needham	Yes	Yes	Yes	Yes
3/21/2021 21:30:12	sallymck@mac.com	Sarah (Sally) McKechnie	1703 Central Ave	Yes	Yes	Yes	Yes
3/21/2021 21:51:49	sarahcbracken@gmail.cor	Sarah Bracken	South street needham	Yes	Yes	Yes	Yes
3/21/2021 21:58:02	jonathanbracken@hotmail	Jonathan Bracken	South street, Needham	Yes	Yes	Yes	Yes
3/21/2021 22:20:01	sandyjordan@comcast.ne	Sandra Jordan	Stratford Road, Needham	Yes	Yes	Yes	Yes
3/22/2021 6:37:00	sarahcbracken@gmail.cor	Sarah Bracken	South street needham	Yes	Yes	Yes	Yes

1652 Central Avenue
Needham, MA 02492

April 3, 2021

Jeanne McKnight
Chair of Needham Planning Board,

Members of the Needham Planning Board,

Lee Newman
Director of Planning and Community Development
500 Dedham Avenue
Public Services Administration Building
Suite 118
Needham, MA 02492

RE: Site Review of Proposed Project at 1688 Central Avenue

Dear Chair McKnight and All Planning Board Members,

Attached please find detailed comments regarding the proposed project at 1688 Central Avenue associated with the Neighborhood Petition submitted to you on March 22, 2021. As of this writing, 418 abutters, neighbors, and other impacted residents have signed.

We submit these comments for consideration during the Planning Board's site review process of the proposed project. We ask that you give careful consideration to these comments and enter them, along with their attachments, into the formal record of your meeting should there need to be further proceedings on the matter. Thank you for your consideration.

Yours truly,

Holly Clarke

Comments of Neighbors of 1688 Central Avenue for Consideration During the Planning Board's Site Review Process for that Location

The following comments are submitted for the Planning Board and other town departments to consider while conducting the site review process for the proposed development of 1688 Central Avenue. The proponent, Matt Borrelli, asks to build and own a large commercial building in a residential zoned area building that he will lease to the operator of a child care facility. The proposal will impact the neighbors of Central Avenue and the town as a whole forever. While daycare facilities are permitted as of right in all Needham zoning districts, the town regulates any proposed project, including those whose use is allowed as of right, to ensure that it fits within the town's development plans and guidelines. In this case:

- The project fits the Needham Zoning By-Laws' definition of a "Major Project" and, therefore, the Board should treat it as such and reject the proponent's submission of the project as only a "Minor Project."
- The proponent does not present the accurate information necessary to assess the project's impact on traffic in the area as required by Needham Zoning By-Law 7.4.5.
- The relationship between the proposed design and structures and open spaces in the natural landscape, existing buildings and other community assets is out of harmony with the surrounding area**.**

I. While Needham allows the use of residential parcels for child care facilities as of right, the town retains the authority to regulate proposed projects through site review.

Massachusetts state law Ch 40a s.3 provides:

> ...No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term ''child care facility'' shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

In keeping with state law, Needham's By-Laws permit the use of parcels in residential districts for child care facilities. Under both state law and the town's By-Laws, such facilities are subject to the town's regulations concerning the building's characteristics and its impact on the surrounding area. In this case, the proposed building at 1688 is subject to site review under Needham's By-Laws. Section 7.4.1 states:

> The purpose of this Section is to provide a comprehensive review procedure for construction projects, herein defined, to insure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse

impacts of such development, and to promote development which is harmonious with surrounding areas.

Section 7.4.6 lays out the Planning Board's responsibilities and authority when conducting a site review:

> In conducting the Site Plan Review, the Planning Board shall consider the following matters:
> (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;
> (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
> (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
> (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
> (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and
> (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

Massachusetts Courts have made clear that town authorities tasked with administering site plan reviews have the authority to impose stricter requirements than those otherwise required by town by-laws as a condition of site plan approval. *Muldoon v. Planning Bd. of Marblehead*, 72 Mass. App. Ct. 372 (2008).

II. The Planning Board should reject the current site review request and require the proponents to apply for site review as a Major Project.

The Needham Zoning By-Laws provide two levels of site plan review, Major and Minor Projects. In this district, the By-Laws define a Major Project as, "Any construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces." A Minor Project is, ".. Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project." (S. 7.4.2). Section 1 of the By-Laws defines gross floor area as, "the sum of the areas of the several floors of each building on a lot including areas used for human occupancy in

basements, attics, and penthouses, as measured from the exterior faces of the walls, but excluding cellars, unenclosed porches, balconies, attics, or any floor space in accessory buildings or in main buildings intended and designed for the parking of automobiles or for accessory heating and ventilating equipment, laundry, or accessory storage."

A. The proposed project is a Major Project because it requires the creation of 25 or more new off-street parking spaces.

The proponent asserts that the project requires only 24 parking spaces for its operation of a day care facility for 100 children. Citing the metric Needham has used in the past to determine parking requirements for day care centers, the plans include only 11 spaces for children and 13 spaces for staff. The proponents offer no explanation for the program's actual staffing plans to justify this part of the design. In its March 11 letter accompanying the submission of its request for site review, the proponents write that the new building, "will allow (the operators) to expand and have the necessary room for children."

The By-Laws require the Planning Board to assess, "the adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises" s.7.4.6(c). In this case, the proposed plan should be found inadequate and the plan rejected.

There are six distinct reasons why the proponent's claim of 13 staff parking spaces is erroneous and should be rejected by the Board:

- The state mandated staff: child ratios require more than 13 staff for the operator's current licensed capacity.
- The state mandated staff: child ratios require more than 13 staff to operate a program for 100 or more children in the designed building.
- The amount of parking required by neighboring towns for the proposed project exceeds the proposed 13.
- Similarly sized programs in Needham have more than 24 spaces.
- The proponent's own submissions indicated the planned parking is insufficient.
- The Needham Fire Department has commented that spaces near the building will need to be marked, "No parking- drop off area only" meaning that the facility will need more than even the 24 spaces it proposes.

1. The EEC required staff: child ratio and the current licensed capacity of the proposed operator establishes this project requires more than 13 parking spaces for staff.

The Department of Early Education and Care (EEC) minimum staff: child ratios are found at 606 CMR 7.10 (Attachment 1). The number of staff required changes with the ages of the children served, with younger children requiring more staff. The EEC also reports providers' program capacity on the EEC website. The Needham Children's Center at 858 Great Plain Avenue (the operator proposed for 1688 Central Ave.) is licensed as a large group care facility and is currently listed with the capacity to serve 113 children. The program's 23 Dedham Avenue location also operates as a large child care facility, with the capacity to serve an additional 30 children (Attachment 2). Table 1 below presents the age groups as set by EEC, the mandated staff:child ratio, the number of children in each age group for which the proposed operator is currently licensed at 858 Great Plain Avenue, and the minimum number of staff required to

be on site for the permitted number of children. The table includes the one full time administrator EEC requires to be on site at all times. This analysis indicates that the program for 113 children in the age groups for which the proposed operator is currently licensed requires a minimum of 16 staff. These numbers do not include interns or volunteers the program may utilize, nor does it include any additional staff members needed for coverage during lunch or break times. Using this analysis, the proposal requires 27 parking spaces and is a Major Project.

Table 1: Staff Required Using EEC Staff:Child Ratios and NCC Current Program

Age Group	Staff: Child Ratio	NCC Capacity	Minimum Staff
Infant	1:3, one additional staff for 4-7 children	7 children	2 staff
Toddler	1:4, one additional for 5-9	18	4
Preschool	1:10	52	6
Kindergarten	1:12	0	0
School Age	1:15	36	3
Infant toddler		0	
Toddler Preschool		0	
Preschool 15mo-k		0	
Preschool SA 33mo-8 yr		0	
MultiAge Group		0	
State Required Administrator			1
TOTALS		113 children	16 staff

2. **A comparison of the EEC required minimum staff: child ratios to the age designations on classrooms in the proponent's drawings also suggests this project requires more than 13 parking spaces for staff.**

The proponent's drawings designate rooms for specific age groups and indicate that the operator intends to enroll a larger number of younger children than in the current program. The submission shows two rooms marked as "nursery," two as "toddler," three as "preschool" and two as "pre-k." None are marked as kindergarten or school aged, and the rooms designated as craft, play space and nursery playroom have not been included in this analysis. A younger population of children requires additional staff. Table 2 below lists the room designation, staff: child ratio, the number of children in each room and the minimum number of staff required for this distribution. Under this analysis, a program for 100 children would require a minimum of 19 parking spaces for classroom staff and the required administrator. This number makes no allowance for volunteers, interns or staff coverage during lunch or

breaks, yet still brings the total minimum number of parking spaces required to 30. The proposal is a Major Project.

Table 2 Staff Required Using EEC Staff:Child Ratios and Proposed Building Design

Room Title	Staff: Child Ratio	Children	Minimum Staff
2 Nurseries	1:3, one additional staff for 4-7 children	7 children/room maximum = 14 children	4 staff
2 Toddler Rooms	1:4, one additional for 5-9	9 children/room maximum = 18 children	4 staff
3 Preschool Rooms	1:10	20 children/room maximum children proportion*	6
2 pre Kindergarten	1:10	20 children/room maximum*	4
Administrator			1
TOTALS		100 children	19 staff

*The number of children in the preschool and prekindergarten rooms for this analysis was 68 and was distributed evenly. (100 overall capacity - (14 + 18 in the nursery and toddler rooms) = 68).

3. **An analysis of the amount of parking neighboring towns would require for this project strongly suggests that the proposal requires more parking than included in the current design and should be reviewed as a Major Project.**

An analysis of the parking other towns require for a project this size is instructive in considering the necessary number of parking spaces. Table 3 presents the number of parking spaces 14 nearby communities would require for a child care facility with 13 staff members and 100 children. It includes the standards each town uses in determining the necessary number of parking spaces. Some towns use the square footage of the building to determine parking requirements, others use the program size. The towns using child and staff information all require more than 11 spaces to be allotted for 100 children.

Eight towns would require the proposed project to have more than the requested 24 spaces. The average number of spaces required would be 33. Norwood requires the fewest spaces at 30 and Medfield requires the most at 42. Four towns leave the determination of the number of spaces required to the building inspector. Two towns, Lexington and Sherborn, set a minimum number of spaces and require the submission and approval of parking plans by the permitting authority. Wellesley is included in the first group of eight towns, as it would require 32 parking spaces for a project of this size. However, Wellesley limits the construction of child care facilities in residential districts to 2,500 sf, which would

prevent the construction of this proposed project.[1] This data supports the conclusion that this proposal requires more than 24 parking spaces and is a Major Project.

Table 3: Child Care Parking Requirements For Neighboring Towns

Town	Regulation	Requirement	Result for Proposal as Drafted	
Belmont	Zoning By-Law S. 5.1	discretion of building inspector		
Brookline	Zoning By-Law S. 6.01, 4 a.	minimum set by the building inspector		
Concord	Zoning By-Law 7.7.2.1	1 space for every teacher and employee +1 space for visitors +1 space for every six children based on the largest enrollment on site at any given time	**31** (13+1+17)	Planning Board may reduce number required, May require and retain control of a Parking and Traffic and Management Plan
Dedham	Zoning By-Laws 7.6.7	1 space for every teacher & employee +1 space for visitors +1 space for every 6 children based on the largest enrollment on site at any given time	**31** (13 + 1 + 17)	

[1] To be clear, this analysis used the proponent's staff numbers. Using an increased number of staff would raise the number of parking spaces required in these towns. In its original Traffic Impact Report, the proponent writes, "Over time, the location could accommodate 80 to 100 students although 120 appears to be allowed"(p.2). If the proponent's intention is to actually allow the operation of a program for 120 children, the number of parking spaces required by this larger program would be even larger in towns basing spaces on enrollment.

Lexington	Zoning By-Law S.135-5.1.4 And S.135-5.5.2	1 per 500 sq.ft. minimum +5 feet rows for snow storage during plowing	**20 minimum***	***Town requires submission of parking plan and traffic study for any permit
Medfield	General By-Laws S. 300-8.1	1 space per each full-time employee + 1 space per each shared part time position +1 per 300 sq ft of classroom space	**42** (13 + 28.3) 8500sf/300)*	***Estimated classroom space
Newton	Zoning Ordinance C. 30, S. 5.1.4.	1 space per employee plus 1 space for every 5 children	**33** (13 +20)	
Norwood	Zoning By-Law 6.1.3	1 space per employees on largest shift +1 space per every six children enrolled	**30** 13 + 17	
Sherborn	Zoning By-Law S.5.1.1 and 5.1.3	Minimum of 10 parking spaces and approval of a parking plan by the Planning Board	**Minimum of 10**	

Walpole	Zoning By-Law S. 8	Discretion of the Building Inspector or applicable Special Permit Granting Authority.		"Adequate parking for occupants, employees, members, customers, clients and visitors"
Wayland	By-Law S 198-506, 506.1.9	1 for every 4 persons of the facility's licensed capacity * + 3 designed for the safe and convenient loading and unloading of persons.	**32*** (100 students+13 staff)= 113/4= 28.25 + 3)	The licensed capacity of the building is likely higher than the 113 staff + children number used**.**
Wellesley*	Zoning By-Law S. 21	1 for each 150 sq. ft.* occupied by buildings but not less than 3.2 spaces per 1,000 sq. ft. of floor area of buildings.	**32**	*Rule only applies to Educational Districts A, Business Districts A, Industrial Districts A *Wellesley limits child care facility size in residential districts to 2,500 sq.ft. size in residential districts to 2,500 sq.ft.
Weston	By-Law VIII C. 1	Sufficient spaces to prevent any parking off site or on public way determined by inspector of buildings or Board with authority		
Westwood	By-Law 6.1.4.3	1 space per employee +2 spaces per classroom	**31** 13 + (2x9)	

4. All similarly sized child care facilities in Needham have more than 24 parking spaces available.

The need for more than the 24 spaces planned by the proponents is also demonstrated by the fact that the similarly sized child care programs in Needham operate with more than 24 parking spaces. The EEC lists six Needham programs licensed for between 85 and 149 children, and Needham's GIS mapping shows that all six operate at sites with access to more than 24 parking spaces. Table 4 below presents the name of each program, the number of children it may enroll according the ECC, and the number of parking spaces.

Table 4 Parking Availability at Similarly Sized Needham Child Care Programs

Program	Number of Children	Number of spaces	
Kindercare 1000 Highland Ave	93 children	49 parking spaces	
Tobin Boulder Schools dba Club 1458 1250 Great Plain Ave	85	Lot at Newman School	
Carter Center for Children & Carter Nursery School 800 HIghland Ave	119 total: Two groups: 59 & 60	33 spaces	One-way lot with separate entrance and exit
Chestnut Children's Center 167 Chestnut St	149	31 spaces + 13 spaces in next lot	One way with separate entrance and exit
Knowledge Beginnings 206 A St	117	31 spaces Next to another lot	Separate entrance and exit
Needham Children's Center 858 Great Plain Ave	113	3 next to building 30 in lot Second lot available	

5. The proponent's submissions indicate the plan requires more parking.

The "Traffic Impact Assessment'' submitted by the proponent affirms that the plan requires more parking. Starting with an analysis based on 80 children rather than the 100 children listed on the the building plans, the report goes on to state, "The parking could easily accommodate over 100 children without creating on site grid lock provided staff is available to assist children into the building where the staff members get that child settled and the initial staff member returns. If a parent insists on entering the facility, they will be directed to park in an unoccupied parking stall or enter the site all the way to the end… to block a staff member's car who is parked for the day" (p.2). The initial traffic impact study also writes that, "Over time, the location could accommodate 80 to 100 students although 120 appears to be allowed" (p.2). This statement raises questions about the actual intended size of the program, making even more concerning the submission's undercounting of necessary parking spaces.

Further, the Storm Water Report provides that, "Snow shall be plowed into wind rows at the edge of the paved areas. Excess snow shall be removed from the site and deposited in approved snow farms" (p.11.) The possibility of losing parking spaces to banked snow during the winter requires additional parking spaces in the plan, further confirming that this is a Major Project.

6. **The Needham Fire Department commented that parking near the building will need to be designated. "No parking- drop-off only".**

After reviewing the proposed plans, the Needham Fire Department commented that the spaces nearest the building will need to be designated as "no parking- drop off only." Chief Condon wrote that this would be necessary to insure access for ambulances or other fire department apparatus in case of any emergency. Designating these spaces as "drop off only" requires the addition of more spaces in order to provide the necessary capacity to allow families, visitors, deliveries and guests to park on site, and provides yet another reason why this project must be reviewed as a Major Project.

B. The proposed project is a Major Project because it involves an increase in gross floor area by 5,000 or more square feet.

As noted above, the Zoning By-Law defines a Major Project to include "[a]ny construction project which involves: the construction of 10,000 or more square feet gross floor area; ***or*** an increase in gross floor area by 5,000 or more square feet…."(emphasis added). The by-laws' definition of gross floor area the sum of the areas of the several floors of each building on a lot…". The definition of gross floor area makes clear that this determination is calculated using all of the buildings at a site. Currently, three buildings stand at 1688 Central Avenue: a single family home, a detached garage and a barn. According to the multiple listing service for the property, the house is 1661 sf. Using the Needham town GIS, the garage is approximately 1,200 sf and the barn is 2,320 sf, for a total of 5,181 sf on site, and a gross floor area of 3,981 sf (*i.e*., the garage is not included in gross floor area). The proponents plan to demolish the house and garage, and build a 9,966 sf building, parking areas, playgrounds and landscaped areas. The barn will be kept and used for "ancillary and storage purposes" (*See* Proponent's Traffic Impact Study, p.1). If built as designed, the project will increase the gross floor area on the lot by 8,305 sf, (the increase in square footage over the existing home). The proposal, therefore, meets the bylaw's definition of a Major Project because it involves an increase in the gross floor area ***at the site*** by more than 5,000 sf.

The proponent states that, "[p]ursuant to Section 7.4.2 of the Bylaw, this project qualifies as a "Minor Project" because it involves the construction of more than 5,000 but less than 10,000 square feet of gross floor area, and because it involves the creation of fewer than 25 new off-street parking spaces." (Mar 11, 2021 letter to Planning Board). Not only is this wrong because of the parking issue described above, it is wrong because it completely ignores the operative square footage language — regarding increases in gross floor area of 5000 sf or greater. To the extent the proponent contends that the project does not constitute a Major Project because it does not involve an increase in gross floor area ***of an existing building*** of more than 5000 sf, that contention would be based on a misreading of the language of the By-Law. The wording used in this section of the By-Law does not limit Major Projects to proposals for the expansion ***of existing buildings*** by more than 5,000 sf. The section uses more expansive language, as it includes any construction project that "involves...an increase in gross floor area by 5,000 or more square feet." If the intention was to limit this section to additions of existing buildings, the By-

Laws could simply have said so. In fact, the By-Laws do just that by defining a Major Project in a Business, Avery Square Business, or Hillside Avenue Business Districts as, "any construction project which involves a new building; or an addition which increases gross floor area ***of an existing building*** by 1,000 or more square feet." (Emphasis added). The difference in language makes clear that the relevant section of the By-Law here classifies projects such as this one, which increase the gross floor area ***on the site*** by 5,000 or more square feet, as Major Projects, rather than just applying to additions to existing buildings. [2]

This plain reading of the By-Law fits its purpose: to provide for a comprehensive review process for construction projects which assures compliance with the goals of the Master Plan and the Zoning By-Laws, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas. In this case, the proposed development project would construct a very large commercial project in a residential neighborhood which already has extreme traffic challenges and safety concerns. The By-Law recognizes the potential impact of large projects which expand the square footage on a site by more than 5,000 sf of gross floor area and classifies them as Major Projects. Any other reading leads to the anomalous conclusion that a smaller project, such as adding 5,000 sf of gross floor area to a 1,000 sf building, would be classified as a Major Project, while a project such as this one, which constructs a 9,966 sf building, stands next to another 2,320 sf two story building, and increases the gross floor area on the site by 8,305 sf, would receive the more limited review process of a Minor Project.

Larger projects merit the procedural safeguards included in the Major Project site review process, including the public notice requirements, written reports by reviewing departments, the right to a hearing by impacted residents and the issuance of a special permit to formally safeguard the interests protected by the By-Laws and to make representations enforceable. As proposed, this project would build a commercial building on a residential lot, with a footprint an order of magnitude larger than any other home on this section of Central Avenue. It proposes only a 35 foot setback from the street, far less than any other building on this part of Central Avenue. It increases the lot's grade by six feet. It has already cut down mature trees on the property and proposes to cut others. It will impact traffic and pedestrian safety for neighbors, Central Avenue and surrounding streets. The business will bring traffic into and out of the site throughout the day, as well as increase noise and light. This development fits the By-Law's definition of a Major Project and should be treated as such, with the appropriate safeguards to protect the interests of the neighbors and the town.

I. The Planning Board should reject the site plan because it does not present the accurate information necessary to assess the project's impact on traffic in the area as required by Needham Zoning By-Law 7.4.5.

[2] The By-Law defines a minor project as, ".. Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project." The Proponent gets no help from this provision, because it explicitly carves out projects "defined as a Major Project" and, as we point out above, this project ***does*** qualify as a Major Project.

Needham Zoning By-Law 7.4.5 requires an applicant to submit information concerning, "projected traffic volume in relation to existing and reasonably anticipated conditions; and... other information as may be necessary to determine compliance with the provisions of the Zoning By-Law." Section 7.4.6 establishes the review criteria, "In conducting the Site Plan Review, the Planning Board **shall** consider the following matters: ... (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets"(emphasis added). One of the most serious consequences of the proposed development that the Planning Board must evaluate is its impact on traffic on Central Avenue and the adjacent streets. Yet, the traffic impact statements submitted by the proponent are incorrect, contradictory, and incomplete.

A. Central Avenue is heavily traveled and congested in non-Covid 19 times and does not operate at anywhere near an "A" level of service.

The impact of this project on the surrounding neighbors on Central Avenue, adjacent streets and all users of this arterial road cannot be overstated. The proponent begins with the assumption that Central Avenue currently functions at an "A" level of service during peak hours, "with little or no delay during the weekday commuting peak hour"(Original Traffic Report, p.2, Revised Report Executive Summary). This is simply untrue. It is contradicted by the actual lived experience of town residents that use the road as well as by traffic studies done by the town. As the neighbors write in their letter to the Planning Board and Town Departments:

> We are deeply concerned about the impact the project will have on safety and traffic on Central Avenue and the surrounding streets.
>
> In normal, non-COVID, times, morning weekday traffic along Central Avenue in this area is extremely heavy and backed up. The morning rush hour extends from approximately 6:30 to 8:30 AM and regularly causes solid backups from the RTS to Temple Aliyah, and often from Newman School back to Temple Aliyah.
>
> To be blunt, during the weekday morning commute, Central Avenue is often an intermittent parking lot all the way to Cedar Street. Evening traffic congestion begins with the release of school and extends through approximately 6:30. Adding the additional vehicles in and out of the facility parking lot –whether coming from the south and joining the backed up traffic before entering the facility's driveway or coming from the north and needing to make a left turn across the backed up northbound traffic and exiting the facility to again add to the backed up traffic -- will make a bad situation much worse and severely impact the ability of neighboring residents to get into and out of their homes and as pedestrians attempt to safely try and cross Central Avenue at Charles River Street and elsewhere.
>
> In addition, Carleton Drive, Pine Street, Country Way, Charles River Street, Fisher Street, Village Lane, Russell Road, Walker Lane, and South Street will all be negatively impacted by the proposed facility, either trying to maneuver into an even denser traffic line on

> Central Avenue or trying to escape the traffic by cutting through roads not designed to handle heavy commuter traffic…
>
> Given the traffic line that occurs during normal weekday rush hour, the level of service for a turn into or out of the facility driveway and along Central Avenue itself, is likely an "E" or "F" without the childcare facility and will be made even worse with it. We are not traffic experts, but a short google search of conditions defining different roadway levels of service, seems instructive: (Graphic source: https://policymanual.mdot.maryland.gov/mediawiki/index.php?title=Roadways:_Facility_Selection).
> The illustration of Levels of Service E and F are what typifies the morning rush hour on Central Avenue in the vicinity of the facility during normal times.

As of this writing, more than 400 people have signed the letter.

The reality of the traffic issues on Central Avenue in general and on this section of Central Avenue in particular are well known in town. In 2014, the town commissioned Pare Corporation to analyze the likely impact of placing the Department of Public Works on Central Avenue at the site of the RTS. The report documents the impact of the operation of both the RTS and the Newman School on traffic. Pare wrote,

> The RTS currently has operating hours of 7:30 to 4:00pm Tuesday- Saturday. Based on correspondence with the town, the heaviest periods can be observed in the early morning, just after the RTS opens, and in the afternoon, just prior to closing. Tuesday and Fridays are typically busy days...Additionally, the Newman School is located approximately one-half mile north of the proposed site on Central Avenue. The Newman School is a heavy traffic generator in the hour surrounding the a.m. drop off period and the p.m. dismissal period.
> https://www.needhamma.gov/DocumentCenter/View/10910/015-Volume-3-Facilities-Master-Plan-2014-Traffic-Study?bidId=

At the time, vehicles exiting the site experienced "D" and "E" levels of service. Ultimately, the town opted not to place the DPW at the RTS due to concerns about the impact of traffic on the ability of town vehicles to enter and leave the site, as well as the impact the additional DPW traffic would have on the traffic. When the town added the John Cogswell Building to the DPW site, it was with the express representation that the new building would store seasonal equipment only and would not add to traffic on Central Avenue. The concerns of 2014 have not only not been alleviated, they have been exacerbated. The RTS and the Newman School both impact traffic in the neighborhood surrounding 1688 Central Avenue. Traffic to the RTS contributes to the area's backups. The neighborhood is in the Newman School district, and many cars headed to and from the school originate here. The town's fleet of school buses leave Newman onto Central Avenue early in the morning rush hour and then stop at individual houses along Central Avenue for safety reasons, all contributing to traffic delays. The Planning Board must address the impact of building a large daycare facility in a residential area facing these realities and an accurate traffic impact statement should be the starting point.

B. Other information shows that the proponent's updated traffic analysis undercounts traffic on Central Avenue.

The proponent's based their original report on observations made on February 4, 2021. That report stated 661 vehicles were observed traveling north on Central Avenue and 152 were traveling south between the morning peak hour of 7:30 to 8:30 am. (Figure 3 of proponent's Traffic Study p.12 and Projected Peak Hour Chart p.20). After being told that the observations during Covid would not be valid as they would severely undercount the true traffic, the proponent submitted a revised report which included pre-Covid traffic volumes from the Needham Engineering Division. Without explanation, the report states a 2016 count obtained just south of the RTS was the most useful. The report does not indicate when the count was taken. The report then uses a growth rate of 1.6% to extrapolate a morning peak hour of 1166 cars headed northbound and 295 headed south bound.

A traffic count conducted by Needham in 2006 at the intersection of Central Avenue and Charles River Street in preparation for the installation of a traffic signal suggests that this extrapolation may still undercount the traffic on Central Avenue. On October 11, 2006 the vehicle counts for the morning peak hour in front of 1688 Central Avenue were 974 headed North and 138 headed south.[3] Applying the proponent's growth rate of 1.6% annually would estimate the number of vehicles passing 1688 Central Avenue in 2021 during the morning peak hour would be 1236 vehicles traveling northbound and 176 southbound. This projection makes no allowances for any specific traffic generating activities or development that have occurred during the past 15 years. Changes in the operating hours of the Newman School and the elimination of free school bus transportation for much of the neighborhood have greatly increased peak hour traffic.

C. **The proponents present, without explanation, different numbers of expected site generated trips in its two reports.**

The Proponent's first report states, "that the project is expected to generate approximately 104 new morning peak trips with 55 inbound and 49 outbound " (p.2). In contrast, the second report states, "This project is expected to generate 76 new morning peak trips with 40 in bound and 36 outbound" (p 2). No explanation is offered for this change, which has nothing to do with the impact of the pandemic on Central Avenue traffic, and the Planning Board should press the Proponent on this point to ensure that it is not changing traffic numbers to artificially appear that its project will have a minimal impact traffic.

Under both scenarios, the trip generated during the peak hour will have a significant impact on the immediate neighbors and the traffic on Central Avenue. With 104 trips in the peak hour, 1.7 cars will

[3] The total number of cars headed north past 1688 Central is reached by adding the number of vehicles which went through the intersection on Central Avenue northbound, the number turning left from Charles River Street eastbound and the number turning right from Charles River Street westbound. The total number of cars headed southbound past 1688 Central Avenue is reached by using the number of cars on Central Avenue southbound that reached the intersection during the peak hour. (Central Avenue at Charles River Street Turning Movement Count (7:00-9:00 AM), attachment 3.)

be trying to enter or leave the center each minute. If the site generates 76 trips, 1.2 cars will try each minute.

D. The proponent's submission is incomplete because it provides no information about the project's impact on traffic flow on the neighbors.

The By-Laws require the consideration of any project's impact on traffic flow both on the site and on surrounding streets. The importance of traffic to this particular project was explicitly made known to the developer. Yet, the information submitted concerning traffic is incomplete. In its April 2 comments submitted on the proposal, the Department of Public Works noted the submitted traffic report does not include data about evening peak hour traffic conditions, accident data and details about the driveway opening and sidewalk improvements in front of the property.

In addition, the proponent's Traffic Impact Report fails to compare future expected traffic growth with and without the proposed building, and does not include a discussion of expected nearby off-site developments. The reports present no discussion of the increase in the number of daily trips generated by a building of this size and use compared to maintaining the parcel's current use as a residence. Using standard ITE formulas included in the proponent's report, a child care facility at 9,966 square feet generates 475 trips, a facility for 100 children generates 409, and a facility for 120 children generates 491 trips. In comparison, the ITE estimates a single family dwelling to generate 10 trips. These numbers present the increased level of traffic abutters and the neighborhood will endure throughout the day if the project is allowed to proceed at its proposed size. The By-Laws require the Planning Board to review the true impact of a proposed development on the area. The proponent has not done so; the Board must.

The site review application also omits any information about the impact of the placement of the driveway on surrounding homes and Temple Aliyah. While the DPW was particularly interested in the impact of the driveway design on the catch basin, the placement of the driveway is critical to the traffic flow and the ability of neighbors to enter and leave their own property safely. The By-Law specifically requires the Planning Board to review the placement of driveways in relation to traffic and adjacent streets. The proponents should demonstrate how the addition of a daycare center with 100 children and staff will allow neighbors to safely enter and leave their homes at all times. The operation of the day care center brings traffic into and out of the site during the highest traffic periods. The most recent report states the majority of site bound traffic will have to cross the heavier northbound traffic lane to enter the site in the morning. Simultaneously, other cars will be seeking leave, some trying to turn right and increasing the heavier northbound traffic, and others needing to cross the busier lane to turn left.

The impact of the driveway on neighbors is not a theoretical concern. Table 5 lists the placement of neighborhood driveways in relation to the proponent's design. This data makes clear that the family at 1681 will be blocked from entering Central Avenue each time a single car waits to enter the daycare center. The family at 1689 will be blocked if two cars headed south wait to turn into the center. The other homes on the street and the Temple will also be impacted by cars waiting to turn into the daycare's driveway, as well as by cars exiting the driveway and adding to the already existing backup along Central Avenue traveling north. The delay as cars wait to enter the facility will create a ripple effect in traffic that will impact the adjacent homes and streets. Moving the driveway simply shifts the brunt of the problem to different homes. Yet, the proponent's site review offers no information about the issue.

Further, the placement of the driveway impacts the light glare created by headlights onto neighboring properties. By-Law s. 5.3.4 requires off-site glare from headlights to be controlled by the

proponents. It is essential that screening be designed to shield all neighboring buildings from the impact of traffic coming onto and off site, including neighbors on the north side of the site and across the street. The submission does not address the impact of headlight glare.

The plan also gives no consideration to the activities which are conducted at Temple Aliyah, which will hopefully return to its normal activities once the pandemic ends. For example, how will the addition of the daycare center impact the traffic during after-school activities? The proponent also ignores the impact of the operation on pedestrian safety near the site. The proponents do not mention these issues in either of its Traffic Impact Reports, or in its March 11 letter to this Board. The site review should be rejected.

Table 5: Distance from Proposed Driveway to Existing Driveways

Address	Distance to Driveway	Direction from site	Number of Cars 16' length** 3 ft spacing	Number of Cars 17' length 3 ft spacing
1663 Central	Opposite		-	-
1681 Central	49.5'	North	2	2
1695	117	South	6	5
1703	157	South	8	7
1708 Central	172	South	9	8
1664 Central (Temple)	208'	North	10	10
1653 Central	246'	North	12	12
1652 Central	273'	North	14	13

*Standard length for a car: 15-16 feet
https://anewwayforward.org/average-car-length/
** Standard length for an Odyssey Minivan: 17'
https://owners.honda.com/vehicles/information/2020/Odyssey/specs#mid^RL6H9LKXW
Car numbers are rounded down to the lowest full car number.
The distance of the neighbors' driveways from that of the proposed project was measured using Needham's NSIS mapping.

E. The proponent's offer no information about the plan's impact on the adjacent streets.

The By-Laws require the proponent to provide the Planning Board with information concerning "reasonable anticipated conditions," but no information has been offered about the impact of the increased traffic and the increase in delays on the intersections of Central Avenue and Marked Tree, Pine

Street, Carleton Drive, Country Way and Charles River Drive. In the absence of this information the site review should be rejected.[4]

F. The Board should enlist the assistance of the Traffic Management Advisory Committee.

Finally, the By-Laws permit the Planning Board to send copies of any proposed building project to any town agency deemed appropriate. (s.7.4.4). The neighbors ask the Planning Board to enlist the comments of the town's Traffic Management Advisory Committee, which may offer information and perspective about the actual traffic conditions on Central Avenue and what, if any measures could be used to address the impact of the proposed project.

II. The Planning Board's review of the proposed design should find that the relationship of structures and open spaces to the natural landscape, existing buildings and other community assets is out of harmony with the surrounding area.

The building as proposed is out of harmony with the surrounding area. It is significantly larger than surrounding homes; it is closer to the street than any other building on this section of Central Avenue; and its grade is higher. Table 6 below reflects the footprints and setbacks of the proposed building, the nearby homes and the Temple as measured using the town's GIS map. The facts are that residences in this area have a smaller footprint than the proposed project and all buildings are set much further back than the design proposes. The general rule here is that larger buildings, including the Temple, are set further back from the street. In referring to its size, the proponent's March 12 letter to this board states that it is smaller than Temple Aliyah and that it is within the guidelines for residential homes in the area. Needham's zones this area residential, and it is important to consider the impact on the residential nature of the area of putting two large non-conforming buildings next to each other.

TABLE 6: Comparison of Footprint Size and Setback of 1688 Central Avenue to Neighboring Homes and Temple Aliyah

Address	Approximate Footprint	Proposed Footprint Is % Larger	Approximate Setback
1688 Central	9960 + 2835(existing Barn)= 12,795 sf	-	40'
1708 Central	1612 sf	794%	65'

[4] Any request by the proponent to waive submission of additional information should be denied, and the site plan as submitted should be rejected. *See Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283-284 n.9 (1986), which clearly states it is within the power of site plan review boards to reject a site plan that fails to furnish adequate information on the various considerations imposed by the by-law as conditions of the approval of the plan.

1652 Central	2714 (house) +830 (garage)= 3544 sf	361%	109’
1729 Central	3350 sf	382%	103’
1719 Central	2280 sf	561%	102’
1711 Central	2400 sf	533%	109’
1703 Central	2774 sf	461%	110’
1695 Central	2976 sf	430%	101’
1689 Central	2901 sf	441%	117’
1681 Central	2820 sf	454%	115’
1663 Central	2295 sf	557%	116’
1653 Central	3550 sf	360%	114’
1664 Central Temple Aliyah	20,844 sf	61%	213’

Furthermore, the entire project is front loaded on the site. From the street to the end of the proposed building and fenced playground is approximately 385 feet. The lot extends another 594 feet. The lot has the square footage to permit any building to be set further back on the property.
The Design Review Board’s comments call for the building to be re-situated, either by reconfiguring it or removing the barn. Moving the building back will also be in keeping with the requirements of By-Law s. 5.3.6, which states “Site arrangements and grading shall minimize the number of removed trees 8” trunk diameter or larger.” Requiring the building to be set back further could preserve a large tree currently destined to be removed, which is especially important given the number of trees that have already been cut. No reason has been offered for the designed placement of the building. Only a smaller, more appropriately sited building could come closer to the requirement of consistency with the residential neighborhood, while potentially reducing traffic impact. It is fully within the authority of the Planning Board and Building Officials to control both the size of the proposed building and its placement on the lot.

Conclusion

The Board should reject the proposed site review as a Minor Project, treat the proposal as a Major Project as required under the By-Law, follow that process to ensure full input from and protections of the neighbors, and carefully consider what changes in the plan and special permitting is necessary to preserve the interests of the residents of Central Avenue and the entire town.

ATTACHMENT 1

606 CMR: DEPARTMENT OF EARLY EDUCATION AND CARE

606 CMR 7.00: STANDARDS FOR THE LICENSURE OR APPROVAL OF FAMILY CHILD CARE; SMALL GROUP AND SCHOOL AGE AND LARGE GROUP AND SCHOOL AGE CHILD CARE PROGRAMS

610 CMR 7.10(9)(b)

(b) Fixed Age Groups. Children may be assigned to groups with others within their same age range, as specified by the Department provided the requirements of 606 CMR 7.10(9)(b)1. through 6. are met. The fixed age group ratios and groupings below may be used by large group and school age child care programs.

Regulation Number	Age Group/Full or Half Day Program	Maximum Group Size	Educator/Child Ratio	Educator Qualifications
606 CMR 7.10(9)(b)1.	Infants (up to 15 months old) (Full or Half Day)	7	1: 3, one additional educator for four – seven infants	At least one Infant/Toddler Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)2.	Toddlers (15 to 33 months) (Full or Half Day)	9	1:4, one additional educator for five – nine toddlers	At least one Infant/Toddler Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)3.	Preschoolers 33 months to school age (Full Day)	20	1:10	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b	Preschoolers 33 months to school age (Half Day)	24	1:12	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)5.	Kindergarten (attending first grade the following year)	30	1:15	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)6.	School Age	26	1:13	At least one Group Leader, per 606 CMR 7.09(19)(a)2.

ATTACHMENT 2

Needham Children's Center, Inc.

858 GREAT PLAIN AVE Needham , MA 02492-3030

Program Information

Name: Carole Sullivan,Susanne Teachout

Capacity: 113

First Licensed On: 01/01/1981

Most Recently Renewed: 08/03/2020

EEC Licensor: Karen Lessard

EEC Regional Office Address:
324-R Clark Street , Worcester , MA 01606

Provider Number: P-170073

Type of Care: Large Group

Provider Status: Current

Umbrella: Needham Children's Center, Inc.

Full Year Schedule

Temp/Emergency:

Open Holidays:

Accepts Children:

Drop In Care Available:

Extended Day option available:

	HOURLY		DAILY		WEEKLY		MONTHLY		OTHER	
Age Group	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**
Toddler Age Group				$135.00		$520.00				
Kindergarten Age Group				$47.00		$160.00				
Preschool Age Group				$120.00		$454.00				
School Age Group				$62.00		$561.00				

Day	Start Time	End Time
Friday	07:30:00 AM	06:00:00 PM
Monday	07:30:00 AM	06:00:00 PM
Thursday	07:30:00 AM	06:00:00 PM
Tuesday	07:30:00 AM	06:00:00 PM
Wednesday	07:30:00 AM	06:00:00 PM

Ages Served and Capacity

Infant (birth - 15 mo)	7
Toddler (15 mo - 33 mo)	18
Preschool (33 mo - K)	52
Kindergarten	0
School Age (5 yr - 14 yr)	36
Infant Toddler (birth - 33 month)	0
Toddler Preschool 15 mo - k	0
Preschool SA 33 mo - 8 yr	0
Multi-Age Group (birth - 14 yr)	0

Needham Children's Center Inc.

23 Dedham Ave Needham , MA 02492-3007

Program Information

Name: Susanne Teachout

Capacity: 30

First Licensed On: 01/31/1989

Most Recently Renewed: 08/03/2020

EEC Licensor: Karen Lessard

EEC Regional Office Address:

324-R Clark Street , Worcester , MA 01606

Provider Number: P-170074

Type of Care: Large Group

Provider Status: Current

Umbrella: Needham Children's Center, Inc.

Full Year Schedule

Temp/Emergency:

Open Holidays:

Accepts Children:

Drop In Care Available:

Extended Day option available:

	HOURLY		DAILY		WEEKLY		MONTHLY		OTHER	
Age Group	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**
Preschool Age Group						$445.00				

Day	Start Time	End Time
Friday	07:30:00 AM	06:00:00 PM
Monday	07:30:00 AM	06:00:00 PM
Thursday	07:30:00 AM	06:00:00 PM
Tuesday	07:30:00 AM	06:00:00 PM
Wednesday	07:30:00 AM	06:00:00 PM

Ages Served and Capacity

Infant (birth - 15 mo)	0
Toddler (15 mo - 33 mo)	0
Preschool (33 mo - K)	30
Kindergarten	0
School Age (5 yr - 14 yr)	0
Infant Toddler (birth - 33 month)	0
Toddler Preschool 15 mo - k	0
Preschool SA 33 mo - 8 yr	0
Multi-Age Group (birth - 14 yr)	0

Source: https://eeclead.force.com/apex/eec_childcaresearchproviderdetail?id=001j000000qhjokAAA

Attachment 3
Traffic Count Conducted by the Needham Engineering Division
October 11, 2006

CENTRAL AVENUE AT CHARLES RIVER STREET TURNING MOVEMENT COUNT (7:00-9:00 AM)													
DATE	APPROACH	MOVEMENT	7:00-7:15	7:15-7:30	7:30-7:45	7:45-8:00	8:00-8:15	8:15-8:30	8:30-8:45	8:45-9:00			
10/11/06											AM PEAK HOUR		
	CENTRAL AVENUE SOUTHBOUND										7:30-8:30 (1487 VEHICLES)		
		LEFT	3		5	2		1	1	3			
		THRU	21	37	25	36	42	35	41	46	% H.V./BUS = 5.4%		
		RIGHT	3	4	4	4	4	5	3	8			
	CENTRAL AVENUE NORTHBOUND												
		LEFT	6	22	28	19	22	33	18	12			
		THRU	111	188	194	194	198	180	157	106			
		RIGHT		1	3	2	1	2	3	4			
	CHARLES RIVER STREET EASTBOUND												
		LEFT	21	53	53	57	42	45	42	37			
		THRU	10	27	27	37	29	30	31	34			
		RIGHT	7	8	3	11	6	7	6	11			
	CHARLES RIVER STREET WESTBOUND												
		LEFT					1		2	1			
		THRU	10	5	22	21	27	19	19	18			
		RIGHT	4		5	3	1	2	2	5			
			196	345	369	386	373	359	325	285			

From: Meredith Fried
To: Selectboard; Planning
Subject: 1688 Central Project
Date: Sunday, April 4, 2021 1:51:57 PM

To the Select Board and Planning Board of Needham –

My name is Meredith Fried and I live at 136 Stratford Road in Needham. First, thank you all for your service to our town. I understand you deal with myriad projects and issues and appreciate your attention to making good choices for our town and our residents. I have lived in Needham for more than 18 years and am grateful to those who have worked to make this a wonderful town for our families.

I am writing to join friends and neighbors in our concern around the proposed project at 1688 Central Avenue. I was part of a call with the day care center owners recently and they certainly seem like lovely people. I think the idea of having a child care center nearby – especially one that sounds like it is run with wisdom and heart – is a nice one. However I have concerns about the way the project has been proposed and the potential challenges it will pose for people in neighborhoods on this side of town.

At the outset, my understanding is that this project has been designed so that it doesn't require the scrutiny of a "major project." However it seems to fall only slightly below that on several levels and makes me very concerned that once it is created it will then be ripe to ask for variances for additions, building renovations and parking spaces that would make it a much bigger center than it's being sold as at the moment. I think if the builders and day care center owners would be willing to somehow codify that this center would never get beyond the size that's being discussed, I would have many fewer concerns. However, without that I am left to imagine that my current concerns would only increase once this becomes a larger child care facility.

My main concern is based on the increase in traffic along Central Avenue. The developer has provided traffic studies but they seem rather disingenuous, as they were done during our current pandemic. In the past year since the pandemic began, traffic has decreased SIGNIFICANTLY. Though it has started to rise up from zero, as it was last spring, it is certainly nowhere near the level it was at pre-pandemic. If for no other reason, there is only half the population attending Newman on any given day. However, I know it's also significantly reduced by people (like my husband) working from home and not driving down Central Ave.

I have concerns about adding to the traffic on Central not just from a convenience standpoint but from a safety standpoint as well. One concern is the ability for emergency vehicles to safely pass with significantly increased traffic. I also have concerns about having many people trying to turn left from Central into the proposed daycare as well as concerns about the safety of children/families walking or biking down Central on their way to Newman, Pollard or the High School. While eliminating that left hand turn and forcing people to loop around to Charles River may help the Central Ave traffic, it seems like that option simply pushes the problem elsewhere into the surrounding neighborhoods and will cause traffic and safety issues there.

I know there is more to learn about this proposed project and as concerned neighbors and town residents we are very willing to discuss the potential issues and come up with creative solutions that serve everyone's needs. I look forward to the planning board giving this true consideration and recognizing that this is not a small project but a major one, and one that deserves the attention of and collaboration with all parties involved to ensure the safety of residents throughout the town.

Thank you very much for taking a detailed look at this project and hearing the voices and concerns of all those impacted.

Regards,

Meredith Fried

Michaela A. Fanning
853 Great Plain Avenue
Needham, MA 02492
617-947-9474 (Cell)

April 5, 2021

Via email at aclee@needham.ma.gov
Needham Planning Board
Lee Newman, Director
Planning And Community Development
1471 Highland Avenue
Needham, MA 02492

Re: Parking/Traffic at Needham Children's Center

To Whom It May Concern:

I write the letter at the request of Needham Children's Center, Inc. ("NCC" hereafter) in connection with its proposed new location at 1688 Central Avenue, Needham, Massachusetts. As a parent of a child who attended NCC for many years and a resident of the property directly across the street from the NCC facility, I write this letter without reservation and am happy to do so to support NCC. Joining me in support of NCC are my neighbors, Matt Gore (whose children also attended NCC) and Gregg Starr. We share the building located at 853-855 Great Plain Avenue directly across the street from NCC.

My daughter attended several NCC programs from preschool through the afterschool program and summer camps. NCC is an efficient, well-run program on all levels including car and foot traffic as well as parking. There was never a time when I dropped my daughter off in the morning or picked her up in the afternoon when there was a rush of parents all picking up at the same time. Drop off and pick up was naturally staggered based on the myriad of work situation(s) and schedule(s) of the respective parents.

On a typical day, there would be 3-4, perhaps sometimes 5 parents picking up when I collected my daughter at the end of the day. As far as the morning drop off, I was usually 1 of 3-4 parents dropping off at the same time as we all caught the same train into Boston.

I have lived across the street from NCC for 21 years. Neither my neighbors nor I have ever witnessed a traffic flow problem and/or back up and/or parking issue caused by parents either dropping off at or picking up their children from NCC.

I spend as much time as possible on my front porch when weather permits. The only time I have ever witnessed a traffic problem is when the YMCA runs its soccer program on Saturdays in the fall and spring. But as far as NCC is concerned, its program has never created a traffic issue. I suspect that will be even more true now because of the pandemic since more parents will be working from home and will have more flexible work schedules. Presumably, that will result in an even more staggered flow of car and foot traffic at the beginning and end of the day especially since fewer parents will be beholden to train schedules and/or traffic congestion when commuting to Needham for pick up.

We urge you to grant NCC whatever permits it needs to operate its business at its new proposed location. Frankly, I will miss seeing the children playing games outside and hearing their laughter when they do. The neighbors in the Central Avenue area will not regret allowing this business to become their neighbors. The staff has always been respectful and responsive to its surrounding neighbors. Gregg, Matt and I have enjoyed having them as neighbors for all these years.

I wish NCC the best of luck in the new location.

Sincerely,

Michaela A. Fanning

Cc: Matthew Gore
Gregg Starr

From:	Maggie Abruzese
To:	Selectboard; Planning; Lee Newman; Alexandra Clee; jabruzese@yahoo.com
Subject:	1688 Central Avenue
Date:	Monday, April 5, 2021 3:52:05 PM

Dear Planning Board and Select Board of Needham, Ms. Newman and Ms. Clee,

We are writing to request that you designate 1688 Central Avenue as a Major Project and that it receives the review required as such. This project meets the threshold of Major Project for two separate reasons, each of which is sufficient to classify it as a Major Project: (1) it increases gross floor area by more than 5000 square feet and (2) it will require the creation of 25 or more new off street parking spaces.

Section 7.4.2 of the Needham Town bylaws define Major Project:

MAJOR PROJECT – Any construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces.

The current gross floor area of 1688 Central is 7,463 according to Needham Assessors Records (1663 sq.ft house, 4800 sq ft barn, 400 sq. ft detached garage, 600 sq. ft. detached garage). The plan submitted by Mr. Borelli proposes replacing the house and garages with a building of 9966 gross floor area in addition to keeping the existing barn. This brings the gross floor area up to 14,766 sq. ft., an increase of 7,303 sq. ft. Therefore this project involves "an increase in gross floor area by 5000 or more square feet" which makes it a Major Project.

The proposal submitted by Mr. Borelli indicates that there will be 24 parking spaces at the new building. However, the building as designed is sufficient to hold 120 children. The parking attendant to a 120 child daycare center (with the required teachers, administrators, maintenance staff, parent parking, etc.) is more than 24 parking spaces. The Board must consider full building capacity and ensure that the project is designed to meet the needs of full building capacity. It is not sufficient for the developer to suggest that they don't intend to utilize the space to full capacity in order to classify the project as minor. That would be as silly as allowing a homeowner to claim that they are not planning to use certain portions of a home in order to escape zoning review triggered by those portions. If the project is big enough to have the space for 120 children, they must comply with regulations for 120 children which would mean space for the necessary staff and parent parking.

Because this project adds more than 5000 sq. ft., and independently because this project must have more than 24 parking spaces, it is a Major Project subject to increase scrutiny. For this reason, we request that you reject Mr. Borelli's attempt to classify it as a minor project.

Sincerely,

Margaret Abruzese
Joseph Abruzese
30 Bridle Trail Rd.
Needham, MA 02492
(617) 429-2264

253 Charles River Street
Needham, MA 02492

April 5, 2021

selectboard@needhamma.gov
Needham Select Board

planning@needhamma.gov
Needham Planning Board

Re: Comments on Proposed 9,960 Square Foot Daycare Facility at 1688 Central Avenue

We believe that this project should be treated as a "Major Project" and undergo the full review required of Major Projects under Section 7.4.3 of the Needham Zoning By Laws (NZBL). This project will have major implications on the neighborhood so it needs to undergo a full and proper review.

Traffic Congestion

We have lived on Charles River Street since 1994. The traffic on Central Avenue has increased a great deal in the years we have lived on Charles River Street. When we first moved to Charles River Street, it felt like living in the country. As building increased in Needham and the surrounding towns, the traffic on Central Avenue has increased greatly each year. In fact, people from as far away as Franklin use Central Avenue as a traffic route to Boston. There is no way that traffic on Central Avenue deserves an "A" rating.

It is important to look at the traffic patterns pre-Covid since traffic will return as the pandemic subsides. Pre-Covid, leaving the house around 7:30 to 8:00 am, it would take multiple cycles of the traffic light at the corner of Central Avenue and Charles River Street before there would be a break in traffic and we could exit our driveway on to Charles River Street. The problem was that cars were not able to make the left turn from Charles River Street on to Central Avenue because Central Avenue would be backed up to at least Temple Aliyah and sometimes to Charles River Street.

The issue of access to the neighborhood by the fire department, ambulances and police is a real issue. Last May 2020, we had a major fire at our house which caused substantial damage (we are living out of our house for at least 15 months). The fire occurred in the evening so the fire trucks, which came from many towns, could get to our house fairly quickly. What would have happened if the fire had occurred during the day? How would the fire trucks have been able to deal with the Central Avenue traffic to get to our house?

Lack of Sidewalks and Crosswalks

Walking around the neighborhood is dangerous due to the lack of sidewalks and crosswalks. We live a short walk to Temple Aliyah and would like to walk to the Temple for various events. However, it is quite dangerous to walk along Central Avenue with the amount of traffic, even on weekends and holidays. In addition, we would like to take advantage of the entrance to the Rail Trail on Charles River Street, but it is even more dangerous to walk to the Rail Trail since there are no sidewalks on Charles River Street and the road is narrower on that end of the street.

It would have been nice if our son could have walked to Newman School when he attended it. However, given the lack of sidewalks and crosswalks on Charles River Street and Central Avenue, and the congested traffic on Central Avenue, it was never safe for him to do so. This is another benefit (walking to school), of which the neighborhood cannot take advantage.

Lack of Transparency Regarding this Proposal

We are troubled by the lack of transparency regarding this proposal and the appearance that it is receiving treatment not in keeping with Needham Zoning By Laws. A project of this magnitude will have a large impact on the surrounding neighborhood so it should be treated with the highest care. In addition, since the Developer is a member of the Needham Select Board, this raises concerns about conflict of interest and ensuring that the process is without improper influence.

In addition, we were amazed to read that town sewer service will be extended from the tie in at Country Way down to 1688 Central Avenue, and would like to understand how this is possible. We do not have town sewer service or gas lines and have always been told by the town that such services would never be extended to our neighborhood. How is it that the benefit of having town sewer service is being extended to this proposed development?

We would appreciate answers to the questions raised by this proposed development.

We would be happy to discuss our experiences in further detail.

Sharon Cohen Gold
617.610.1020

Evan Gold
617.974.1219

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

60 WALNUT STREET, WELLESLEY, MASSACHUSETTS 02481
781-943-4000 • FAX 781-943-4040

EVANS HUBER
781-943-4043
EH@128LAW.COM

April 6, 2021

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Ave, Needham; Minor Project Site Plan Review

Dear Ms. Newman:

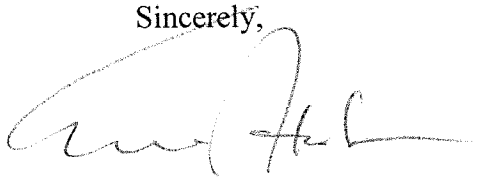
Pursuant to our conversation yesterday, Needham Enterprises is requesting that the hearing on its application for minor project Site Plan Review be taken off the agenda for the meeting of the Planning Board tonight. You have advised me that the earliest date that is available to reschedule the matter is May 18; accordingly, we are requesting that the hearing be moved to May 18. You have also advised me that the Board is requesting that the applicant agree that the Board may have an additional 30 days after the May 18 hearing to issue a decision (or recommendations) in the matter. The applicant agrees to this as well.

We are obviously aware that the question of whether this proposed project is subject to the requirements for major project Site Plan Review has been raised with the Board. We are considering that issue. In the meantime, it remains the position of the applicant that the project qualifies for minor project site plan review.

Please confirm that the matter is on the Board's agenda for May 18.

Thank you.

Sincerely,



Evans Huber

EH:sfc

From: noreply@civicplus.com
To: Alexandra Clee; Lee Newman; Elisa Litchman
Subject: Online Form Submittal: Contact Planning Board
Date: Friday, March 26, 2021 8:03:20 PM

The following form was submitted via your website: Contact Planning Board

Full Name:: Robert J Onofrey

Email Address:: robert.onofrey@gmail.com

Address:: 49 Pine Street

City/Town:: Needham

State:: MA

Zip Code:: 02492

Telephone Number:: 3392250436

Comments / Questions: I'm writing to oppose the planned Daycare Development at 1688 Central Avenue. Central Avenue is a heavily traveled roadway and the additional traffic of parents dropping off their kids during the rush hours is problematic. Central Avenue isn't wide enough to create a left turn lane if traveling towards Dover and attempting to enter the proposed Daycare site. Cars existing the site will also encounter problems if they attempt to turn left and head towards Dover.
The best use for this site is Residential. With over 3 acres of land - this property could easily accommodate two residences - sharing a common entrance drive.
Additional Daycare facilities are needed in Needham - but this is not the right location. I ask that you deny this use at this site.

Additional Information:

Form submitted on: 3/26/2021 8:03:12 PM

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From: noreply@civicplus.com
To: Alexandra Clee; Lee Newman; Elisa Litchman
Subject: Online Form Submittal: Contact Planning Board
Date: Wednesday, March 31, 2021 12:10:28 PM

The following form was submitted via your website: Contact Planning Board

Full Name:: Norman MacLeod

Email Address:: macleod@aol.com

Address:: Pine Street

City/Town:: Needham

State:: MA

Zip Code:: 02492

Telephone Number:: 781-444-7525

Comments / Questions: I am writing to express my concern with proposed development of 1688 by Matt Borelli, sitting member of the Needham Select Board, with a Day Care facility for 80-120 children.

The traffic flow on Central Avenue in this area during the morning and evening commute is already awful. It was not uncommon during the pre-Covid period to have morning traffic backed up beyond Pine Street on the north bound side and evening traffic was often backed up to Marked Tree Road on the south bound side. The additional traffic created by parent drop offs and pick-ups during peak traffic periods with (80-120 trips IN and OUT each morning and (80-120 trips IN and OUT in the evening) would further severely impact the traffic flow on Central Avenue. Virtual all of these vehicles will need to cross this congested traffic either going into or exiting the proposed Day Care site both morning and evening commute creating further congestion a serious safety issue.

The traffic study presented to the neighborhood by Matt Borrelli and his team was a Joke. It gave this area of Central Avenue an "A" rating. Study was conducted on February 4, 2021 (Covid-19). The traffic engineer said he had compared this flow with that of Goddard School of Medfied stating the 1688 site compared favorably with that of the Goddard School. He failed note Goddard School (Medfield) has two INS and two OUTS to access their site (one on N. Meadow Rd – Rt27 and one on Main Street). The Rt 27 entrance to Goddard also has a turn off lane to access the site. He also failed to note Goddard has (36) parking spaces on site and there is very ample space for vehicles to cue on site while awaiting pick-up or drop off children (Google Earth arial view of Goddard will support these comments). The proposed site at 1688 is totally lacking in all of these areas.
The inability to have vehicles cue on site at 1688, coupled with no turn-off lane on Central Avenue (single lane road in both directions) will back this traffic onto Central Avenue will further disrupt the flow on Central avenue and potentially impede Needham Police and Fire from carrying out the mission to Walker School and residence in this area of Town.
Vehicles unable to access the Day Care center coming from the south will likely attempt to cue on the "unapproved" sidewalk making this unsafe for walkers, joggers and children on their way to school or play. Dover, Sherborn and other communities south of Needham frequently use Central Avenue on their route to BIDLH and Newton Wellesley Hospital. This additional congestion during peak traffic periods will further impact their response time and mission.

Also, there is a question of conflict of interest with Matt Borrelli being the owner and developer of this property while a siting member of the Needham Select Board. Needham does not want or need the negative publicity and expense Weston recently experienced with a sitting member of their Select Board and a project where he was deeply involved.

In short – The proposed use of 1688 Central Ave as a Day Care Center is very inappropriate on many counts. I have focused mainly on traffic. impact and safety. There are many other reasons this site is not appropriate for a (80-100-120) child Day Care Center as is currently proposed.

The development of this site with one or two residential properties on would be very appropriate. This would fit in with surrounding homes in the immediate area well as the surrounding neighborhoods. It would have no impact to an already serious traffic issue on Central Avenue.

Additional Information:

Form submitted on: 3/31/2021 12:10:18 PM

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From:	Tara Gurge
To:	Alexandra Clee
Cc:	Lee Newman
Subject:	Public Health Division"s reply to Planning Boards Request for comment - 1688 Central Avenue
Date:	Wednesday, March 24, 2021 2:12:41 PM
Attachments:	ALL APPLICATION materials minus Stormwater_reduced.pdf Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham.docx image002.png image003.png
Importance:	High

Alex –

Here are the Public Health Division comments for the **Project Site Plan Special Permit proposal at 1688 Central Avenue**. See below:

- Prior to demolition, we will need to ensure that the applicant fills out the online Demolition permit form, through the Building Dept., via ViewPoint Cloud online permitting system, and submits the Demolition review fee along with uploading the required supplemental demolition report documents online, including septic system abandonment form and final pump report, for our review and approval (as noted on the form.)
- Ensure that a licensed pest control service company is contracted and will conduct routine site visits to the site, first initially to bait the interior/exterior of each structure to be raised prior to demolition, and also continue to make routine site visits (to re-bait/set traps) throughout the duration of the construction project. Pest reports must be submitted to the Health Division on an on-going basis for our review.
- If this proposal triggers the addition of any food to be served or prepped on site at this new facility, the owner must fill out and submit an online application for a Food Permit Plan Review packet. As part of this plan review, a food establishment permit will need to be applied for through the Public Health Division via the Town's ViewPoint Cloud online permitting system, which will require a review of the proposed kitchen layout plans, with equipment and hand sinks noted, along with any proposed seating layout plans where applicable.
- Please ensure that sufficient exterior space is provided to accommodate an easily accessible Trash Dumpster and a separate Recycling Dumpster, per Needham Board of Health Waste Hauler regulation requirements. These covered waste containers must be kept clean and maintained, and be placed on a sufficient service schedule in order to contain all waste produced on site. These containers may not cause any potential public health and safety concerns with attraction of pest activity due to improper cleaning and maintenance.
- As noted in the proposal, the applicant will be required to connect to the municipal sewer line, once it's brought up to the property, prior to building occupancy. A copy of the completed signed/dated Sewer Connection application, which shows that sewer connection fee was paid, must be forwarded to the Public Health Division for our record.
- No public health nuisance issues (i.e. odors, noise, light migration, standing water/improper on site drainage, etc.), to neighboring properties, shall develop on site during or after construction. We are in support of an extensive landscaping plan be developed on site to screen and enhance the site, and to ensure that noise and visual impacts are minimized for the benefit of the neighboring residential properties in this location. Additional buffering, by the addition of new vegetation, along with new plantings, is strongly encouraged.

- Proposed lighting on site shall not cause a public health nuisance, with lighting being allowed to migrate on to other abutting properties. If complaints are received, lighting may need to be adjusted so it will not cause a public health nuisance.
- The applicant must meet current interior/exterior COVID-19 Federal, state and local requirements for spacing of seating, HVAC/ventilation, face covering requirements, sanitation requirements and occupancy limit requirements, etc. Please ensure that proper occupancy limits are met in order to accommodate the most updated state COVID-19 requirements for this proposed facility to ensure the health and safety for the number of proposed students and staff on site.
- The Public Health Division is also in support of the comments and concerns noted in the letter entitled, 'Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham,' that was received and distributed by the Planning Board, including the excerpt on the neighboring abutters' concerns regarding the previous uses of the property with reference to potential soil contamination that may be present. We conducted a file check for this property address and we support the neighbors request for a soil test based on a concern that was investigated by the Fire Dept. that was filed back on June 24, 2003. The applicant must ensure that the property is safe, which includes conducting proper soil testing of the site prior to construction, and also follow through with any necessary mitigation measures as found to be necessary, as part of this project approval.

Please let us know if you need additional information or have any follow-up questions on those requirements.

Thanks,



TARA E. GURGE, R.S., C.E.H.T., M.S.
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
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Email - tgurge@needhamma.gov
Web- www.needhamma.gov/health

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From: Alexandra Clee <aclee@needhamma.gov>
Sent: Monday, March 22, 2021 2:50 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
Subject: Request for comment - 1688 Central Avenue

Dear all,

The Planning Board will be hearing about a proposal for a new daycare at 1688 Central Avenue on April 6, 2021. More information is included in the submitted documents, detailed below, which can be attached to this email (with the exception of the Stormwater Report) and can also be found at this location K:\Planning Board Applications\Planning_1688 Central Avenue_2021. Some of the application documents are attached, as noted, but not all, as the files were too large to include all. (some of you will receive a hard copy in the inter-office mail as well).

The documents attached for your review are:

1. Application submitted by Needham Enterprises, LLC with Exhibit A. *attached*

2. Letter from Evans Huber Attorney, dated March 11, 2021. *Attached*

3. Letter from Evans Huber Attorney, dated March 12, 2021. *attached*

4. Letter from Evans Huber Attorney, dated March 16, 2021. *attached*

5. Plan set entitled "Needham Enterprises Daycare Center," prepared by Mark Gluesing Architects, consisting of 4 sheets: Sheet 1, Sheet A 1-0, entitled "1st Floor Plan," dated March 8, 2021; Sheet 2, Sheet A 1-1, entitled "Roof Plan," dated March 8, 2021; Sheet 3, Sheet A 2-1, showing Building Sections, dated March 8, 2021; Sheet 4, Sheet A 3-0, showing elevations, dated March 8, 2021. *Attached.*

6. Plan set entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham MA," prepared by Glossa Engineering Inc., 46 East Street, East Walpole, MA, consisting of 10 sheets: Sheet 1, Cover Sheet, dated June 22, 2020; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020; Sheet 3, entitled "Site Plan," dated June 22, 2020; Sheet 4, entitled "Grading and Utilities," dated June 22, 2020; Sheet 5, entitled "Landscaping Plan," dated June 22, 2020; Sheet 6, entitled "Construction Details," dated June 22, 2020; Sheet 7, entitled "Construction Details," dated June 22, 2020; Sheet 8, entitled "Sewer Extension Plan and Profile," dated "as noted November 19, 2020"; Sheet 9, entitled

"Construction Period Plan," dated June 22, 2020; Sheet 10, entitled "Appendix, Photometric and Site Lighting Plan," dated June 22, 2020.

7. Traffic Impact Study, dated March, 2021. *Attached*

8. Stormwater Report, dated June 22, 2020.

I also have attached a letter from Abutters that we received today that I am sharing in case you wish to note the neighborhood concerns while you conduct your review.

The meeting where this topic will be presented to the Planning Board is April 6, 2021. If you wish to comment, please submit your comment by Wednesday March 31, 2021, so that the Petitioner has time to address any concerns or questions in advance of the hearing.

Thanks, alex.

_____

Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

TOWN OF NEEDHAM
TOWN HALL
1471 Highland Avenue
Needham, MA 02492-2669

Design Review Board

Memo: Project Site Plan Review, 1688 Central Ave., Needham Enterprises LLC
Meeting Date: March 22, 2021

The Board reviewed the design drawings for the new building proposed for this site. Representing and presenting for the Applicant was Evans Huber, the attorney for the project. Present for the Design Review board were Deborah Robinson (vice-chair), Nelson Hammer, Steve Tanner, Bob Dermody and Len Karan. Mark Gluesing (chair) recused himself due to his involvement as architect for the project.

The proposed building is a day care facility of 9,966 SF to be located on a 146,003 SF lot in a residential neighborhood. The proposed one-story building would be set back 35 FT from the street. The site would include 24 parking spaces. While the existing residential building on the site and smaller out-building (garage) would be demolished, the barn structure is shown to remain. The project application indicates that the new building will be "designed to look like a large single-family home...".

The Design Review Board's comments to the Planning Board are as follows:

Site Plan
The Board has concerns regarding the siting of the building so close to the street. This is not in keeping with the character of Central Ave. We understand the parking and building access requirements, but those could be retained while adjusting the building away from central avenue, either by reconfiguring the building footprint or by demolishing the barn and moving the proposed building and parking further to the east. There is unused area to the east.

Building Design
The Board has concerns regarding the building exterior. The building is not residential in appearance. The west façade is the most important façade, and is too institutional in design. It is very flat. A residential-looking building would have more modulation of the massing, possibly including more three-dimensional window areas, a porch or overhang, etc. While the Applicant responded to this by indicating that the truss system for the roof structure is a limiting factor for the massing, we do not agree that that is a driving force for the architecture.

The Applicant's screenshare presentation included a 3-D drawing of the building that was not in the package submitted to the Design Review Board.

Barn
The applicant's representative stated that the barn would be retained without any renovation, there is no intended use for the time being, and that it is being retained because it is "historic".

As noted above, the Board questioned whether keeping the barn is the best solution given the site plan issues. The Applicant did not know if the barn has any local or other historic designation that might affect a decision to retain or not retain the barn.

Lighting
The 24' high lights at the north side of the proposed driveway have a long distance between them, which would result in bright and dim spots. Better would be four rather than three pole lights at the north side, with 20' high poles. Lower fixtures would create less light trespass onto Temple property.

The site plan presented did not show lighting at the entry, as required by code. The applicant did clarify that there would be lighting at the entry canopy.

Fence
The fence at the south of the building is intended to be white vinyl. The Board comment was that this is very bright relative to the rest of the built elements, and another color would be preferable so as to not be as visible. Vinyl is also available in tan and gray, or another material could be used.

Trees
The north edge of the site, at the Temple Aliyah side, will indeed benefit from trees to screen the site, but the 15' spacing of white pines will not be satisfactory to form a true screen for several (5-10) years. The Board's recommendation is that additional species be added in this area, located in groupings of different species and staggered. The front (west) of the site would benefit from foundation plantings/trees at the building as well.
The sidewalk at the south of the building shows some trees very close to the walk. These would be too low and conflict with people. Either provide bigger/taller trees or move them away from the sidewalk.
Arborvitae are an acceptable selection as shown to the north of the parking.
The white pines shown to the south of the proposed building would also benefit from the same treatment as commented on for the north.

Parking
The dumpster enclosure at the east end of the parking limits the ability of the user of the end parking space to easily back out. Moving the dumpster enclosure to the east could easily provide more turning space for that vehicle.
There was some confusion due to the presented documents not matching what the DRB had received. This parking item is another example of a discrepancy.

The Board presents these comments for Planning Board consideration. These comments summarize and are limited to the comments made at the meeting, and are intended to relay the Board's thoughts in seeing this project for the first time. This is not intended to be minutes of the meeting. These comments do not document comments and explanations made by the Applicant in response to the Board's comments and questions. Any lack of comment on the Board's part in response to the Applicant's justifications or in response to comments made by the public does not constitute agreement.

End of Notes

From: Dennis Condon
To: Alexandra Clee
Subject: RE: Request for comment - 1688 Central Avenue
Date: Monday, March 29, 2021 10:39:09 AM
Attachments: image001.png
image002.png

Hi Alex,
We would want the drop off area be lettered to read “no parking drop off area only” so that we would have access with our ambulance and apparatus if needed. Otherwise our interior fire protection will be required to meet the fire and building codes.

Thanks,
Dennis

Dennis Condon
Chief of Department
Needham Fire Department
Town of Needham
(W) 781-455-7580
(C) 508-813-5107
Dcondon@needhamma.gov

Follow on Twitter: Chief Condon@NeedhamFire

Watch Needham Fire Related Videos on YouTube @ Chief Condon

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Monday, March 22, 2021 2:50 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
Subject: Request for comment - 1688 Central Avenue

Dear all,

The Planning Board will be hearing about a proposal for a new daycare at 1688 Central Avenue on April 6, 2021. More information is included in the submitted documents, detailed below, which can be attached to this email (with the exception of the Stormwater Report) and can also be found at

this location K:\Planning Board Applications\Planning_1688 Central Avenue_2021. Some of the application documents are attached, as noted, but not all, as the files were too large to include all. (some of you will receive a hard copy in the inter-office mail as well).

The documents attached for your review are:

1. Application submitted by Needham Enterprises, LLC with Exhibit A. *attached*

2. Letter from Evans Huber Attorney, dated March 11, 2021. *Attached*

3. Letter from Evans Huber Attorney, dated March 12, 2021. *attached*

4. Letter from Evans Huber Attorney, dated March 16, 2021. *attached*

5. Plan set entitled "Needham Enterprises Daycare Center," prepared by Mark Gluesing Architects, consisting of 4 sheets: Sheet 1, Sheet A 1-0, entitled "1st Floor Plan," dated March 8, 2021; Sheet 2, Sheet A 1-1, entitled "Roof Plan," dated March 8, 2021; Sheet 3, Sheet A 2-1, showing Building Sections, dated March 8, 2021; Sheet 4, Sheet A 3-0, showing elevations, dated March 8, 2021. *Attached.*

6. Plan set entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham MA," prepared by Glossa Engineering Inc., 46 East Street, East Walpole, MA, consisting of 10 sheets: Sheet 1, Cover Sheet, dated June 22, 2020; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020; Sheet 3, entitled "Site Plan," dated June 22, 2020; Sheet 4, entitled "Grading and Utilities," dated June 22, 2020; Sheet 5, entitled "Landscaping Plan," dated June 22, 2020; Sheet 6, entitled "Construction Details," dated June 22, 2020; Sheet 7, entitled "Construction Details," dated June 22, 2020; Sheet 8, entitled "Sewer Extension Plan and Profile," dated "as noted November 19, 2020"; Sheet 9, entitled "Construction Period Plan," dated June 22, 2020; Sheet 10, entitled "Appendix, Photometric and Site Lighting Plan," dated June 22, 2020.

7. Traffic Impact Study, dated March, 2021. *Attached*

8. Stormwater Report, dated June 22, 2020.

I also have attached a letter from Abutters that we received today that I am sharing in case you wish to note the neighborhood concerns while you conduct your review.

The meeting where this topic will be presented to the Planning Board is April 6, 2021. If you wish to comment, please submit your comment by Wednesday March 31, 2021, so that the Petitioner has time to address any concerns or questions in advance of the hearing.

Thanks, alex.

Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC WORKS DEPARTMENT
500 Dedham Avenue, Needham, MA 02492
Telephone (781) 455-7550 FAX (781) 449-9023

March 31, 2021

Needham Planning Board
Public Service Administration Building
Needham, MA 02492

RE: Minor Project Site Plan Review
Needham Enterprises Childcare Facility-1688 Central Avenue

Dear Members of the Board,

The Department of Public Works has completed its review of the above referenced site Planning Board plan minor permit review. The applicant proposes to demolish an existing house and garage on the property and construct a new 9,966 square foot building as a childcare facility. The existing barn on the property will remain. The childcare facility will have a maximum of 100-children. The support staff will be 13-employees and there will be 24-parking spaces to service the facility.

The review was conducted in accordance with the Planning Board's regulations and standard engineering practice. The documents submitted for review are as follows:

1- Completed Application for Minor Project Plan Review, with Exhibit A.
2- A letter from Attorney Evans Huber to members of the Needham Planning Board dated March 11, 2021.
3- A letter from Attorney Evans Huber to members of the Needham Planning Board dated March 12, 2021.
4- A Supplemental letter from Attorney Evans Huber to members of the Needham Planning Board dated March 16, 2021.
5- Plans entitled, "Needham Enterprises Daycare Center", 1688 Central Avenue, Needham, Massachusetts 02492 prepared by Mark Gluesing Architect revised March 8, 2021, and consisting of 4 sheets.
6- Plans entitled, "Site Development Plans Daycare", 1688 Central Avenue, Needham, MA prepared by Glossa Engineering, Inc. dated June 22, 2020, signed 1/26/21, and consisting of 10 sheets.
7- Traffic Impact Assessment Report prepared by Gillion Associates dated March 2021
8- Stormwater Report Dated January 26, 2021, provided by Glossa Engineering consisting of 131-pages
9- Document entitled, "Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham" submitted by Neighbors and Neighborhoods of 1688 Central Avenue.
10- Updated Traffic Report submitted by Gillion Associates dated Revised March 2021

Our comments and recommendations are as follows:

- The updated traffic report submitted only provides information of the peak weekday morning traffic conditions. Although the report indicates that the morning peak hours will have more site generated trips, the report should provide the evening data and those finding as well.
- The accident data on Central Avenue in the area is absent for the traffic study. The applicant should provide this information for review.
- The applicant should provide details of the driveway opening, and sidewalk improvements in front of the property. Specifically, to ensure that the existing catch basin that will be now located in the driveway apron will collect stormwater off the road and that the sidewalk will meet accessibility standards.
- The plans show that the facility's proposed lighting will not trespass onto the neighboring properties. However, the shields proposed should minimize visual glare to the closest neighboring properties.
- The project does not indicate if a generator, or if an electrical transformer is required. If found to be required, the applicant will need to provide a sound study and demonstrate sound attenuation measures for the generator, and visual screening measures for the generator or transformer.
- The plans call for collecting stormwater and mitigating the post construction storm events though onsite infiltration systems. As part of the NPDES requirements, the applicant will also need to comply with the Public Out Reach & Education and Public Participation & Involvement control measures. The applicant shall submit a letter to the DPW identifying the measures selected for Public Outreach, and for Public Participation and Involvement and provide dates by which the measures will be completed.

If you have any questions regarding the above, please contact our office at 781-455-7538.

Truly yours,

Thomas Ryder
Assistant Town Engineer

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

60 WALNUT STREET, WELLESLEY, MASSACHUSETTS 02481
781-943-4000 • FAX 781-943-4040

EVANS HUBER
781-943-4043
EH@128LAW.COM

April 16, 2021

Members of the
Needham Planning Board

And

Lee Newman
Director of Planning and Community Development
Public Services Administration Building
500 Dedham Ave
Needham, MA 02492

Re: 1688 Central Ave, Needham

Dear Planning Board Members and Ms. Newman:

I am writing on behalf of Needham Enterprises, LLC for two purposes. The first is to address the question of whether this proposed building and associated parking is, or should be, subject to major project Site Plan Review as described in section 7.4 of the Bylaw. The second is to submit some revised plans that have been prepared on behalf of Needham Enterprises in what we believe is a substantial and good-faith effort to address some of the concerns that have been raised by Town residents, most recently in an attachment to a letter submitted by Holly Clarke.

I. Whether the proposed building and parking area is subject to major project Site Plan Review:

We disagree that the building and parking areas, as proposed in the application for minor project Site Plan Review, are subject to major project site plan review, as argued by Ms. Clarke and others. The starting point for analyzing this question is Massachusetts General Laws c. 40A, s. 3, third par., which provides:

> **"No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility**; provided, however, that such land or structures may be subject to

> reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term 'child care facility' shall mean a day care center or a school age child care program, as those terms are defined in section nine of chapter twenty-eight A." (emphasis added).

This statute is perfectly clear that the project that Needham Enterprises is proposing -- a building "for the primary purpose of operating a child care facility" -- cannot be required to be approved through the Town's special permit process as outlined in section 7.4 of the Bylaw for major project site plan review. In view of the highlighted language quoted above, it is not correct, as some have argued, that the Town must allow the use, but, as to the building and parking areas, can nevertheless require the applicant to obtain a special permit through major project site plan review. Indeed, an analogous argument was expressly rejected in *Petrucci v. Board of Appeals of Westwood*, 45 Mass. App Ct. 818 (1998), citing *Watros v. Greater Lynn Mental Health & Retardation Assn., Inc.*, 421 Mass. 106 (1995):

> The "constrictive result" flowing from the abutters' reading of the statute was "neither required by the language of the statute nor consistent with its purpose," which was "to prevent local interference with the use of real property" - whether of land or of structures thereon for the exempt purposes identified in the statute. Here, also, the plain language of the statute (which, as in Watros, speaks not once but twice of "land or structures") and its manifest intent - to broaden, rather than narrow, the opportunities for establishing child care facilities in the Commonwealth - overwhelm the board's constrictive effort to parse any substantial child care facility on a residential property out of the statute.

Petrucci, 45 Mass. App. Ct. at 822 (internal citations omitted). See also *Trustees of Tufts Coll. v. City of Medford*, 415 Mass. 753, 765, (1993)("A local zoning law that improperly restricts an educational use by invalid means, such as by special permit process, may be challenged as invalid in all circumstances. In this case, for example, the Land Court judge properly declared invalid the site plan and special permit requirements of the ordinance as to present *and* future, unspecified projects on the Tufts campus. [citation omitted] The Appeals Court correctly did not disturb this aspect of the judgment.").

We also disagree that the proposed square footage of the new construction makes this a "major project;" the analysis and interpretation of the Bylaw set forth in the attachment to the Clarke letter would mean that the only time new construction between 5,000 and 9,999 s.f. would qualify as a "minor project" is if it is being done on entirely vacant land. Under the interpretation argued in the Clarke letter, any lot with any structure on it would mean, for example that a 6,000 s.f. new and unrelated structure would be a "major project," since that would represent more than 5,000 s.f. of increased square footage "on the lot." Although this argument does point out an ambiguity in the Bylaw, the only legitimate way to resolve that ambiguity is with reference to the Town's interpretation and application of that Bylaw in the past. As the Planning Department is no doubt aware, the Town has consistently interpreted the

Bylaw provision in question to mean that new construction of more than 5,000 but less than 10,000 s.f. is a "major project" only if it consists of the expansion of an existing building.

In addition, we disagree that the design of the parking area and the proposed number of spaces will be inadequate for the proposed use, but to eliminate any dispute over this issue, as describe in greater detail, below, and as shown on the drawing submitted herewith, Needham Enterprises has redesigned the parking area to include 30 spaces. This new layout and increased number of parking spaces should eliminate any argument that the number of parking spaces is insufficient, or that the queue of cars dropping off or picking up children will back up onto Central Ave.

If this building and parking area were being proposed for some use not governed by Massachusetts General Laws c. 40A, s. 3, the creation of 30 new parking spaces would subject the project to major project Site Plan Review, including the requirement of a special permit. But, for the reasons stated above, in this case, and for this use, the major project special permit/site plan review requirement of section 7.4.3 of the Bylaw cannot be imposed by the Town. For this reason, the question of whether this is a "major project" or a "minor project" as defined in section 7.4 of the Bylaw is moot.

M. G. L. c. 40A, section 3 does state that the project can be subject "**reasonable** regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." (emphasis added). Although some of these topics overlap with the site plan review criteria set forth in section 7.4.6 of the Bylaw, it is clear that the allowable subjects of "reasonable regulation" set forth in c. 40A, section 3 are not the same as the Section 7.4.6 Site Plan Review criteria. And it is the criteria enumerated in c. 40A, not section 7.4.6 of the Bylaw, that control the Planning Board's authority in this instance. The hearing on May 18 for this project is thus neither minor nor major project plan review under section 7.4 of the Bylaw. It is simply site plan review pursuant to c. 40A, section 3, during which process the Board may consider "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."[1]

Exactly what constitutes "reasonable regulation" of these aspects of this project remains to be determined, but among the factors that could demonstrate *unreasonableness* are (1) that a particular restriction "would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the . . . [applicant's property], without appreciably advancing the municipality's legitimate concerns," and (2) excessive cost of compliance without significant

[1] It is worth noting that while Needham does not have a Bylaw provision specifically addressing site plan review for projects falling under M.G.L. c. 40A, section 3, the relevant section of Framingham's Bylaw, for example, provides that for "any new structure or alteration of an existing structure or change of use in any structure for an entity claiming exception under G.L. c. 40A, § 3, site plan review shall be limited . . . to the imposition of reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

gain in terms of municipal concerns . . ." *Trustees of Tufts College, supra,* 415 Mass. at 759-760. See also, *Radcliffe College v. Cambridge*, 350 Mass. 613, 619 (1966)(local zoning provision that requires an educational institution to adapt plans for the use of its land may be enforced, so long as the provision is shown to be related to a legitimate municipal concern, and its application bears a rational relationship to the perceived concern, but a zoning requirement that results in something less than nullification of a proposed educational use may be unreasonable within the meaning of the Dover Amendment.); *Jewish Cemetery Ass'n of Mass. v. Bd. of Appeals of Wayland*, 18 LCR 428 (Massachusetts Land Court) (August 13, 2010) citing *The Bible Speaks v. Bd. of Appeals of Lenox, 8 Mass. App. Ct. 19, 31, 391 N.E.2d 279 (1979)* ("towns may not, through the guise of regulating bulk and dimensional requirements under the [Dover Amendment], proceed to 'nullify' the use exemption permitted. . . .").

We would also note that the project as shown in the revised drawings submitted herewith is already set further back from Central Ave than Section 4.2.4 of the Bylaw requires; is well under the maximum allowable height, side and rear setbacks, number of stories, lot coverage and FAR set forth in Section 4.2.4; has more parking spaces than the formula used by the Town requires; and has a parking and circulation design that, in conjunction with the tenant's staggered drop-off and pick up schedule, will insure that cars do not back up from the property out onto Central Ave. The parking area has also been designed to have a drop-off/pick-up area and (as required) handicapped parking close to the main entrance. Thus, to the extent that the Planning Board considers what *reasonable* restrictions, if any, would be appropriate that are more stringent than what the Bylaw requires,[2] in many respects this project has already been designed with those legal principles in mind.

II. Revised Plans:

As noted above, in response to the concerns expressed by some of the neighbors, submitted herewith are revised plans in which the building has been moved 10 feet further back from Central Ave, so that the setback is now 50 feet (as compared to the 35-foot setback required by section 4.2.4 of the Bylaw). In addition, as noted above, the parking area has been redesigned to increase the number of parking spaces to 30, and to provide additional room for picking up and dropping off children (although this revised layout will need to be reviewed by the Fire Department). The landscaping plan has been enhanced in response to the recommendations of the Design Review Board, and the façade of the building facing Central Ave has been changed as suggested by the DRB.

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[2] Ms. Carke's letter cites *Muldoon v. Planning Bd. of Marblehead*, 72 Mass. App. Ct. 372 (2008), for the proposition that a town may impose restrictions greater than those set forth in the town's Bylaws. *Muldoon* does not involve a use or structure covered by M.G.L. c. 40A, and thus provides no guidance as to the extent, if any, to which a town may impose restrictions greater than those already imposed by its Bylaws in the context of G.L. c. 40A section 3, nor does it provide guidance as to whether any such "more stringent" restriction(s) would be deemed "reasonable" under *Trustees of Tufts College v. Medford, supra.*

Thank you for your consideration of the matters raised in this letter. We look forward to meeting with you on May 18.

Sincerely,

Evans Huber

ZONING LEDGEND:				
SINGLE RESIDENCE A	REQUIRED/ALLOWED	EXISTING	PROPOSED	COMPLIANCE
MIN. AREA	43,560 S.F.	146,003 S.F.	146,003 S.F.	YES
MIN. FRONTAGE	150'	250.05'	250.05'	YES
MIN. SETBACK FRONT	30'	*105.0' **211.2' ***30'	50.0'	YES
MIN. SETBACK SIDE	25'	*67.5' **65.0' ***54.2'	52.3'	YES
MIN. SETBACK REAR	15'	*864.9' **763.4' ***677.0'	826.5'	YES
MAXIMUM STORIES	2-1/2	*2 **1 ***2	1	YES
MAXIMUM HEIGHT	35'	*30.7' **15.3' ***31.2'	20'	YES
BUILDING COVERAGE	NR	NR	NR	YES
FLOOR AREA RATIO	NR	NR	NR	YES
DRIVEWAY OPENINGS	18' - 25'	19'	24'	YES

*EXISTING HOUSE (TO BE DEMOLISHED)
**OUT BUILDING -1 (TO BE DEMOLISHED)
***OUT BUILDING -2 (TO REMAIN)

ZONING BYLAW 6.1.3 PARKING PLAN AND DESIGN REQUIREMENTS

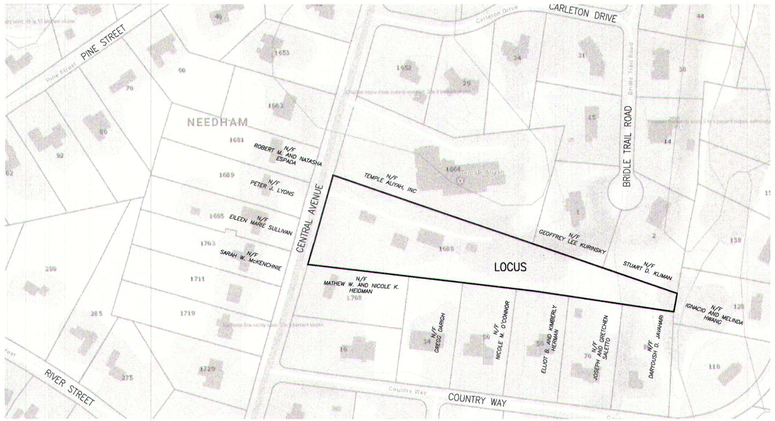
	REQUIRED/ALLOWED	EXISTING	PROPOSED	COMPLIANCE
A) PARKING ILLUMINATION	AVG. 1 FOOT CANDLE	N/A	AVG. 1 FOOT CANDLE	YES
B) LOADING REQUIREMENTS	N/A	N/A	N/A	YES
C) HANDICAPPED REQUIREMENTS	2	N/A	2	YES
D) DRIVEWAY OPENINGS	1	1	1	YES
E) COMPACT CARS	50% (8'X16')	N/A	N/A	YES
F) PARKING SPACE SIZE	9'X18.5'	N/A	9'X18.5'	YES
G) BUMPER OVERHANG	1' OVERHANG	N/A	NONE REQUIRED	YES
H) PARKING SPACE LAYOUT	N/A	N/A	N/A	YES
I) WIDTH OF MANEUVERING AISLE	24' (90° STALL)	N/A	24' (90° STALL)	YES
J) PARKING SETBACK				
-FRONT	10'	N/A	181.2'	YES
-SIDE	4'	N/A	31.0'	YES
-REAR	4'	N/A	625.1'	YES
-BUILDING	5'	N/A	5'	YES
K) LANDSCAPE AREA	10%	N/A	10%	YES
L) TREES	1 PER 10 SPACES (3)	N/A	3	YES
M) LOCATION	WITHIN LOT	N/A	WITHIN LOT	YES
N) BICYCLE RACKS	NONE REQUIRED	N/A	NONE REQUIRED	YES

REQUIRED PARKING TO BE DETERMINED BY BUILDING INSPECTOR
PARKING PROVIDED SPACES INCLUDING 2 HANDICAP SPACES

LANDSCAPE AREA REQUIREMENT IS 10% OF REQUIRED SET BACK AREA. SET BACK AREA IS 3,939 S.F. 10% OF 3,939 IS 394 S.F. OF MAINTAINED LANDSCAPE AREA REQUIRED 25% OF THAT OR 98 S.F. TO BE LOCATED WITHIN THE INTERIOR OF THE PARKING AREA. 365 S.F. PROVIDED WITHIN PARKING AREA

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

SITE DEVELOPMENT PLANS
DAYCARE
1688 CENTRAL AVENUE
NEEDHAM, MA
JUNE 22, 2020



LOCUS
N.T.S

OWNER:
NEEDHAM ENTERPRISES LLC
105 CHESTNUT STREET SUITE 28
NEEDHAM, MA 02492

APPLICANT:
NEEDHAM ENTERPRISES LLC
105 CHESTNUT STREET SUITE 28
NEEDHAM, MA 02492

ASSESSORS PARCELS:
MAP 199, LOT 213

DEED REFERENCE:
BOOK 37770 PAGE 308

PLAN REFERENCE:
PLAN OF LAND DATED SEPTEMBER 28, 1933
BY P.D.G. HAMILTON, CIVIL ENGINEER

PLAN INDEX

SHEET 1: COVER SHEET
SHEET 2: EXISTING CONDITIONS PLAN
SHEET 3: SITE PLAN
SHEET 4: GRADING AND UTILITIES PLAN
SHEET 5: LANDSCAPE PLAN
SHEET 6 & 7: DETAILS
SHEET 8: SEWER PLAN AND PROFILE
SHEET 9: CONSTRUCTION PERIOD PLAN
APPENDIX PHOTOMETRIC AND SITE LIGHTING PLAN

COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32298
REGISTERED PROFESSIONAL ENGINEER
4/15/21

COMMONWEALTH OF MASSACHUSETTS
ANDREW C. MURPHY
No. 35042
REGISTERED PROFESSIONAL ENGINEER
4/15/21

PREPARED BY
GLOSSA ENGINEERING, INC.
46 EAST ST
EAST WALPOLE, MA 02032
(508) 668-4401

LEDGEND:

EXISTING GRADE ---------- 100 ----------

EXISTING SPOT GRADE × 200.02

EXISTING GAS MAIN ——G——

EXISTING SEWER MANHOLE ○ SMH

EXISTING DRAIN MANHOLE ○ DMH

EXISTING CATCH BASIN ⊞

EXISTING ELECTRIC MANHOLE ○ EMH

EXITING UTILITY POLE UP

EXISTING TEST PIT TEST PIT#5

EXISTING BOUND ⊡

EXISTING FENCE × × × × ×

EXISTING FIRE HYDRANT

EXISTING GATE VALE

TEST PIT # 1

0"		200.00
	A SANDY LOAM 10YR 3/2	
14"		198.33
	B SANDY LOAM 10YR 5/8	
40"		199.67
	C SAND 2.5Y 5/4	
112"		190.67

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 2

0"		201.00
	A SANDY LOAM 10YR 3/2	
13"		199.92
	B1 SANDY LOAM 10YR 5/8	
28"		198.67
	B2 SANDY LOAM 2.5Y 6/3	
48"		197.00
	C SAND 2.5Y 5/4	
108"		192.00

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 3

0"		199.50
	A SANDY LOAM 10YR 3/2	
12"		198.50
	B SANDY LOAM 10YR 5/8	
26"		197.33
	C SAND 2.5Y 5/4	
120"		189.50

NO REFUSAL
NO MOTTLING
NO WEEPING

TEST PIT # 4

0"		199.75
	A SANDY LOAM 10YR 3/2	
12"		198.75
	B SANDY LOAM 10YR 5/8	
24"		197.75
	C SAND 2.5Y 5/4	
114"		190.25

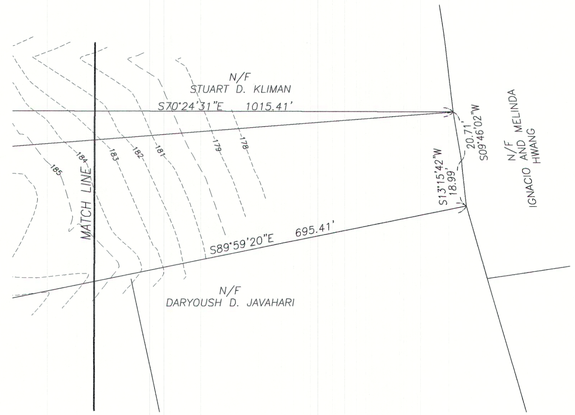
NO REFUSAL
NO MOTTLING
NO WEEPING

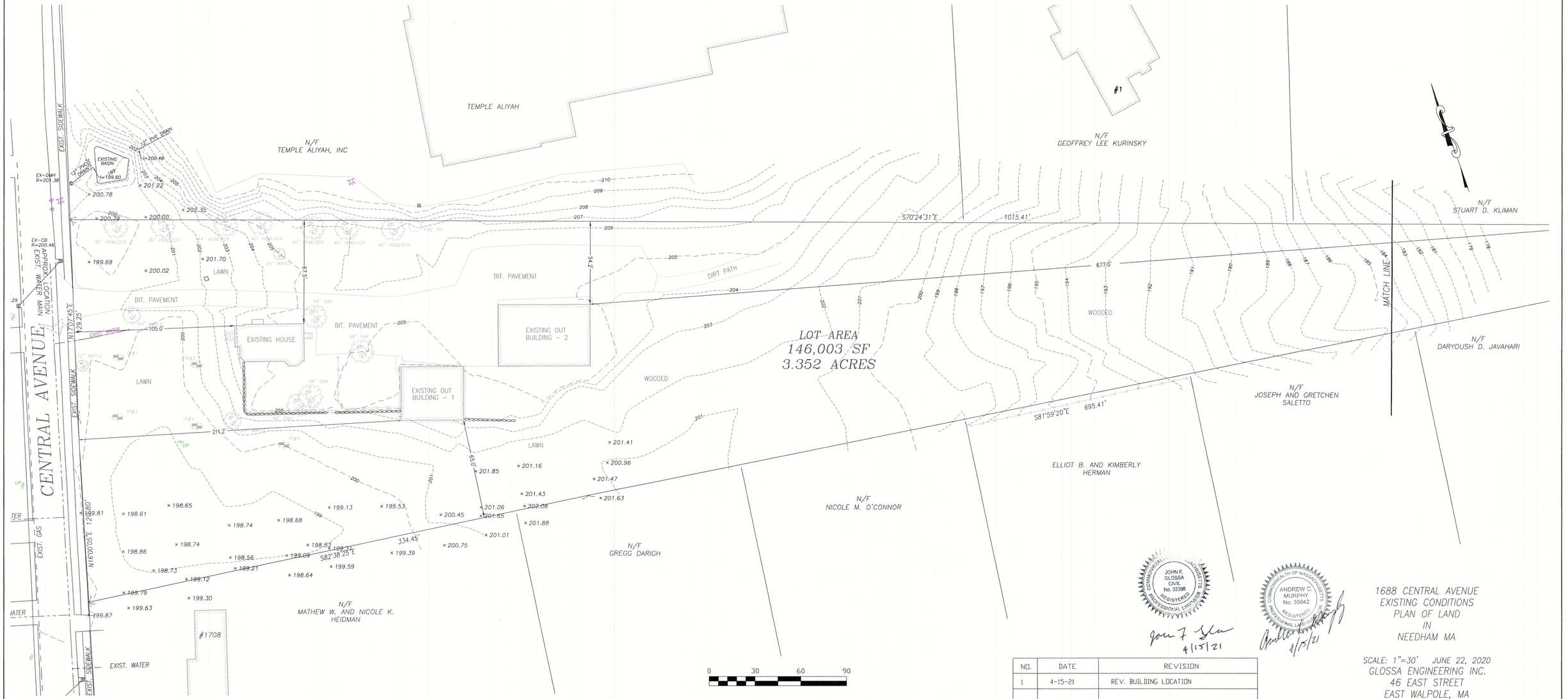
TEST PIT # 5

0"		200.00
	A SANDY LOAM 10YR 3/2	
13"		198.92
	B SANDY LOAM 10YR 5/8	
48"		196.00
	C SAND 2.5Y 5/4	
136"		188.67

NO REFUSAL
NO MOTTLING
NO WEEPING

SOIL TEST PERFORMED BY JOHN F. GLOSSA P.E. SOIL EVALUATOR #890
ON 3-24-20





JOHN F. GLOSSA CIVIL No. 32398 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS
4/15/21

ANDREW C. MURPHY No. 35042 REGISTERED PROFESSIONAL LAND SURVEYOR COMMONWEALTH OF MASSACHUSETTS
4/15/21

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

1688 CENTRAL AVENUE
EXISTING CONDITIONS PLAN OF LAND IN NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020

GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

CONSTRUCTION NOTES

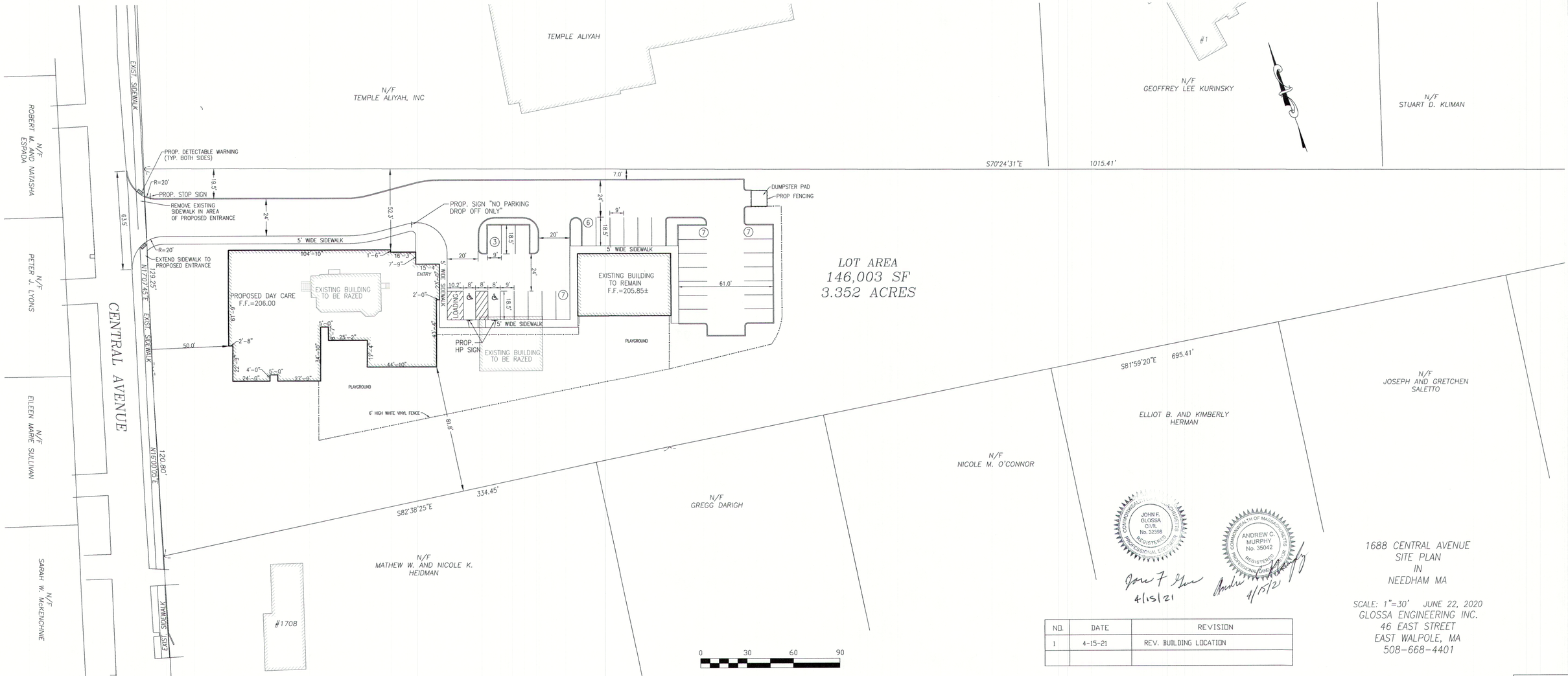
1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.

2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT.

LEDGEND:

EXISTING GRADE	--------100--------
EXISTING SPOT GRADE	100x0
EXISTING GAS MAIN	——G——
EXISTING SEWER MANHOLE	SMH
EXISTING DRAIN MANHOLE	EX-DMH
EXISTING CATCH BASIN	EX-CB
EXISTING ELECTRIC MANHOLE	EX-EMH
EXITING UTILITY POLE	UP
EXISTING TEST PIT	TEST PIT#5
EXISTING BOUND	
EXISTING FENCE	
EXISTING FIRE HYDRANT	
EXISTING GATE VALE	
PROPOSED GRADE	205
PROPOSED SPOT GRADE	205X4
PROPOSED CATCH BASIN	CB-1
PROPOSED DRAIN MANHOLE	DMH-1
PROPOSED TAPPING SLEEVE AND VALVE	PROPOSED 8"X6" TS&V

NOTE:
THE PROJECT DOES NOT REQUIRE AN ELECTRICAL TRANSFORMER AND WILL NOT HAVE A GENERATOR.



JOHN F. GLOSSA CIVIL No. 32388 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS
4/15/21

ANDREW C. MURPHY No. 35042 REGISTERED PROFESSIONAL LAND SURVEYOR COMMONWEALTH OF MASSACHUSETTS
4/15/21

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

1688 CENTRAL AVENUE
SITE PLAN
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

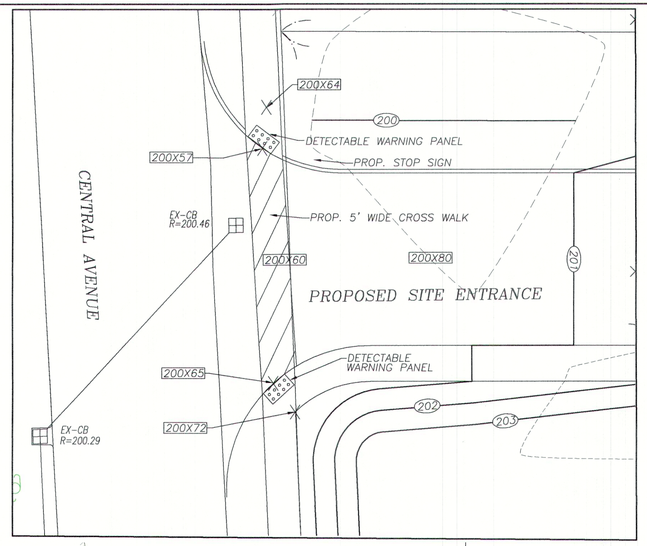
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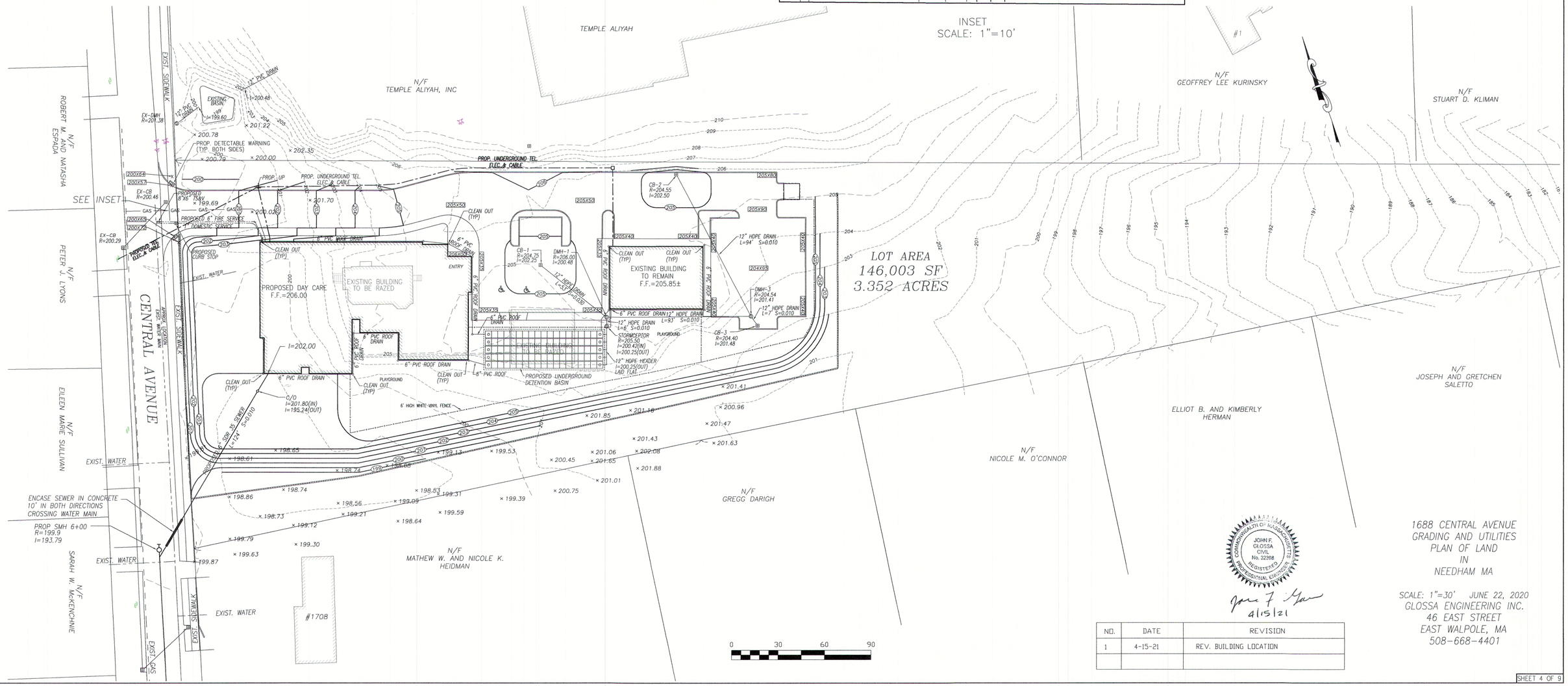
LEDGEND:

EXISTING GRADE	100
EXISTING SPOT GRADE	× 200.02
EXISTING GAS MAIN	G
EXISTING SEWER MANHOLE	SMH
EXISTING DRAIN MANHOLE	EX-DMH
EXISTING CATCH BASIN	EX-CB
EXISTING ELECTRIC MANHOLE	EX-EMH
EXITING UTILITY POLE	UP
EXISTING TEST PIT	TEST PIT#5
EXISTING BOUND	
EXISTING FENCE	
EXISTING FIRE HYDRANT	
EXISTING GATE VALE	
PROPOSED GRADE	205
PROPOSED SPOT GRADE	205X56
PROPOSED CATCH BASIN	CB-1
PROPOSED DRAIN MANHOLE	DMH-1
PROPOSED TAPPING SLEEVE AND VALVE	PROPOSED 8"X6" TS&V



INSET
SCALE: 1"=10'

NOTE:
THE PROJECT DOES NOT REQUIRE AN ELECTRICAL TRANSFORMER AND WILL NOT HAVE A GENERATOR.



4/15/21

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

1688 CENTRAL AVENUE
GRADING AND UTILITIES
PLAN OF LAND
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020

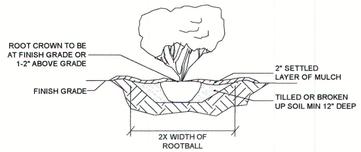
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

CONSTRUCTION NOTES

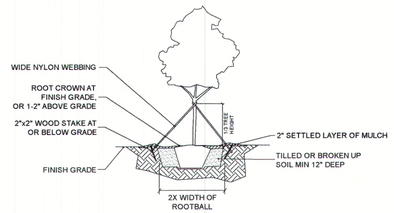
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	COMMON NAME	BOTANICAL NAME	SIZE	QUANTITY
PA	PINK AZELEA	RHODODENDRON PERICLYMENOIDES	2'-3'	7
WA	WHITE AZELEA	RHODODENDRON VICOSUM	2'-3'	4
LM	MAPLE "LEGACY"	ACER SACCHARUM	1-1/2" CAL.	4
WP	WHITE PINE	PINUS STOBUS	1-1/2" CAL.	17
CA	CRABAPPLE "DONALD WYMAN"	MALUS "DONALD WYMAN"	1-1/2" CAL.	4
EG	ARBORVITAE "EMERALD GREEN"	THJA OCCIDENTALIS SMARAGD	2'-3'	75
HM	ARBORVITAE "HETZ MIDGET"	THJA OCCIDENTALIS "HETZ MIDGET"	2'-3'	6
RC	RED CEDAR	JUNIPERUS VIRGINIANA	1-1/2" CAL.	14
CH	CHERRY	PRUNUS AVIUM	1-1/2" CAL.	2



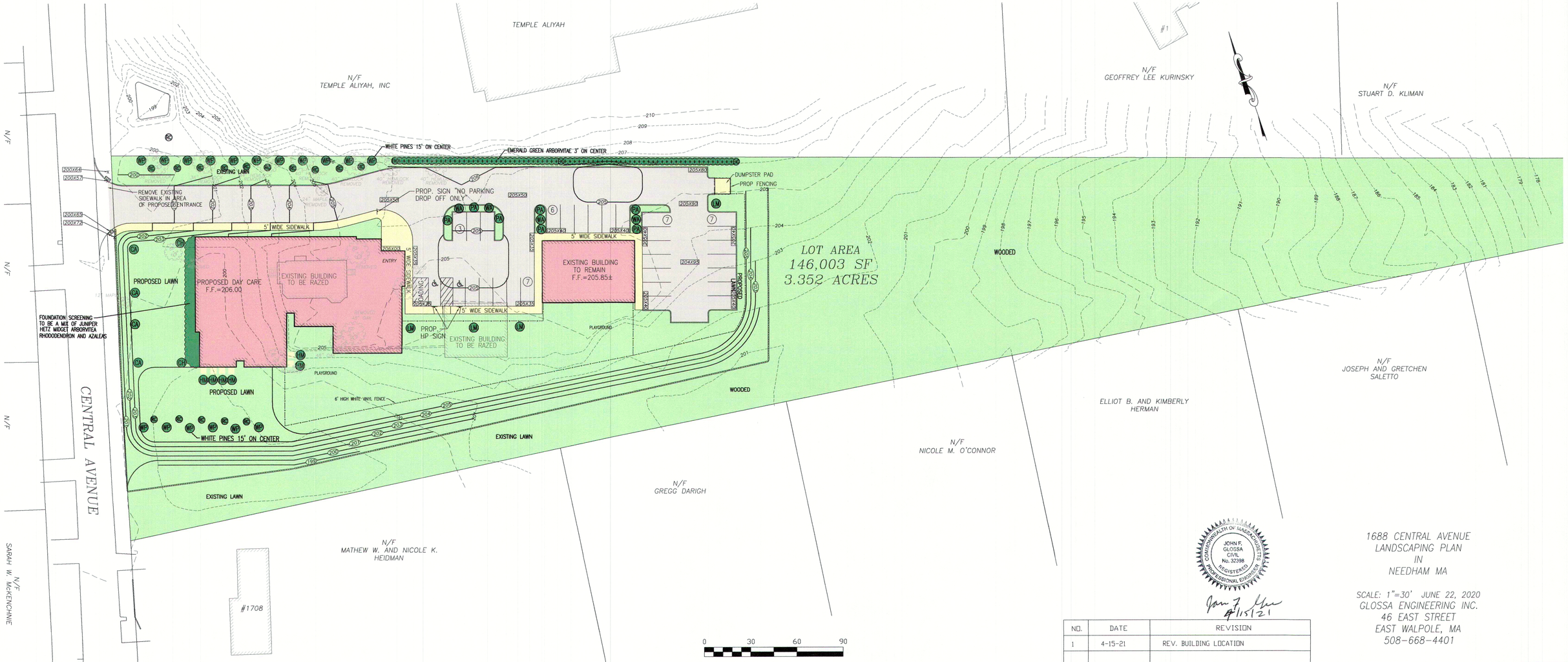
TYP. SHRUB PLANTING:
INDIVIDUAL PLANTING HOLE
NOT TO SCALE



TREE PLANTING
NOT TO SCALE

LEDGEND:

EXISTING GRADE 100
EXISTING SPOT GRADE × 200.02
EXISTING GAS MAIN G
EXISTING SEWER MANHOLE SMH
EXISTING DRAIN MANHOLE EX-DMH
EXISTING CATCH BASIN EX-CB
EXISTING ELECTRIC MANHOLE EX-EMH
EXITING UTILITY POLE UP
EXISTING TEST PIT TEST PIT#5
EXISTING BOUND
EXISTING FENCE
EXISTING FIRE HYDRANT
EXISTING GATE VALE
PROPOSED GRADE 205
PROPOSED SPOT GRADE 205X32
PROPOSED CATCH BASIN CB-1
PROPOSED DRAIN MANHOLE DMH-1
PROPOSED TAPPING SLEEVE AND VALVE PROPOSED 8"X6" TS&V

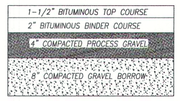


COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED PROFESSIONAL ENGINEER
4/15/21

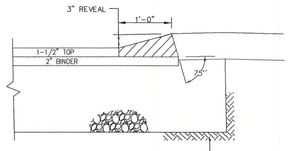
NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

1688 CENTRAL AVENUE
LANDSCAPING PLAN
IN
NEEDHAM MA

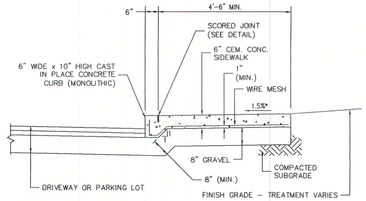
SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

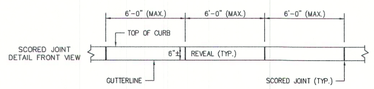


PAVEMENT DETAIL
NOT TO SCALE



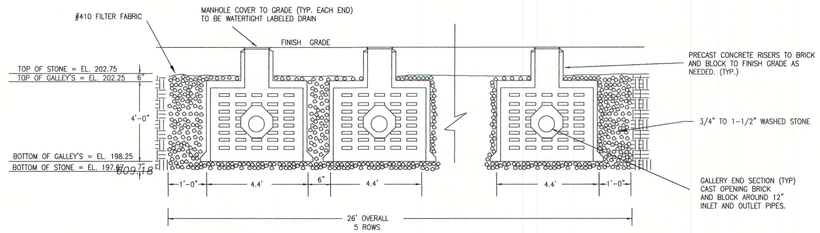
TYPICAL CAPE COD BERM DETAIL
NOT TO SCALE

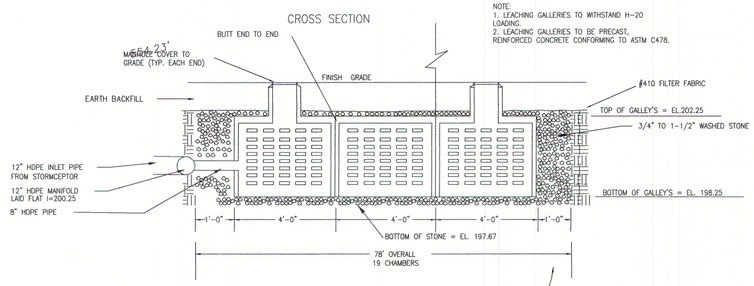




NOTE: MONOLITHIC CONCRETE CURB SHALL NOT BE USED ON ANY PUBLIC STREET OR WAY. MONOLITHIC CONCRETE CURB MAY BE USED ON PRIVATE WAYS, DRIVEWAYS AND IN PARKING LOTS.

* – TOLERANCE FOR CONSTRUCTION ±0.5%

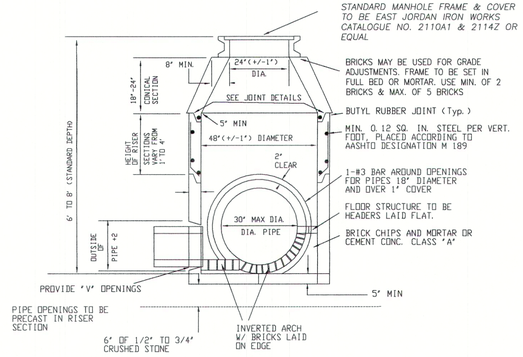




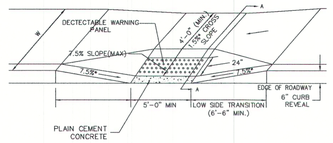
NOTE:
1. LEACHING GALLERIES TO WITHSTAND H-20 LOADING.
2. LEACHING GALLERIES TO BE PRECAST, REINFORCED CONCRETE CONFORMING TO ASTM C478.

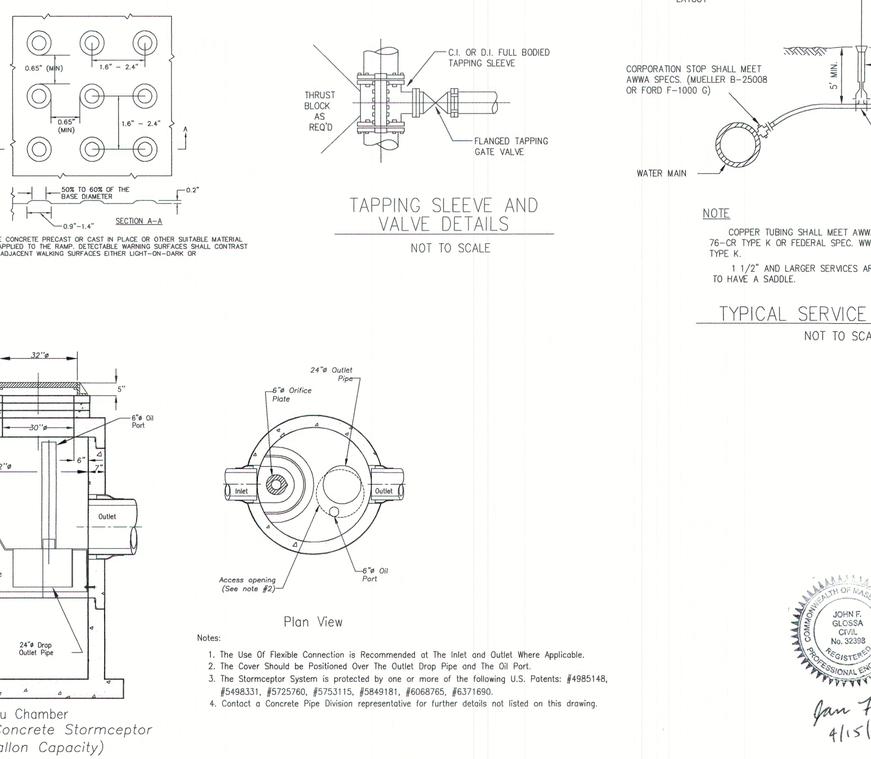
NOTE: REMOVE ALL UNSUITABLE MATERIAL FROM BENEATH THE INFILTRATION BASIN TO THE TOP OF THE SAND AND GRAVEL LAYER AS DETERMINED BY A DEP APPROVED SOIL EVALUATOR. REPLACE WITH SEPTIC SAND

TYPICAL UNDERGROUND INFILTRATION BASIN
NOT TO SCALE



PRECAST CONCRETE DRAIN MANHOLE DETAILS
NOT TO SCALE



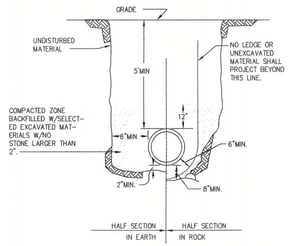


NOTE

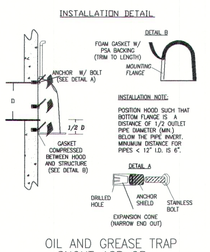
COPPER TUBING SHALL MEET AWWA SPEC. 76-CR TYPE K OR FEDERAL SPEC. WWT-799 TYPE K.

1 1/2" AND LARGER SERVICES ARE REQUIRED TO HAVE A SADDLE.

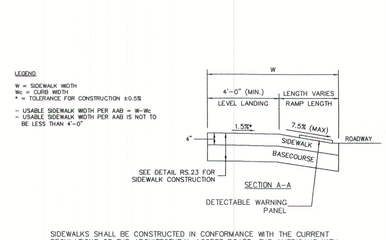
TYPICAL SERVICE CONNECTION
NOT TO SCALE



WATER MAIN TRENCH DETAIL
NOT TO SCALE



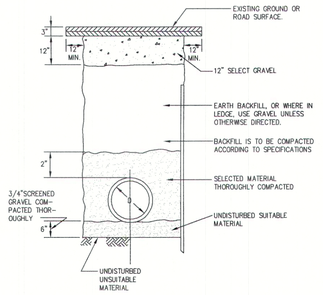
OIL AND GREASE TRAP SNOUT 18R OR APPROVED EQUAL
NOT TO SCALE



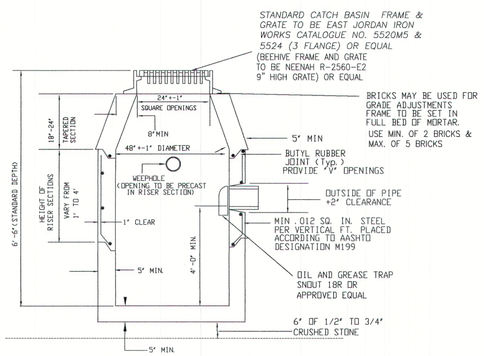
SIDEWALKS SHALL BE CONSTRUCTED IN CONFORMANCE WITH THE CURRENT REGULATIONS OF THE ARCHITECTURAL ACCESS BOARD, THE AMERICANS WITH DISABILITIES ACT AND THE CURRENT MASSHIGHWAY CONSTRUCTION STANDARDS.

PANELS MAY BE CONCRETE PRECAST OR CAST IN PLACE OR OTHER SUITABLE MATERIAL PERMANENTLY APPLIED TO THE RAMP. DETECTABLE WARNING SURFACES SHALL CONTRAST VISUALLY WITH ADJACENT WALKING SURFACES EITHER LIGHT-ON-DARK OR DAR-ON-LIGHT.

TAPPING SLEEVE AND VALVE DETAILS
NOT TO SCALE

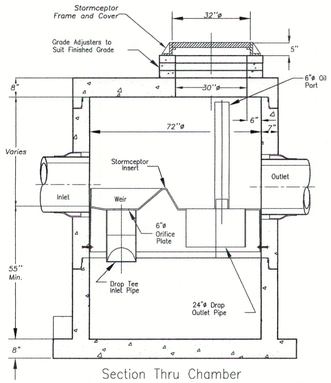


TYPICAL DRAIN TRENCH DETAILS
NOT TO SCALE



NOTE: NO BELL ENDS IN CATCH BASIN. CONNECTIONS TO BE TIGHTLY SEALED WITH MORTAR.

PRECAST CONCRETE CATCH BASIN DETAILS
NOT TO SCALE



Section Thru Chamber
STC 900 Precast Concrete Stormceptor
(900 U.S. Gallon Capacity)

Plan View

Notes:
1. The Use Of Flexible Connection is Recommended at The Inlet and Outlet Where Applicable.
2. The Cover Should be Positioned Over The Outlet Drop Pipe and The Oil Port.
3. The Stormceptor System is protected by one or more of the following U.S. Patents: #4985148, #5498331, #5725760, #5753115, #5849181, #6068765, #6371690.
4. Contact a Concrete Pipe Division representative for further details not listed on this drawing.

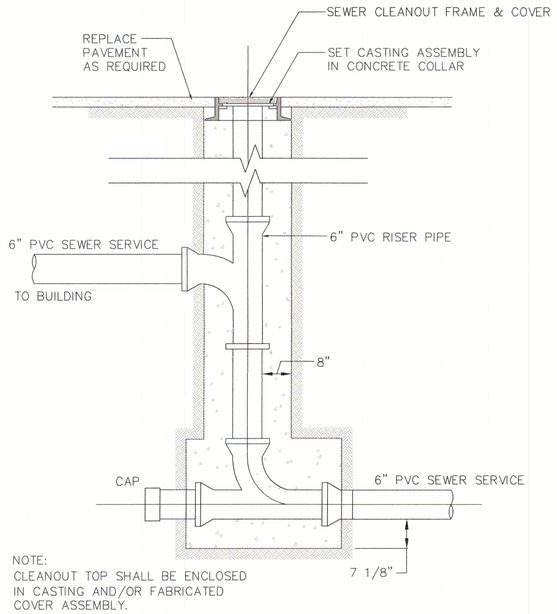
NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

JOHN F. GLOSSA CIVIL No. 32308 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS

4/15/21

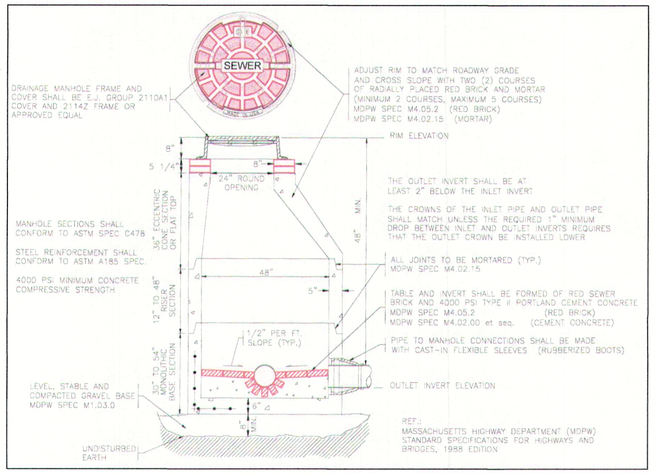
1688 CENTRAL AVENUE
CONSTRUCTION DETAILS
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401



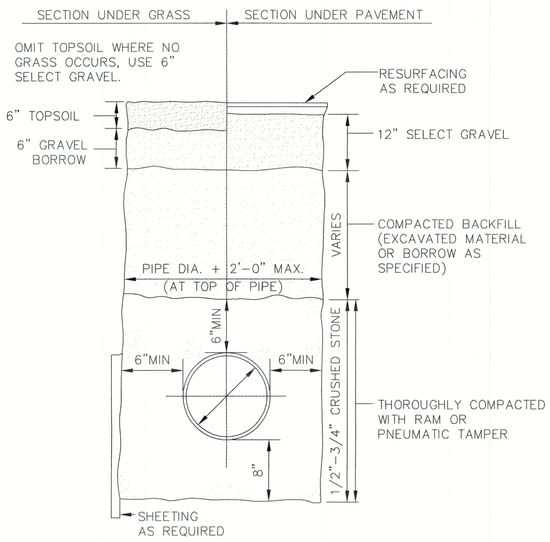
SEWER CLEANOUT DETAIL (C/O)

NOT TO SCALE



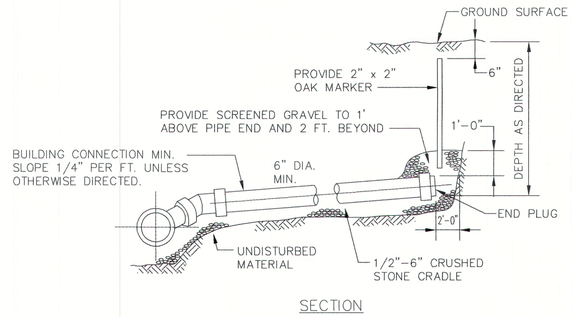
TYPICAL SEWER MANHOLE DETAIL

NOT TO SCALE

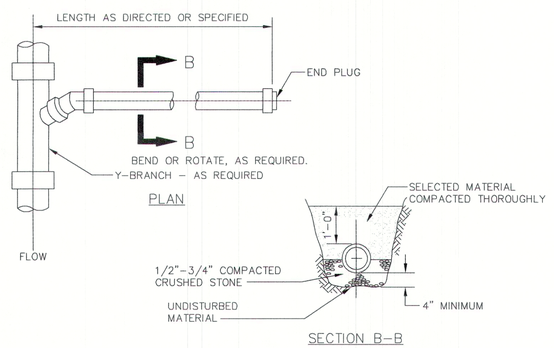


TYPICAL SEWER TRENCH DETAIL

NOT TO SCALE



SECTION



SECTION B-B

TYPICAL BUILDING CONNECTION

NOT TO SCALE

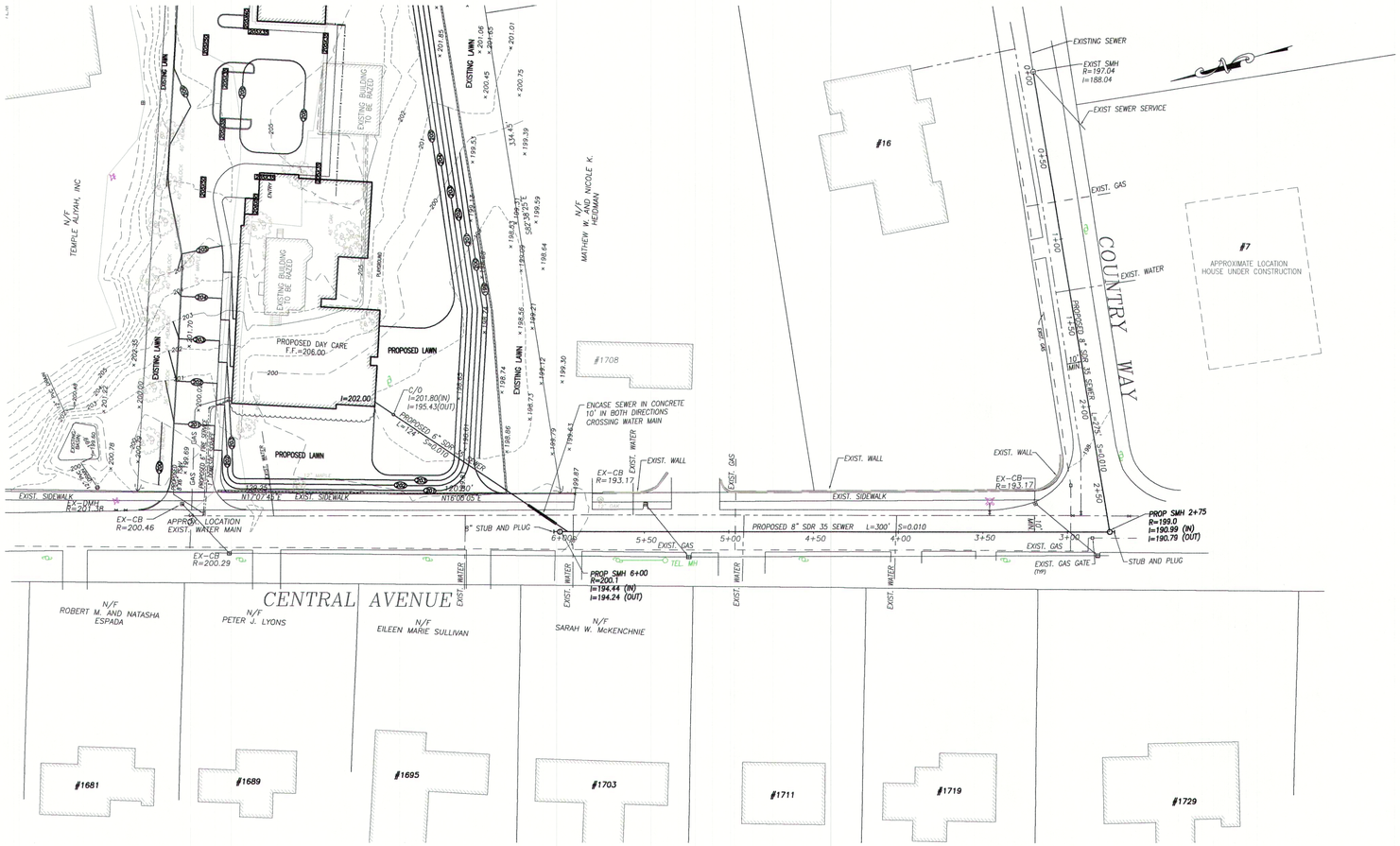
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1	4-15-21	REV. BUILDING LOCATION

COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED
PROFESSIONAL ENGINEER

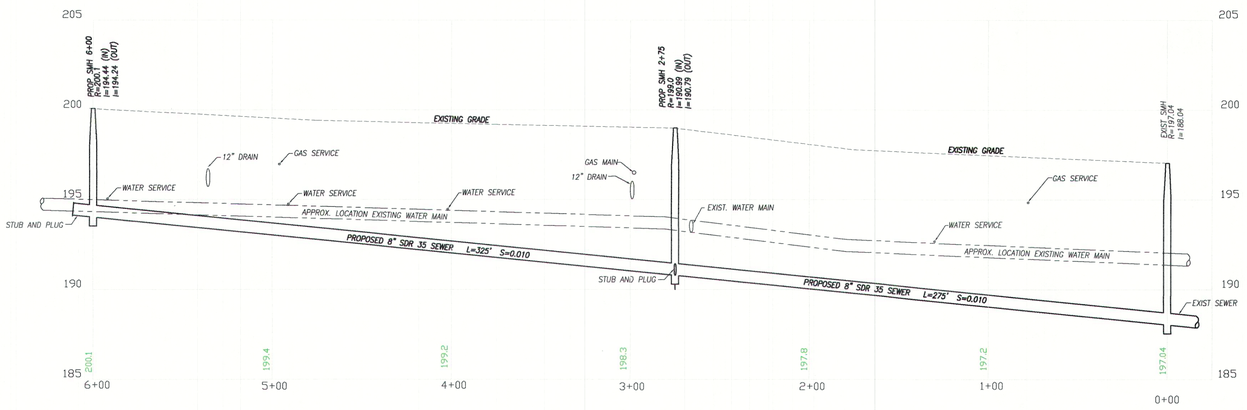
Jan F Glo
4/15/21

1688 CENTRAL AVENUE
CONSTRUCTION DETAILS
IN
NEEDHAM MA

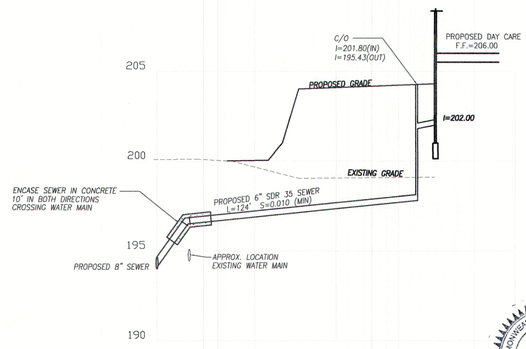
SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401



PLAN
SCALE: 1" = 40'



PROFILE
SCALE: HOR. 1" = 40'
VERT. 1" = 4'



BUILDING CONNECTION PROFILE
SCALE: HOR. 1" = 40'
VERT. 1" = 4'

LEDGEND:

EXISTING GRADE	100
EXISTING SPOT GRADE	× 200.02
EXISTING GAS MAIN	
EXISTING GAS GATE	
EXISTING SEWER MANHOLE	EXIST. SMH
EXISTING DRAIN MANHOLE	EX-DMH
EXISTING CATCH BASIN	EX-CB
EXISTING ELECTRIC MANHOLE	EX-EMH
EXITING UTILITY POLE	
EXISTING FENCE	
EXISTING FIRE HYDRANT	
EXISTING GATE VALE	
PROPOSED GRADE	205
PROPOSED SPOT GRADE	205×35
PROPOSED SEWER MANHOLE	PROP. SMH
PROPOSED CATCH BASIN	CB-1
PROPOSED DRAIN MANHOLE	DMH-1
PROPOSED TAPPING SLEEVE AND VALVE	PROPOSED 8"X6" TS&V

CONSTRUCTION NOTES

1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.

2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32168
REGISTERED PROFESSIONAL ENGINEER

Jan 7 Glossa
4/15/21

0 30 60 90

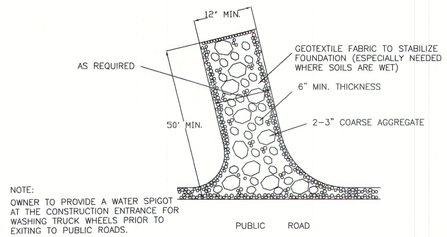
1688 CENTRAL AVENUE SEWER EXTENTION PLAN AND PROFILE IN NEEDHAM MA

SCALE: AS NOTED NOVEMBER 19, 2020

GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

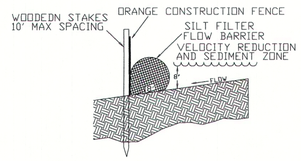
CONSTRUCTION SEQUENCING:
1. INSTALLATION OF SILT BARRIERS AS SHOWN ON THE PLANS
2. INSTALLATION OF STABILIZED CONSTRUCTION ENTRANCE
3. ESTABLISHMENT OF A CONSTRUCTION STAGING AREA
4. ESTABLISHMENT OF A MATERIALS STOCKPILE AREA
5. REMOVAL OF EXISTING BUILDINGS
6. CLEARING AND GRUBBING
7. REMOVAL AND STOCKPILING OF TOP AND SUBSOILS
8. REMOVAL OF SAND AND GRAVEL TO BRING SITE TO SUB GRADE
9. ESTABLISHING AND STABILIZING WITH LOAM AND SEED ALL CUT AND FILL SLOPES
10. INSTALL BINDER COURSE OF DRIVEWAY IN LOCATION OF FINAL ASPHALT DRIVEWAY
11. CONSTRUCTION OF THE BUILDING
12. INSTALLATION OF UNDERGROUND DETENTION BASIN
13. INSTALLATION OF UNDERGROUND UTILITIES, IE DRAINAGE,WATER LINE, ELECTRIC, CATV AND TELEPHONE
14. INSTALLATION OF LANDSCAPING AND GRASS AREAS
15. FINAL COURSE OF ASPHALT FOR DRIVEWAYS
16 CLEAN UP AND DEMOBILIZE

CONSTRUCTION NOTES:
1. ALL AREAS TO BE ALTERED SHALL BE BROUGHT TO SUB GRADE OR FINAL GRADE AT THE START OF CONSTRUCTION
2. AREAS ONCE BROUGHT TO GRADE THAT WILL NOT BE ALTERED AGAIN SHALL BE LOAMED AND SEEDED AND PROTECTED WITH STRAW GUARD AS NEEDED
3. DRAINAGE BASIN AS SHOWN SHALL NOT BECOME OPERATIONAL UNTIL THE SITE IS FINISHED AND SWEPTED OF ALL DEBRIS
4. TEMPORARY SEDIMENT BASINS SHALL BE USED AND MAINTAINED UNTIL ALL PROPOSED PAVED AREAS ARE COMPLETE AND SWEPT OF ALL DEBRIS
5. CATCH BASINS SHALL BE PROTECTED FROM SEDIMENTS AT ALL TIMES UNTIL CONSTRUCTION IS COMPLETE
6. INSTALL SILT SACKS IN ALL EXISTING AND PROPOSED CATCH BASINS

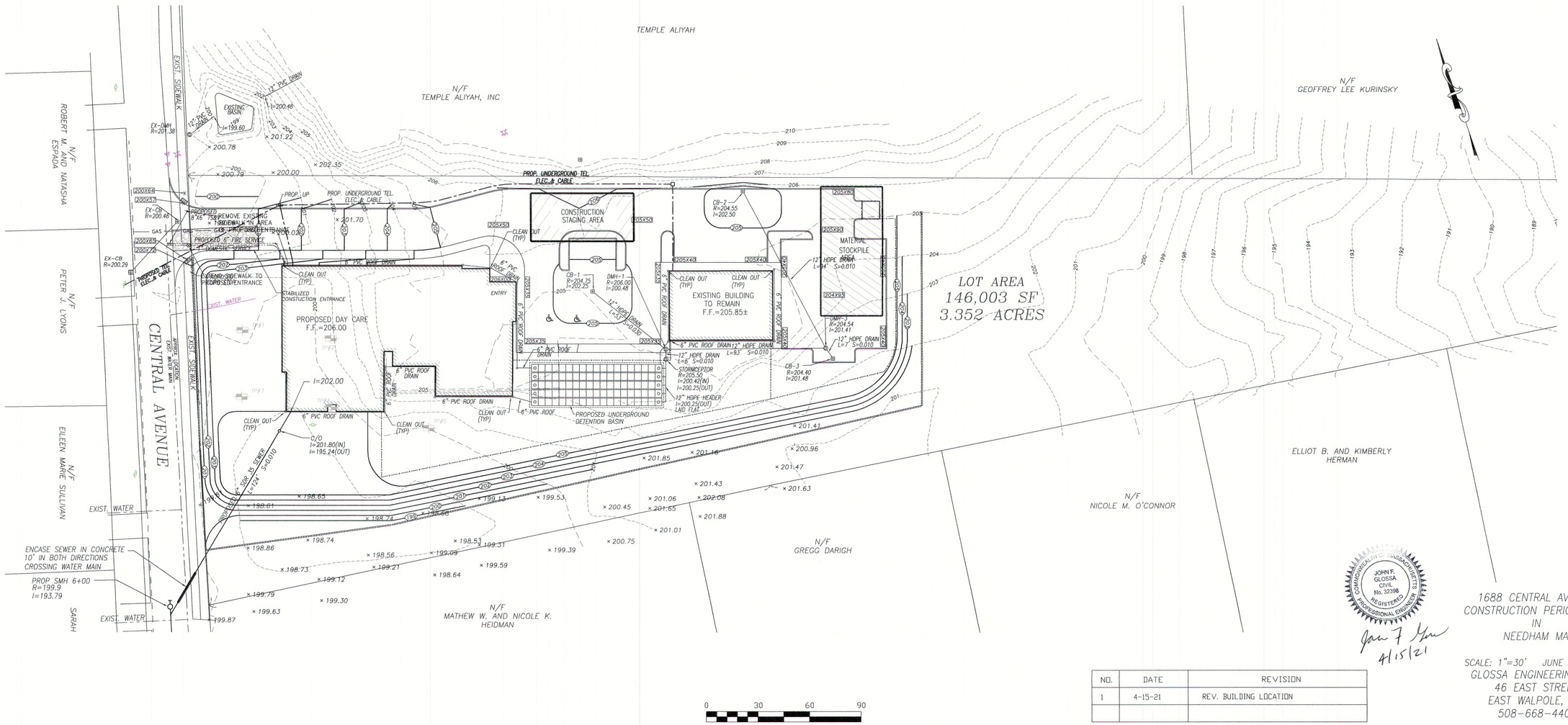


NOTE:
OWNER TO PROVIDE A WATER SPIGOT AT THE CONSTRUCTION ENTRANCE FOR WASHING TRUCK WHEELS PRIOR TO EXITING TO PUBLIC ROADS.

STABILIZED CONSTRUCTION ENTRANCE
NOT TO SCALE



8" COMPOST SOCK DETAIL
NOT TO SCALE



JOHN F. GLOSSA CIVIL No. 32398 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS
4/15/21

NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

1688 CENTRAL AVENUE
CONSTRUCTION PERIOD PLAN
IN
NEEDHAM MA

SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

From: Dennis Condon
To: Alexandra Clee
Subject: RE: Request for comment - 1688 Central Avenue - revised plans
Date: Tuesday, April 27, 2021 9:45:04 AM
Attachments: image001.png
image002.png

Hi Alex,
The Fire dept. has no further comments at this time.

Thanks,
Dennis

Dennis Condon
Chief of Department
Needham Fire Department
Town of Needham
(W) 781-455-7580
(C) 508-813-5107
Dcondon@needhamma.gov

Follow on Twitter: Chief Condon@NeedhamFire

Watch Needham Fire Related Videos on YouTube @ Chief Condon

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Tuesday, April 27, 2021 9:31 AM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
Subject: Request for comment - 1688 Central Avenue - revised plans

Dear all,

We received an updated letter and updated plan set for the noted project; both are attached for your review. This matter is currently scheduled for May 18 in front of the Planning Board. As there is a lot of interest in this proposal, we would welcome any new/additional comments you may have as soon as you are able (but at the latest, by Wednesday May 12).

Thanks, alex.

Alexandra Clee
Assistant Town Planner
Needham, MA
www.needhamma.gov

From: Alexandra Clee
Sent: Monday, March 22, 2021 2:50 PM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
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Subject: Request for comment - 1688 Central Avenue

Dear all,

The Planning Board will be hearing about a proposal for a new daycare at 1688 Central Avenue on April 6, 2021. More information is included in the submitted documents, detailed below, which can be attached to this email (with the exception of the Stormwater Report) and can also be found at this location K:\Planning Board Applications\Planning_1688 Central Avenue_2021. Some of the application documents are attached, as noted, but not all, as the files were too large to include all. (some of you will receive a hard copy in the inter-office mail as well).

The documents attached for your review are:

1. Application submitted by Needham Enterprises, LLC with Exhibit A. *attached*

2. Letter from Evans Huber Attorney, dated March 11, 2021. *Attached*

3. Letter from Evans Huber Attorney, dated March 12, 2021. *attached*

4. Letter from Evans Huber Attorney, dated March 16, 2021. *attached*

5. Plan set entitled "Needham Enterprises Daycare Center," prepared by Mark Gluesing Architects, consisting of 4 sheets: Sheet 1, Sheet A 1-0, entitled "1st Floor Plan," dated March 8, 2021; Sheet 2, Sheet A 1-1, entitled "Roof Plan," dated March 8, 2021; Sheet 3, Sheet A 2-1, showing Building Sections, dated March 8, 2021; Sheet 4, Sheet A 3-0, showing elevations, dated March 8, 2021. *Attached.*

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I also have attached a letter from Abutters that we received today that I am sharing in case you wish to note the neighborhood concerns while you conduct your review.

The meeting where this topic will be presented to the Planning Board is April 6, 2021. If you wish to comment, please submit your comment by Wednesday March 31, 2021, so that the Petitioner has time to address any concerns or questions in advance of the hearing.

Thanks, alex.

_____
Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

From:	Tara Gurge
To:	Alexandra Clee
Cc:	Lee Newman
Subject:	FW: Public Health additional comment RE:1688 Central Avenue project
Date:	Tuesday, April 27, 2021 11:28:01 AM
Attachments:	1688Modified.pdf letter1688.pdf image002.png image003.png

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Alex –

The Public Health Division had an additional comment noted below, which was discussed at our recent Board of Health meeting conducted back on April 16th. See additional comment below –

- Will soil testing be completed at this site, which also includes Lead soil testing, since the future property use would be for a Daycare? This is in light of the report that was located in the Fire Dept. files RE: the previous property owner reportedly conducting car repairs at this site. Please have the applicant confirm that Lead testing will also be part of the this overall soil testing to be conducted at this property prior to construction. Can a copy of these soil testing results also be shared with the Public Health Division?

Please let us know if you have any additional questions on need further clarification on that request.

Thanks,

TARA E. GURGE, R.S., C.E.H.T., M.S.
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
Mobile- (781) 883-0127
Email - tgurge@needhamma.gov
Web- www.needhamma.gov/health

please consider the environment before printing this email

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Follow Needham Public Health on Twitter!

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Sent: Tuesday, April 27, 2021 9:31 AM
To: David Roche <droche@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>; Timothy McDonald <tmcdonald@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Carys Lustig <clustig@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
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Thanks, alex.

_____

Alexandra Clee
Assistant Town Planner
Town of Needham

500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

May 6, 2021

The Needham Police have reviewed the materials related to the proposed daycare facility located at 1688 Central Ave. As part of this review, I have spoken with Holly Clarke who is involved with a neighborhood group that is concerned with the project. I also spoke with Pat Day who is the owner of the daycare facility.

I have also reviewed the two traffic impact assessment reports.

As we look at most projects the police department is primarily concerned with traffic, safety, and parking. All three of these issues are relevant in this review. Traffic congestion and flow are a concern, but I feel that several measures have been taken to mitigate some of the concerns raised. The first from an overall perspective is that the center will be staggering drop-off and pick-up times as they currently do and will continue post covid. The ability to stagger drop-offs will limit vehicles that are stacked within the back parking area which will prevent vehicles from stacking on Central Ave. This will also prevent an influx of vehicles at one drop off limiting the impact to traffic on Central Ave and within the parking area. The change to 30 parking spaces will alleviate any concern of adequate parking or vehicles stacking within the lot during drop-off and pick-up.

Several adjustments or improvements related to traffic flow have been improved to address some traffic concerns. The addition of traffic lights at Central and Charles River St allows for an interrupted traffic flow which allows for breaks in the traffic which may assist with entering and exiting the site. The Needham Police have adjusted traffic mitigation within the Newman School parking lot that will have a positive impact on traffic along Central Ave near the school. We continue to monitor the Newman site and will adjust as needed.

A check of accidents at the Central Ave and Charles River St shows 1 accident between 2016-3/2/21.

A check of accidents on Central Ave between Pine St and Charles River St shows 11 accidents between 1/1/16-4/13/2021.

I do not envision the neighboring streets being used as a cut-through for commuter traffic as the layout of these roads does not provide a route that would circumvent Central Ave traffic that would save time.

I do anticipate that neighboring residents could potentially have a tougher time getting into and out of their driveways. The staggered drop-off times and intermittent traffic due to the traffic lights may provide some relief for these concerns. The owner of the facility has mentioned the willingness to have a police officer present during the opening week or so to mitigate and recommend changes to traffic, parking, and overall site safety.

Based on the information provided I do not believe that this project would impact the police or fire department's ability to respond promptly to emergencies.

If the facility continues to stagger drop-offs and manages the internal parking circulation, I feel the traffic will be manageable and not a safety concern.

Chief John J. Schlittler

TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC WORKS DEPARTMENT
500 Dedham Avenue, Needham, MA 02492
Telephone (781) 455-7550 FAX (781) 449-9023

May 12, 2021

Needham Planning Board
Public Service Administration Building
Needham, MA 02492

RE: Minor Project Site Plan Follow up Review of revised submittals
Needham Enterprises Childcare Facility-1688 Central Avenue

Dear Members of the Board,

The Department of Public Works has completed a follow up review of the above referenced site Planning Board plan minor permit review. The applicant proposes to construct a new 9,966 square foot building as a childcare facility. The childcare facility will have a maximum of 100-children. The support staff will be 13-employees. The plans have been mainly updated to reshape the proposed drop off and parking areas to provide 30-parking spaces to service the facility.

The review was conducted in accordance with the Planning Board's regulations and standard engineering practice. The documents submitted for review are as follows:

1- A memo from Attorney Evans Huber to members of the Needham Planning Board dated May 5, 2021 regarding plan updates and changes per discussions with the Board and neighbors.
2- Plans entitled, "Site Development Plans Daycare", 1688 Central Avenue, Needham, MA prepared by Glossa Engineering, Inc. dated June 22, 2020, revised 4/15/21, and consisting of 9 sheets.
3- A letter from Attorney Evans Huber to members of the Needham Planning Board dated April 16, 2021.
4- Request from the Planning Board Office to determine if the parking demands for this daycare facility meet the most current ITE manual.

Our comments and recommendations are as follows:

- The updated traffic report submitted only provides information of the peak weekday morning traffic conditions. Although the report indicates that the morning peak hours will have more site generated trips, the report should provide the evening data and those finding as well.
- The accident data on Central Avenue in the area is absent for the traffic study. The applicant should provide this information for review.
- Please easier to read the over lapping text on the plan regarding driveway opening, and sidewalk improvements in front of the property.

- Original plans show that the facility's proposed lighting will not trespass onto the neighboring properties. However, the shields proposed should minimize visual glare to the closest neighboring properties. Provide updated plans on the lighting for the additional parking area (previously plans show as an asphalt playground).
- The project does not indicate if a generator, or if an electrical transformer is required. If found to be required, the applicant will need to provide a sound study and demonstrate sound attenuation measures for the generator, and visual screening measures for the generator or transformer.
- The plans call for collecting stormwater and mitigating the post construction storm events though onsite infiltration systems. As part of the NPDES requirements, the applicant will also need to comply with the Public Out Reach & Education and Public Participation & Involvement control measures. The applicant shall submit a letter to the DPW identifying the measures selected for Public Outreach, and for Public Participation and Involvement and provide dates by which the measures will be completed.
- According to the ITE Journal entitled, "Parking and Trip Generation Characteristics for Day-Care Facilities" dated July 1994, (typical reference document used in the past for parking demand for day care facilities) the number of parking spaces for this enrollment and staff should be 24. This is based on 100 students and 13 staff employees that may be onsite at one time.

  The latest ITE Parking Generation Manual (5th Ed., January 2019) for this land use average demand is 2.45 Parking spaces per 1,000 square feet of Gross Floor Area. The parking Demand will be 24-spaces (9.941 x 2.45= 24). The applicant meets the most recent ITE parking generation manual as the most recent plan submittal provides 30-Parking spots.

If you have any questions regarding the above, please contact our office at 781-455-7538.

Truly yours,

Thomas Ryder
Assistant Town Engineer

TOWN OF NEEDHAM
TOWN HALL
1471 Highland Avenue
Needham, MA 02492-2669

Design Review Board

Memo: Project Site Plan Review, 1688 Central Ave., Needham Enterprises LLC
Meeting Date: May 10, 2021
Memo Date: May 14, 2021
By: Deborah Robinson

The Board reviewed the design drawings for the new building proposed for this site, and the project was discussed at the March 22 meeting. The Applicant asked to return to the DRB on May 10 in order to present revisions they had made to the landscaping plans. As the next meeting is a Planning Board meeting on May 18, we understand the intent was to obtain updated feedback from the DRB. Representing and presenting for the Applicant was Evans Huber, the attorney for the project. Present for the Design Review board were Deborah Robinson (vice-chair), Nelson Hammer, Steve Tanner, Bob Dermody, Len Karan and Chad Reilly. Mark Gluesing (chair) recused himself due to his involvement as architect for the project.

The proposed building is a day care facility of 9,966 SF to be located on a 146,003 SF lot in a residential neighborhood. The proposed one-story building would be set back 50 FT (increased from 40 FT) from the street. The site would include 30 parking spaces (increased from 24). While the existing residential building on the site and smaller out-building (garage) would be demolished, the barn structure is shown to remain. The project application indicated that the new building will be "designed to look like a large single-family home...".

The package received for our review included a site plan but no architectural drawings. An updated package was sent to DRB members on 5/10/21, including building elevations and some other drawings. The Applicant prepared a summary memo (dated 5/5/21) of the changes made, and included this with the revised submission on 5/10/21.

The following are the previous comments from our memo of March 26, 2021, with updated comments in **bold**:

Site Plan
The Board has concerns regarding the siting of the building so close to the street. This is not in keeping with the character of Central Ave. We understand the parking and building access requirements, but those could be retained while adjusting the building away from central avenue, either by reconfiguring the building footprint or by demolishing the barn and moving the proposed building and parking further to the east. There is unused area to the east.

The Board appreciates that the site plan was adjusted to move the building back some, and this involved reconfiguring parking as well as adding spaces. It is an improvement, and the parking layout looks acceptable from a circulation standpoint.
There is still some concern that a relatively large building is sited closer to the street than other buildings in the neighborhood. An option to be considered still could be the removal of the barn and moving the building and site design elements further to the east of the property.

The Applicant did not include a site plan or street-view renderings to show the relationship of the proposed building to the street, to adjacent houses and to the synagogue next door. Those drawings would be helpful moving forward as the site plan and building issues are reviewed.

Building Design
The Board has concerns regarding the building exterior. The building is not residential in appearance. The west façade is the most important façade, and is too institutional in design. It is very flat. A residential-looking building would have more modulation of the massing, possibly including more three-dimensional window areas, a porch or overhang, etc. While the Applicant responded to this by indicating that the truss system for the roof structure is a limiting factor for the massing, we do not agree that that is a driving force for the architecture.

The Applicant's screenshare presentation included a 3-D drawing of the building that was not in the package submitted to the Design Review Board.

The rendered elevations received just prior to the meeting showed a minor change to the windows on the west façade. As described by the Applicant, this involved having the windows now project 8" from the façade, with an overhang of 5" beyond that. The Applicant did not include the drawings from the previous meeting to show the change more clearly. The Board had little comment on this change. While one member (someone who had not been present at the March meeting) indicated the design of the building in general "looks good", that was not a specific acknowledgement that the comments at the previous meeting had been successfully addressed. To some, a lack of comment was a response to a lack of changes to the overall massing, and the initial comments from 3/22/21 stand. Members of the Board do not necessarily have the same reaction to the building design and its suitability for this location. As this was not a vote, there was no "yes' or 'no' required from each member.

Barn
The applicant's representative stated that the barn would be retained without any renovation, there is no intended use for the time being, and that it is being retained because it is "historic". As noted above, the Board questioned whether keeping the barn is the best solution given the site plan issues. The Applicant did not know if the barn has any local or other historic designation that might affect a decision to retain or not retain the barn.

As there was no further clarification regarding the intentions for the barn, the option of removing it for the benefit of other site plan issues could still be considered. The Applicant did not comment when this was brought up again.

Lighting
The 24' high lights at the north side of the proposed driveway have a long distance between them, which would result in bright and dim spots. Better would be four rather than three pole lights at the north side, with 20' high poles. Lower fixtures would create less light trespass onto Temple property.

The site plan presented did not show lighting at the entry, as required by code. The applicant did clarify that there would be lighting at the entry canopy.

The lighting at the north does not look to have been addressed, so that comment stands.

Fence
The fence at the south of the building is intended to be white vinyl. The Board comment was that this is very bright relative to the rest of the built elements, and another color would be preferable so as to not be as visible. Vinyl is also available in tan and gray, or another material could be used.

Another suggestion is a dark green vinyl, which would look more "natural".

Trees
The north edge of the site, at the Temple Aliyah side, will indeed benefit from trees to screen the site, but the 15' spacing of white pines will not be satisfactory to form a true screen for several (5-10) years. The Board's recommendation is that additional species be added in this area, located in groupings of different species and staggered. The front (west) of the site would benefit from foundation plantings/trees at the building as well.
The sidewalk at the south of the building shows some trees very close to the walk. These would be too low and conflict with people. Either provide bigger/taller trees or move them away from the sidewalk.
Arborvitae are an acceptable selection as shown to the north of the parking.
The white pines shown to the south of the proposed building would also benefit from the same treatment as commented on for the north.

The addition of more trees is definitely helpful to the design, and the Applicant has addressed the items brought up at the first meeting. The added trees at the southeast will help screen the building massing for vehicles and others approaching from the south. The suggestion is that evergreen trees at the west would help with screening the building in a way that could offset the perceived negative aspects of the building size and proximity to the street.

The Applicant should look more closely at the expected size of trees that are adjacent to the walks and the building as the design is developed. It was noted, for example, that the Legacy Maple at the far left of the row is too close to the building and would grow into the building in five years.

Another comment was that plants adjacent to parking stalls should be durable enough to withstand people stepping, etc. Prostrate Juniper instead of the Azeleas that are shown was one suggestion.

Parking
The dumpster enclosure at the east end of the parking limits the ability of the user of the end parking space to easily back out. Moving the dumpster enclosure to the east could easily provide more turning space for that vehicle.
There was some confusion due to the presented documents not matching what the DRB had received. This parking item is another example of a discrepancy.

The increased number of parking spaces and added length to the drive (fitting 10 cars) will help with potential congestion on the site. As noted above, the revised circulation around to the east looks acceptable.
It was noted that 3 1/2 FT width is required for accessibility at sidewalks, and the 5 ft sidewalk as shown adjacent to parking spaces might not be adequate once cars park. The sidewalk could be made wider, or a grass strip added. Simply adding tire stops would be less desirable as that limits maneuverability.

The Board cannot comment on whether or not the number of parking spaces is adequate, more than adequate, etc. for this proposed use and occupancy.

The Board presents these comments for Planning Board consideration. These comments summarize and are limited to the comments made at the meeting, and are intended to relay the Board's thoughts in seeing this project for the first time. This is not intended to be minutes of the meeting. These comments do not document comments and explanations made by the Applicant in response to the Board's comments and questions. Any lack of comment on the Board's part in response to the Applicant's justifications or in response to comments made by the public does not constitute agreement.

These comments on the revised information show improvement relative to what was presented in March. We understand this project will continue to be reviewed, next at a Planning Board meeting on May 18. The Board is available to review this project again, if additional design development is done, at future meetings.

End of Notes

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

May 4, 2021

To Abutters:

On May 18, 2021, the Planning Board will review a proposal by Needham Enterprises, LLC, for property located at 1688 Central Avenue, for minor site plan review of the construction of a child care facility. The applicant has revised their earlier submittal. Under the current proposal, the existing house and garage will be demolished, and the large barn will be kept. The proposed plan is to build a new child care facility that will house an existing Needham child-care business, Needham Children's Center (NCC). This will allow NCC to expand and have the necessary room for children post COVID-19. The gross floor area of the building is proposed to be 9,966 square feet on one floor, and 30 parking spaces are proposed.

Interested persons may attend the Planning Board meeting to learn more about the proposal, to ask questions and/or to share your opinion with the Planning Board. **The Planning Board has scheduled this matter for Tuesday, May 18, 2021 at 7:50 p.m.** by Zoom Web ID Number 826-5899-3198 (further instructions for accessing are below). The application (original application materials including revised plans at the end) may be viewed at this link: https://www.needhamma.gov/Archive.aspx?ADID=8690

To view and participate in this virtual meeting on your phone, download the "Zoom Cloud Meetings" app in any app store or at www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following Meeting ID: 826-5899-3198

To view and participate in this virtual meeting on your computer, at the above date and time, go to www.zoom.us click "Join a Meeting" and enter the following ID: 826-5899-3198

Or to Listen by Telephone: Dial (for higher quality, dial a number based on your current location):
US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 Then enter ID: 826-5899-3198

Direct Link to meeting: https://us02web.zoom.us/s/82658993198

Very truly yours,

NEEDHAM PLANNING BOARD

Lee Newman

Lee Newman
Director of Planning and Community Development

MEMORANDUM

To: Needham Planning Department
From: Evans Huber, Esq.
Date: May 5, 2021
Subject: Summary of Changes to Proposed Project at 1688 Central Avenue

As requested by email from Alex Clee dated April 29, the following is a summary of the changes that Needham Enterprises has made to the proposed project, following the submission of a plan set on March 12, review and comment by the DRB at its meeting on March 22, and neighborhood feedback.

Building

- The building has been moved further back from Central Ave, so that the setback is now 50 feet, rather than 40 feet as previously submitted. Please note that the setback required by Section 4.2.4 of the Bylaw is 35 feet.
- Bayed windows have been added to the building façade facing Central Avenue.

Parking:

- The increased setback from Central Ave resulted in a corresponding decrease in the distance between the building and the existing barn, requiring a redesign of the parking area between the barn and the main entrance to the building.
- In response to neighborhood concerns that there will be insufficient parking for the required staffing, the number of parking spaces has been increased from 24 to 30.
- In addition, in response to the concern that vehicles queueing for drop-off and pick-up may create a back-up on Central Avenue, a parking area has been added behind the existing barn.

Landscaping:

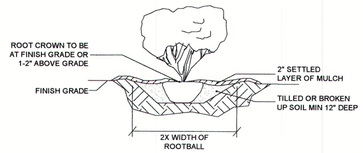
- Both side lot line screen plantings have been changed from all white pine to mix of white pine, red cedar, blue spruce, and Norway spruce
- Both groups of side line screen plantings have been reconfigured so that they are no longer in a straight line
- On the north sideline adjacent to Temple Aliyah, the number of trees has been increased from 11 to 17.
- On the south side of the property, the number of trees has been increased from 6 to 21 and the length of the planting screen has been increased to fully screen the building from the neighbor at 1708 Central Ave.
- Foundation plantings have been added along the Central Avenue building façade, as well as cherry trees at each end of that façade.
- Shrubs have been added between the proposed flowering crabapple trees along Central Avenue at the top of the new proposed grade.
- Maple trees adjacent to the walkway along parking area between the building and existing barn have been moved further from the walkway.

CONSTRUCTION NOTES

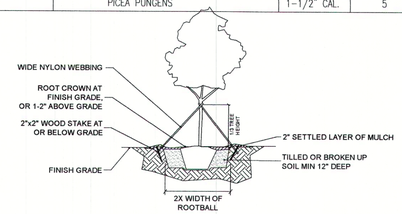
1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.

2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF NEEDHAM PUBLIC WORKS DEPARTMENT.

	COMMON NAME	BOTANICAL NAME	SIZE	QUANTITY
PA	PINK AZELEA	RHODODENDRON PERICLYMENOIDES	2'-3'	10
WA	WHITE AZELEA	RHODODENDRON VICOSUM	2'-3'	7
RH	RHODODENDRON	RHODODENDRON FERRUGINEUM	2'-3'	2
JU	JUNIPER	JUNIPERUS	2'-3'	2
LM	MAPLE "LEGACY"	ACER SACCHARUM	1-1/2" CAL.	4
WP	WHITE PINE	PINUS STOBUS	1-1/2" CAL.	16
CA	CRABAPPLE "DONALD WYMAN"	MALUS "DONALD WYMAN"	1-1/2" CAL.	4
EG	ARBORVITAE "EMERALD GREEN"	THJA OCCIDENTALIS SMARAGD	2'-3'	54
HM	ARBORVITAE "HETZ MIDGET"	THJA OCCIDENTALIS "HETZ MIDGET"	2'-3'	18
RC	RED CEDAR	JUNIPERUS VIRGINIANA	1-1/2" CAL.	14
CH	CHERRY	PRUNUS AVIUM	1-1/2" CAL.	2
NS	NORWAY SPRUCE	PICEA ABIES	1-1/2" CAL.	3
BS	BLUE SPRUCE	PICEA PUNGENS	1-1/2" CAL.	5



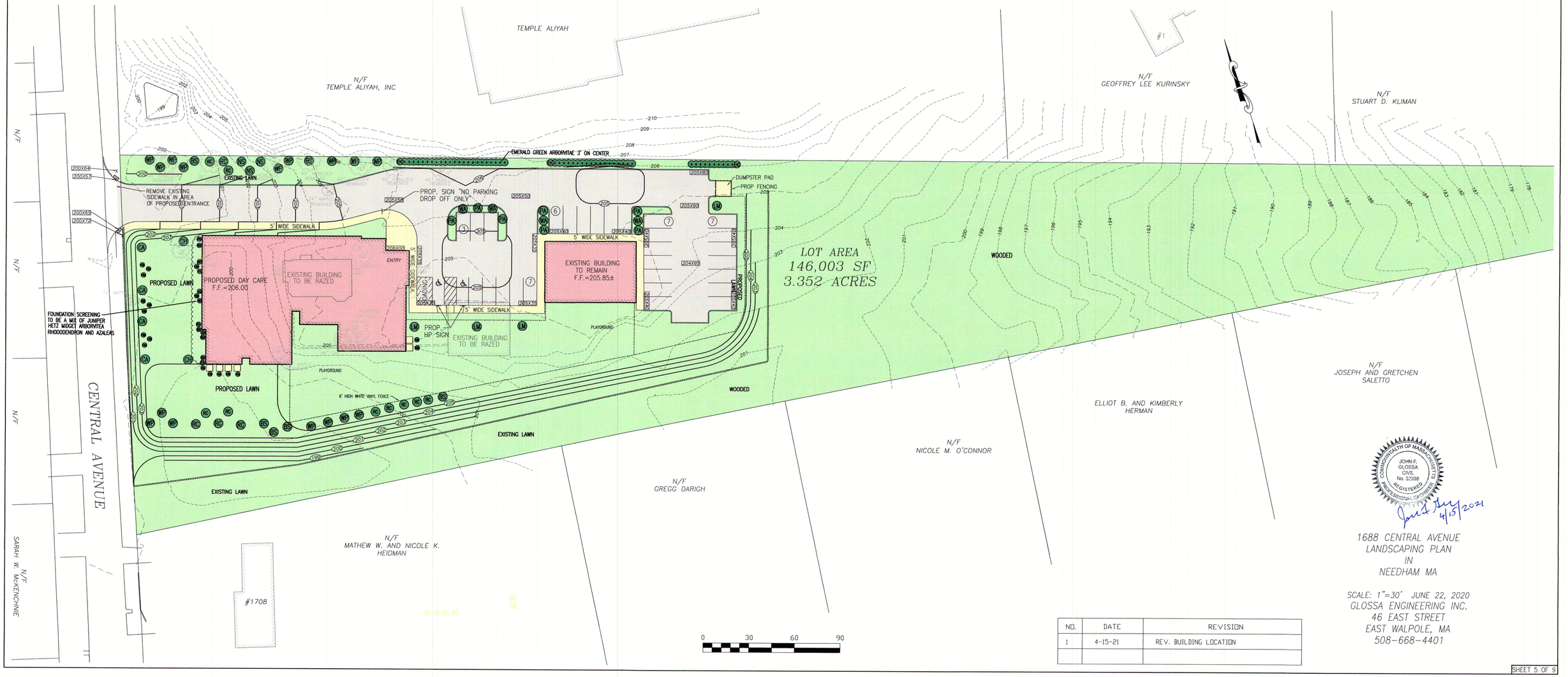
TYP. SHRUB PLANTING:
INDIVIDUAL PLANTING HOLE
NOT TO SCALE



TREE PLANTING
NOT TO SCALE

LEDGEND:

EXISTING GRADE 100
EXISTING SPOT GRADE × 200.02
EXISTING GAS MAIN G
EXISTING SEWER MANHOLE SMH
EXISTING DRAIN MANHOLE EX-DMH
EXISTING CATCH BASIN EX-CB
EXISTING ELECTRIC MANHOLE EX-EMH
EXITING UTILITY POLE UP
EXISTING TEST PIT TEST PIT#5
EXISTING BOUND
EXISTING FENCE
EXISTING FIRE HYDRANT
EXISTING GATE VALE
PROPOSED GRADE 205
PROPOSED SPOT GRADE 205X45
PROPOSED CATCH BASIN CB-1
PROPOSED DRAIN MANHOLE DMH-1
PROPOSED TAPPING SLEEVE AND VALVE PROPOSED 8"X6" TS&V



NO.	DATE	REVISION
1	4-15-21	REV. BUILDING LOCATION

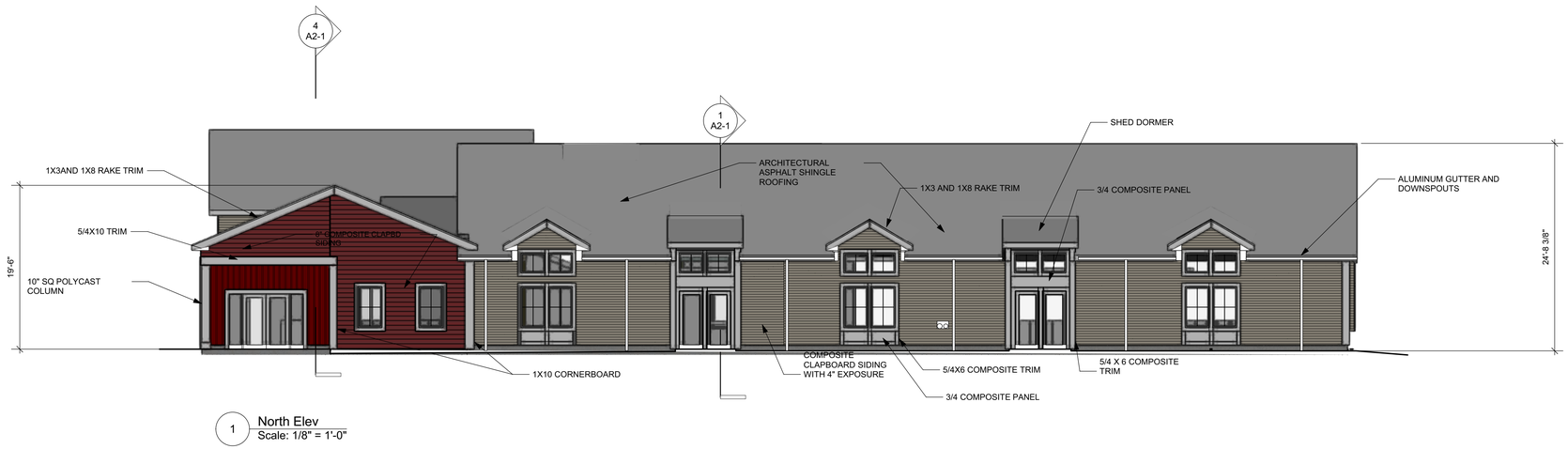
COMMONWEALTH OF MASSACHUSETTS
JOHN F. GLOSSA
CIVIL
No. 32358
REGISTERED PROFESSIONAL ENGINEER
4/15/2021

1688 CENTRAL AVENUE
LANDSCAPING PLAN
IN
NEEDHAM MA

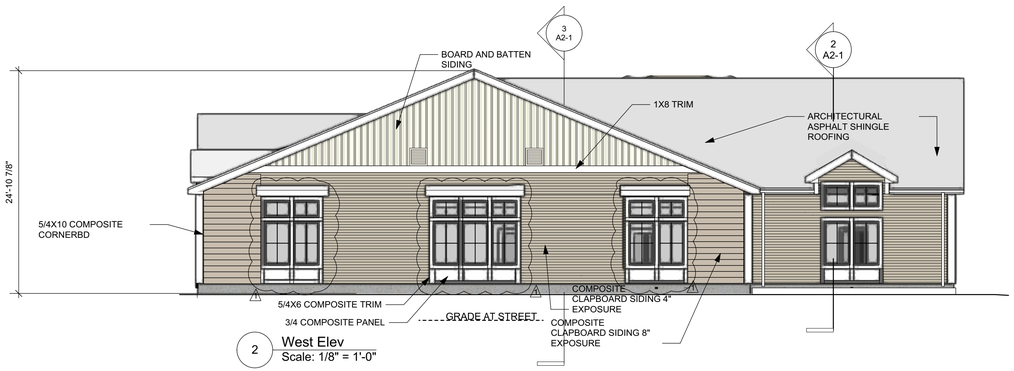
SCALE: 1"=30' JUNE 22, 2020
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

Mark Gluesing Architect
48 Mackintosh Avenue
Needham, Massachusetts 02492
781. 444 . 3504

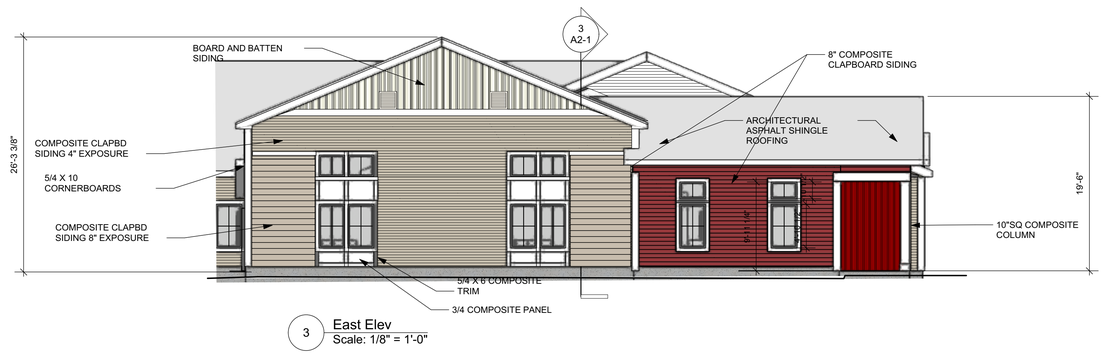




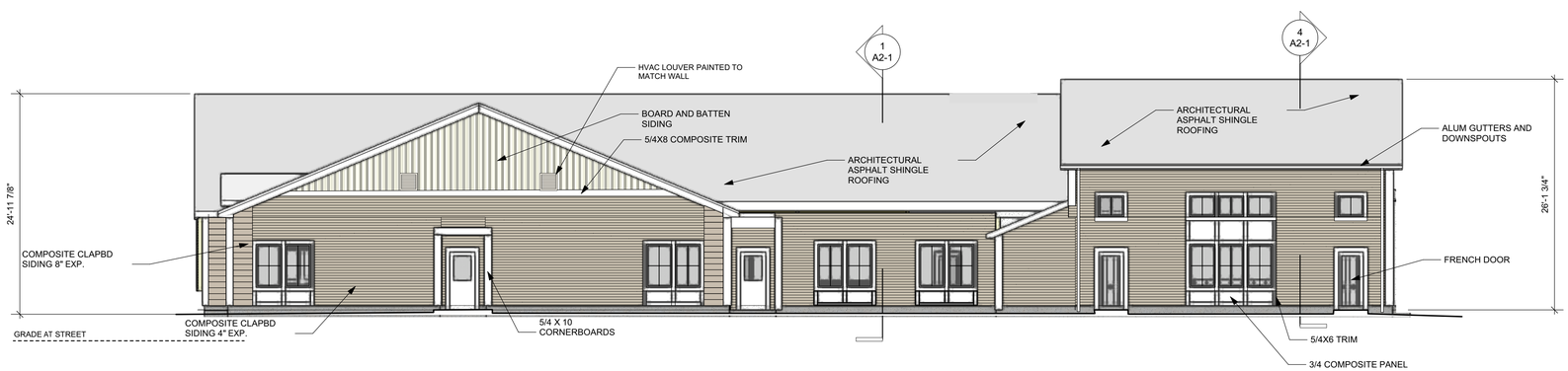
1 North Elev
Scale: 1/8" = 1'-0"



2 West Elev
Scale: 1/8" = 1'-0"



3 East Elev
Scale: 1/8" = 1'-0"



4 South Elev
Scale: 1/8" = 1'-0"

COLOR CHART

SIDING		BENJ MOORE AC-28
TRIM		BENJ MOORE OC-85
BOARD/BATTEN AT GABLES		BENJ MOORE OC-85
SIDING AT ENTRANCE		BENJ MOORE HC-181

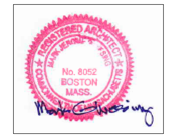
NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

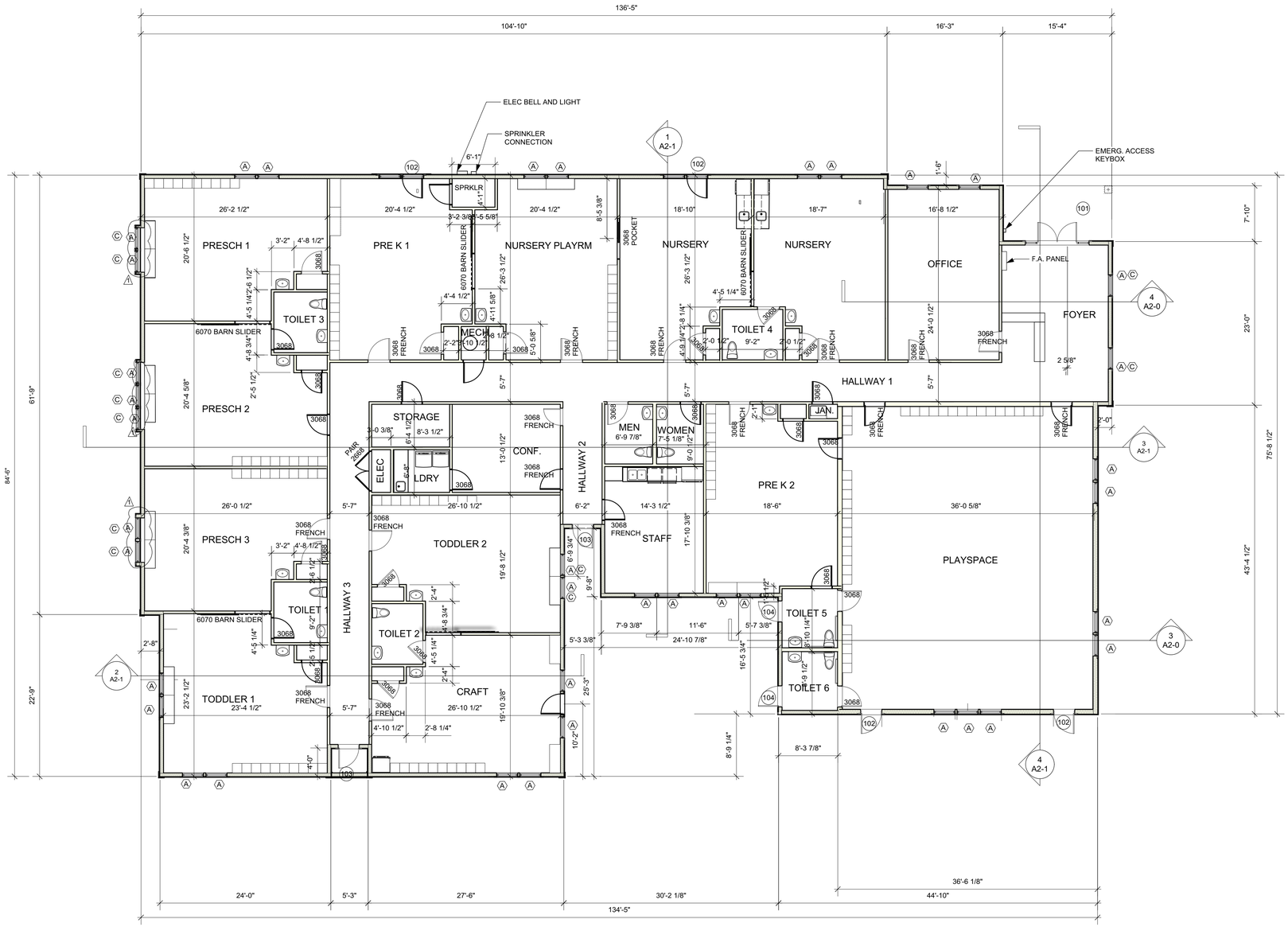
SITE PLAN REV.
3.8.21

1 3.30.21 DRB REV

A 3-0

Mark Gluesing Architect
48 Mackintosh Avenue
Needham, Massachusetts 02492
781 444 3504





1 1st Floor Plan
Scale: 1/8" = 1'-0"

BUILDING DATA

LOT SIZE	146,003 SF
NEW BUILDING SIZE	9,966 SF
PARKING SPACES:	
OPERATIONAL OCCUPANCY	
100 CHILDREN: 8 SPACES+1/40 (3)=	11
13 STAFF	13
TOTAL	24

NEEDHAM ENTERPRISES
DAYCARE CENTER
1688 Central Avenue
Needham, Massachusetts

SITE PLAN REV.
3.8.21
1 3.30.21 DRB REV

A 1-0

From:	Lee Newman
To:	Alexandra Clee
Subject:	FW: Re; Neighborhood concerns for 1688 Central Avenue project for DRB"s review
Date:	Monday, May 10, 2021 4:50:55 PM
Attachments:	41EC65E8-A81A-49AF-8670-C05F4CAB50FD.png

From: Elisa Litchman <elitchman@needhamma.gov>
Sent: Monday, May 10, 2021 4:04 PM
To: Matthew Heideman <matthew.heideman@gmail.com>
Cc: Holly Clarke <jonasclarke@verizon.net>; David Lazarus <david.lazarus@gmail.com>
Subject: Re: Re; Neighborhood concerns for 1688 Central Avenue project for DRB's review

Thank you. The Design Review Board agenda for this evening's meeting includes this project however, this is not a public hearing with public comments taken. The Planning Board has this project on their agenda for May 18th and will take public comment at that time. I have shared the information with them.

Elisa Litchman
Administrative Assistant
Planning & Community Development/
Conservation Department
Town of Needham
500 Dedham Avenue
Suite 118
Needham, MA 02492
781.455.7550 Ext. 222
www.needhamma.gov

Hours:
Monday, Tuesday 12:30-5pm
Wednesday, Thursday 8:30am-3pm
Friday 8:30am-2pm

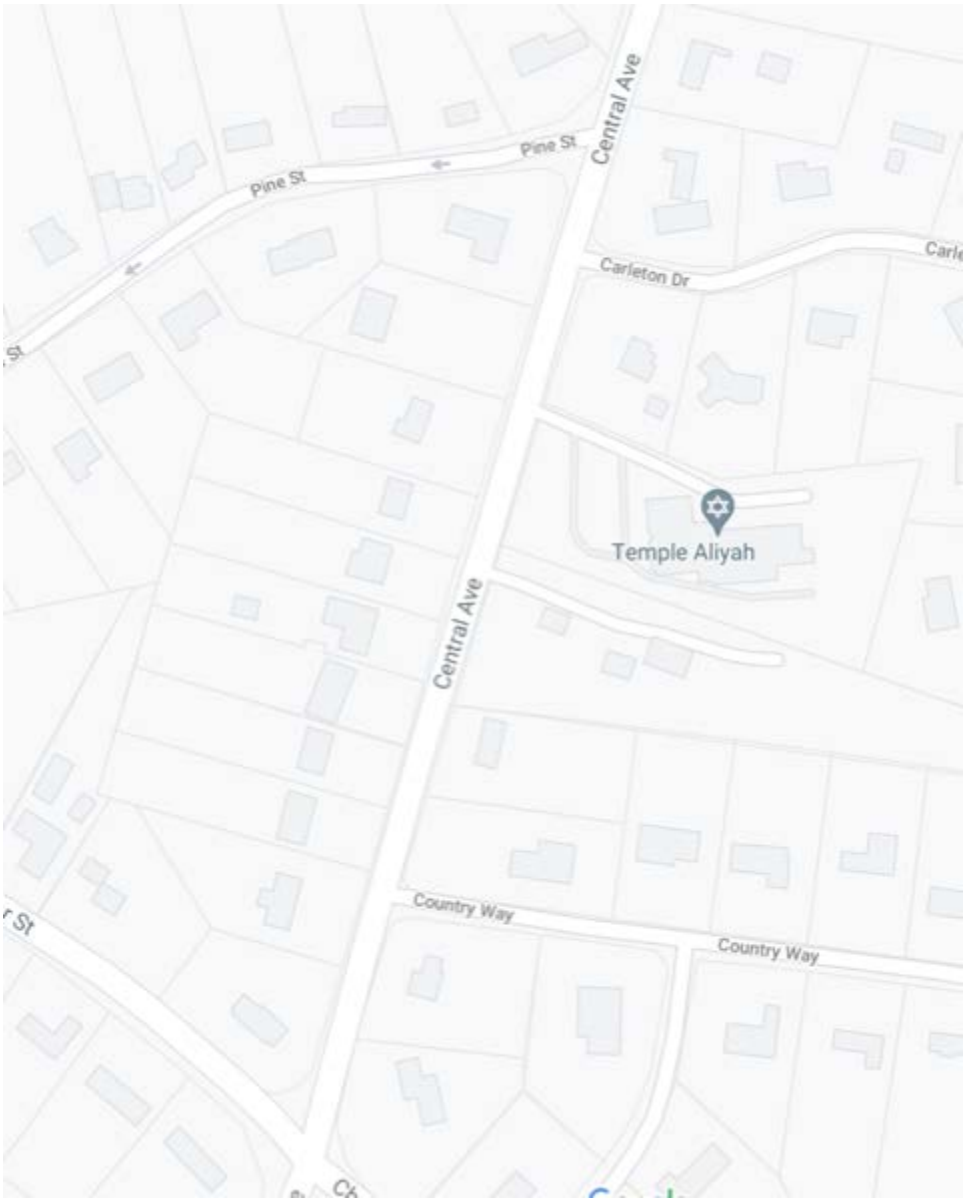
From: Matthew Heideman <matthew.heideman@gmail.com>
Sent: Monday, May 10, 2021 12:47:23 PM
To: Elisa Litchman <elitchman@needhamma.gov>
Cc: Holly Clarke <jonasclarke@verizon.net>; David Lazarus <david.lazarus@gmail.com>
Subject: Re; Neighborhood concerns for 1688 Central Avenue project for DRB's review

Ma'am,

I am writing to inform the DRB of the neighborhoods concerns before tonights meeting. We have worked hard to consolidate our responses for review and consideration.

The below attached neighborhood concerns we share with the Planning board on April 5th before their previous meeting. From the documents we feel the relevant items for the DRB to consider are as follows:

1. Need proper traffic review with Pre-covid information. When will this be received?
2. Setback is not appropriate for the street context on Central Avenue. We would like to see 65' min to match adjacent property. Everything else on street is larger than 65' - see map attached.
3. Design of building, scale and proportion revisions - We do not feel it fits into the neighborhood especially due to the size and set back.
4. Soil Testing report needs to be provided with deadline for mitigation.
5. Landscape layout review and appropriate all season screening from street and neighbor



Please let me know if we will have a chance to express these concerns on the meeting this evening?

Thank you,

Matthew Heideman
1708 Central Avenue
Needham MA 02492
(M) 914-523-1231

Town of Needham
Design Review Board

Members of the Design Review Board,

The Neighborhood of 1688 Central Avenue is writing in follow up to the Design Review Board meeting of May 10th, 2021 with specific request to be considered and addressed when reviewing the project for 1688 Central Avenue.

Two items previously raised by the Design Review Board on March 22nd, 2021 were not discussed in last evenings meeting. The comments presented to the Planning Board after the meeting on the 22nd, the board recommended that the building design did not fit the neighborhood. Additionally, size and height of the building would dwarf many of the houses in the neighborhood.

In last evenings meeting neither of those topics were discussed in depth and, in the neighborhoods view, those are critical topics. If the intention of this project is to provide a quality space for children and also fit into the neighborhood, why were these two topics not addressed. The building height and design has not gotten smaller, the set back of the building isn't nearly enough not to cause a disruption to the Neighborhood and the design hasn't changed enough to fit into the look and feel of the other houses around.

In the neighborhoods view, we would like the setback to be greater than 65 feet. Ideally start where the temple's building starts. The land exists.

This solves several issues:

1. The building design and size would be hidden from the neighborhood
2. The larger driveway ensures there is plenty of room for the cars to get off Central Avenue hence mitigating any Traffic or Safety concerns previously raise by this group

We would like the Design Review Boards opinion on these items as you consider your comments for the Planning board.

Thank you,

Members of the Neighborhood of 1688 Central Avenue

From: Lee Newman
To: Alexandra Clee
Subject: FW: 1688 Central Avenue
Date: Thursday, May 13, 2021 7:54:58 AM

From: Robert Dimase <rob.dimase@verizon.net>
Sent: Wednesday, May 12, 2021 6:48 PM
To: Lee Newman <LNewman@needhamma.gov>
Subject: Fwd: 1688 Central Avenue

I've lived at 1681 Central Ave since December 2000. I attended the Design Board Meeting this week and remain very concerned that this project is going to substantially increase traffic in an already congested section of Town and create a hazardous situation twice/day, five days/week during peak travel hours.

I've read Chief Schlitter's written response to the propose project and I find it hard to believe that the Town of Needham would not require the owner of the day care facility to provide traffic detail service every day during drop off and pick up times. While the proposed tenant has "promised" staggered drop off and pick up times there is virtually no way to ensure their customers will comply with this request. The Chief's letter alludes to 11 accidents between Pine and Charles River Street over a 5+ year time period. This strikes me as a significant number of accidents in a very short stretch of roadway that is bound to increase substantially if this project is allowed to move forward.The traffic study performed by the developer is a sham as it occurred in the middle of the pandemic when we all know that traffic volumes were down 80%+ and should be completely disregarded.

Based on the proposed driveway location to the development, it will be nearly impossible for me to leave my driveway in the morning in either direction. I strongly encourage the Town of Needham to reconsider their safety stance as it relates to the project and should it be allowed to move forward require the day care center to provide detail service through the entirety of the drop off and pick up times, not just for the one week "trial" period suggested.

Additionally the Developer has not provided any information on the proposed use of the Barn and the rest of the property. My assumption is that further development is contemplated which would simply exacerbate the traffic situation. I strongly urge the Town of Needham to consider the very significant traffic and safety impacts the proposed development will create in a residential neighborhood.

Thank you.

Rob DiMase
781-844-5729

From:	Eileen Sullivan
To:	Kate Fitzpatrick; Elisa Litchman; Alexandra Clee; David Roche; Lee Newman; Anthony DelGaizo; Rhain Hoyland; John Schlittler
Subject:	1688 Central Ave project
Date:	Wednesday, May 12, 2021 5:28:35 PM

To all this may concern,

As a resident of Central Avenue living directly across from 1688 Central, I have been closely paying attention to the plans and various communications relating to the proposed building of a childcare facility at that location. After attending various virtual meetings and consulting with other neighbors, I must express numerous concerns that I have regarding the building planned for this location.

The design plans show the new structure will be elevated to 150' and I am concerned about the effect of the run-off this will have on my property and septic system that is on the front of my lot. Is a pump that can process the overflow be added to the current plan to resolve any issues that could develop in the future?

Another concern is the location of the new structure and how close it is to the street. I see that there has been a slight revision moving it back to 50' but this would still make it out of sync with all of the other residences in the neighborhood. In the Planning Design Board meeting on May 10th the Chairwoman suggested the possibility of the barn that Mr. Borelli intends on keeping be eliminated from the plan allowing the new building to be moved back on the lot. With Temple Aliyah set back 213' from the street and at similar elevation to the proposed structure, this would allow the new building to be more in harmony with the surrounding area. It is my understanding that the use of the barn will be for storage. With a childcare center of 100 students, I find it unlikely that the intended use will be its only purpose. I question Mr. Borelli's future intentions for the barn after the building permit has been issued.

Other issues of concern are the traffic that the childcare center will cause for residents that travel in this area daily and the safety of those that use this area of Central Ave. As an educator at a similar size school in Newton (Jackson School), I am very familiar with drop-off and pick-up lines. Each morning and afternoon the traffic wraps around our location onto Washington St. causing a hinderance to the traffic flow although there are two lanes moving in each direction. With Central Ave having one lane, the drop-off and pick-up times would cause a major disruption to those travelers, and especially to those that reside so close to the school location. This disruption would be caused directly by the overflow of traffic due to proposed plans for drop-off and pick-up. This problem would exist in both north and south directions with parents entering the childcare facility. Each weekday morning, I wait in my driveway more than 5 minutes to move north onto Central. This wait-time would increase substantially for me, many of my neighbors and for those already traveling on Central Ave. A few questions I have relating to this issue are: 1) Does the childcare center have adequate staffing to move the car line quickly so that it doesn't spill out onto Central Ave? With the younger ages of the children, it will take longer for them to be moved into/out of the car requiring assistance from school staff. 2) What is the "staggered time" schedule and how long is each slot? I question how this model is enforced by the school staff and see this as being very difficult to control. There are too many uncertainties that would result in additional traffic and safety problems. If the

barn were eliminated from the plan and the new structure moved back, the drop-off and pick-up lines could be extended onto the property lessening the overflow onto Central Ave.
The safety issues that this proposed plan allows are very concerning. I have lived in this town for over 30 years and on many school days, my children would ride their bikes to the Newman School. If I were a parent of school-aged children today, I would not feel at all comfortable with the amount of traffic in this area of the street. With cars entering the childcare center and the temple each morning and afternoon, this is a major safety issue. In a recent report given by Chief Schlittler, there were 11 accidents in the past five years between Pine St. and Charles River St. This is not surprising to me seeing how much congestion there is already in this part of town. If there is nothing done to mitigate the traffic concerns that have been brought forward, the expectation of an increase in this number can only be expected. That isn't acceptable given that there is an opportunity now to do something about it.

Thank you for considering the issues I have brought forward, and my hope is that you will show consideration towards revising the proposed plans for the 1688 site. If you have any questions or would like any clarification, please feel free to contact me. I will continue to give this matter my close attention and will certainly be present for the scheduled town meeting on the 18th. Thank you for your time in hearing my concerns.

Sincerely,

Eileen Sullivan
1695 Central Ave
339-225-0491

From:	Eric Sockol
To:	Kate Fitzpatrick; Elisa Litchman; Alexandra Clee; Lee Newman; Anthony DelGaizo; Rhain Hoyland; John Schlittler
Cc:	matthew.heideman@gmail.com; Eric David Sockol; Keller, Stanley
Subject:	1688 Central Ave project is an embarrassment for Needham
Date:	Tuesday, May 11, 2021 9:24:47 PM

I have proudly lived in Needham for 54 years and have always viewed the town's offices and their dedicated employees with the highest regards and integrity. I always believed that when " push came to shove " the town would do the right thing for its citizens and fight to maintain the character and reputation Needham has worked so hard to earn. The intent and actions of Selectman Matt Borrelli are an embarrassment to all elected and employed officials of Needham. The easy thing to do is take the stance that " there is nothing " any of the town offices can do because of Massachusetts statute. Needham is better than that and " doing the right thing " is always harder. If the town chooses to look the other way, the permanent stain will harm the town and its citizens for years to come.

This email is now a public record, I hope I proudly tell my grandson someday that the citizens' voices can be heard and Needham had an epiphany and did the right thing.

Respectively submitted,

Eric Sockol
Needham Resident since 1967

==========

Eric Sockol
617-470-4259

From:	Eric Sockol
To:	Elisa Litchman; Alexandra Clee; Rhain Hoyland; John Schlittler; Anthony DelGaizo
Cc:	Eric David Sockol
Subject:	1688 Central Ave - Email clarification
Date:	Wednesday, May 12, 2021 10:55:55 AM

I wanted to clarify something regarding the email I sent last night. My concern and comments are 100% directed at the behavior and intentions of Selectman Matt Borrelli and **not at any** of the town officials that received the email. I know from numerous interactions with the various town offices, that they are always fully committed to serving the town's benefit over their own personal benefit. I strongly believe that the current and future projects at 1688 Central Ave will cause irreversible traffic congestion and numerous safety issues.
The main purpose of my email was to highlight the concerns and request that each of you challenge the proposal before the damage becomes permanent.

Thank you for your service to Needham,

Respectively submitted,
Eric Sockol
Needham resident since 1967

==========

Eric Sockol
617-470-4259

From:	Robert Dimase
To:	Elisa Litchman; Alexandra Clee; David Roche; Lee Newman; Anthony DelGaizo; Rhain Hoyland; John Schlittler; Kate Fitzpatrick
Subject:	Proposed development at 1688 Central Avenue
Date:	Thursday, May 13, 2021 10:44:59 PM

I was particularly struck when I read the following on the Town of Needham website, http://needhamma.gov/493/Responsibilities-Goals

Select Board Responsibilities & Goals

- **Representing the interests of town residents in business dealings**, legal affairs, and inter-governmental cooperation with other municipal, county, state, and federal agencies.

With the amount of neighborhood concern this project has generated since it became public, Matt Borrelli will have completely abdicated his duty as a member of the Select Board should he continue to pursue this project. He's clearly representing his own financial interests over the community at large.

I am not terribly knowledgeable about our town's governance but would hope there are protections in place for the electorate when a Town official fails to uphold their duty to town residents.

Rob DiMase
1681 Central Avenue
781-844-5729

From:	SALLY MCKECHNIE
To:	Kate Fitzpatrick; elichtman@needhamma.gov; Alexandra Clee; David Roche; Lee Newman; Anthony DelGaizo; Rhain Hoyland; John Schlittler
Subject:	1688 Central Ave.
Date:	Thursday, May 13, 2021 4:58:01 PM

Dear Folks,

I know you are all aware of the current ongoing concerns of the neighborhood residents of 1688 Central Ave.

May I first say that I was greatly disappointed in the way this project was handled from the very start, with little

communication afforded, especially to the neighbors who would be most affected. It seems that we were only an

afterthought to plans that were already well underway!

As has been stated by many of the citizens living next to and across the street from this project, as well as those

from the surrounding areas, our greatest concern is about traffic and the safety issues which we believe have been

minimized to a great extent by outdated or overlooked studies of the problems that have long been a part of Central

Ave. I have lived here for over 40 years and traffic has always been an issue.

We have also expressed our concerns about the location of the building and proposed uses of other

buildings on this property, not to mention the integrity of the property itself based on previous usage

Our sincere belief is that this proposed building constitutes a major project based on the information that we have

been given.

Please give these concerns your utmost attention!!

Respectfully,

Sally McKechnie
1703 Central Ave.

1652 Central Avenue
Needham, MA 02492

April 3, 2021

Jeanne McKnight
Chair of Needham Planning Board,

Members of the Needham Planning Board,

Lee Newman
Director of Planning and Community Development
500 Dedham Avenue
Public Services Administration Building
Suite 118
Needham, MA 02492

RE: Site Review of Proposed Project at 1688 Central Avenue

Dear Chair McKnight and All Planning Board Members,

Attached please find detailed comments regarding the proposed project at 1688 Central Avenue associated with the Neighborhood Petition submitted to you on March 22, 2021. As of this writing, 418 abutters, neighbors, and other impacted residents have signed.

We submit these comments for consideration during the Planning Board's site review process of the proposed project. We ask that you give careful consideration to these comments and enter them, along with their attachments, into the formal record of your meeting should there need to be further proceedings on the matter. Thank you for your consideration.

Yours truly,

Holly Clarke

Comments of Neighbors of 1688 Central Avenue for Consideration During the Planning Board's Site Review Process for that Location

The following comments are submitted for the Planning Board and other town departments to consider while conducting the site review process for the proposed development of 1688 Central Avenue. The proponent, Matt Borrelli, asks to build and own a large commercial building in a residential zoned area building that he will lease to the operator of a child care facility. The proposal will impact the neighbors of Central Avenue and the town as a whole forever. While daycare facilities are permitted as of right in all Needham zoning districts, the town regulates any proposed project, including those whose use is allowed as of right, to ensure that it fits within the town's development plans and guidelines. In this case:

- The project fits the Needham Zoning By-Laws' definition of a "Major Project" and, therefore, the Board should treat it as such and reject the proponent's submission of the project as only a "Minor Project."
- The proponent does not present the accurate information necessary to assess the project's impact on traffic in the area as required by Needham Zoning By-Law 7.4.5.
- The relationship between the proposed design and structures and open spaces in the natural landscape, existing buildings and other community assets is out of harmony with the surrounding area**.**

I. While Needham allows the use of residential parcels for child care facilities as of right, the town retains the authority to regulate proposed projects through site review.

Massachusetts state law Ch 40a s.3 provides:

> ...No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term ''child care facility'' shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

In keeping with state law, Needham's By-Laws permit the use of parcels in residential districts for child care facilities. Under both state law and the town's By-Laws, such facilities are subject to the town's regulations concerning the building's characteristics and its impact on the surrounding area. In this case, the proposed building at 1688 is subject to site review under Needham's By-Laws. Section 7.4.1 states:

> The purpose of this Section is to provide a comprehensive review procedure for construction projects, herein defined, to insure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse

impacts of such development, and to promote development which is harmonious with surrounding areas.

Section 7.4.6 lays out the Planning Board's responsibilities and authority when conducting a site review:

> In conducting the Site Plan Review, the Planning Board shall consider the following matters:
> (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;
> (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
> (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
> (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
> (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and
> (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

Massachusetts Courts have made clear that town authorities tasked with administering site plan reviews have the authority to impose stricter requirements than those otherwise required by town by-laws as a condition of site plan approval. *Muldoon v. Planning Bd. of Marblehead*, 72 Mass. App. Ct. 372 (2008).

II. The Planning Board should reject the current site review request and require the proponents to apply for site review as a Major Project.

The Needham Zoning By-Laws provide two levels of site plan review, Major and Minor Projects. In this district, the By-Laws define a Major Project as, "Any construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces." A Minor Project is, ".. Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project." (S. 7.4.2). Section 1 of the By-Laws defines gross floor area as, "the sum of the areas of the several floors of each building on a lot including areas used for human occupancy in

basements, attics, and penthouses, as measured from the exterior faces of the walls, but excluding cellars, unenclosed porches, balconies, attics, or any floor space in accessory buildings or in main buildings intended and designed for the parking of automobiles or for accessory heating and ventilating equipment, laundry, or accessory storage."

A. The proposed project is a Major Project because it requires the creation of 25 or more new off-street parking spaces.

The proponent asserts that the project requires only 24 parking spaces for its operation of a day care facility for 100 children. Citing the metric Needham has used in the past to determine parking requirements for day care centers, the plans include only 11 spaces for children and 13 spaces for staff. The proponents offer no explanation for the program's actual staffing plans to justify this part of the design. In its March 11 letter accompanying the submission of its request for site review, the proponents write that the new building, "will allow (the operators) to expand and have the necessary room for children."

The By-Laws require the Planning Board to assess, "the adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises" s.7.4.6(c). In this case, the proposed plan should be found inadequate and the plan rejected.

There are six distinct reasons why the proponent's claim of 13 staff parking spaces is erroneous and should be rejected by the Board:

- The state mandated staff: child ratios require more than 13 staff for the operator's current licensed capacity.
- The state mandated staff: child ratios require more than 13 staff to operate a program for 100 or more children in the designed building.
- The amount of parking required by neighboring towns for the proposed project exceeds the proposed 13.
- Similarly sized programs in Needham have more than 24 spaces.
- The proponent's own submissions indicated the planned parking is insufficient.
- The Needham Fire Department has commented that spaces near the building will need to be marked, "No parking- drop off area only" meaning that the facility will need more than even the 24 spaces it proposes.

1. The EEC required staff: child ratio and the current licensed capacity of the proposed operator establishes this project requires more than 13 parking spaces for staff.

The Department of Early Education and Care (EEC) minimum staff: child ratios are found at 606 CMR 7.10 (Attachment 1). The number of staff required changes with the ages of the children served, with younger children requiring more staff. The EEC also reports providers' program capacity on the EEC website. The Needham Children's Center at 858 Great Plain Avenue (the operator proposed for 1688 Central Ave.) is licensed as a large group care facility and is currently listed with the capacity to serve 113 children. The program's 23 Dedham Avenue location also operates as a large child care facility, with the capacity to serve an additional 30 children (Attachment 2). Table 1 below presents the age groups as set by EEC, the mandated staff:child ratio, the number of children in each age group for which the proposed operator is currently licensed at 858 Great Plain Avenue, and the minimum number of staff required to

be on site for the permitted number of children. The table includes the one full time administrator EEC requires to be on site at all times. This analysis indicates that the program for 113 children in the age groups for which the proposed operator is currently licensed requires a minimum of 16 staff. These numbers do not include interns or volunteers the program may utilize, nor does it include any additional staff members needed for coverage during lunch or break times. Using this analysis, the proposal requires 27 parking spaces and is a Major Project.

Table 1: Staff Required Using EEC Staff:Child Ratios and NCC Current Program

Age Group	Staff: Child Ratio	NCC Capacity	Minimum Staff
Infant	1:3, one additional staff for 4-7 children	7 children	2 staff
Toddler	1:4, one additional for 5-9	18	4
Preschool	1:10	52	6
Kindergarten	1:12	0	0
School Age	1:15	36	3
Infant toddler		0	
Toddler Preschool		0	
Preschool 15mo-k		0	
Preschool SA 33mo-8 yr		0	
MultiAge Group		0	
State Required Administrator			1
TOTALS		113 children	16 staff

2. **A comparison of the EEC required minimum staff: child ratios to the age designations on classrooms in the proponent's drawings also suggests this project requires more than 13 parking spaces for staff.**

The proponent's drawings designate rooms for specific age groups and indicate that the operator intends to enroll a larger number of younger children than in the current program. The submission shows two rooms marked as "nursery," two as "toddler," three as "preschool" and two as "pre-k." None are marked as kindergarten or school aged, and the rooms designated as craft, play space and nursery playroom have not been included in this analysis. A younger population of children requires additional staff. Table 2 below lists the room designation, staff: child ratio, the number of children in each room and the minimum number of staff required for this distribution. Under this analysis, a program for 100 children would require a minimum of 19 parking spaces for classroom staff and the required administrator. This number makes no allowance for volunteers, interns or staff coverage during lunch or

breaks, yet still brings the total minimum number of parking spaces required to 30. The proposal is a Major Project.

Table 2 Staff Required Using EEC Staff:Child Ratios and Proposed Building Design

Room Title	Staff: Child Ratio	Children	Minimum Staff
2 Nurseries	1:3, one additional staff for 4-7 children	7 children/room maximum = 14 children	4 staff
2 Toddler Rooms	1:4, one additional for 5-9	9 children/room maximum = 18 children	4 staff
3 Preschool Rooms	1:10	20 children/room maximum children proportion*	6
2 pre Kindergarten	1:10	20 children/room maximum*	4
Administrator			1
TOTALS		100 children	19 staff

*The number of children in the preschool and prekindergarten rooms for this analysis was 68 and was distributed evenly. (100 overall capacity - (14 + 18 in the nursery and toddler rooms) = 68).

3. **An analysis of the amount of parking neighboring towns would require for this project strongly suggests that the proposal requires more parking than included in the current design and should be reviewed as a Major Project.**

An analysis of the parking other towns require for a project this size is instructive in considering the necessary number of parking spaces. Table 3 presents the number of parking spaces 14 nearby communities would require for a child care facility with 13 staff members and 100 children. It includes the standards each town uses in determining the necessary number of parking spaces. Some towns use the square footage of the building to determine parking requirements, others use the program size. The towns using child and staff information all require more than 11 spaces to be allotted for 100 children.

Eight towns would require the proposed project to have more than the requested 24 spaces. The average number of spaces required would be 33. Norwood requires the fewest spaces at 30 and Medfield requires the most at 42. Four towns leave the determination of the number of spaces required to the building inspector. Two towns, Lexington and Sherborn, set a minimum number of spaces and require the submission and approval of parking plans by the permitting authority. Wellesley is included in the first group of eight towns, as it would require 32 parking spaces for a project of this size. However, Wellesley limits the construction of child care facilities in residential districts to 2,500 sf, which would

prevent the construction of this proposed project.[1] This data supports the conclusion that this proposal requires more than 24 parking spaces and is a Major Project.

Table 3: Child Care Parking Requirements For Neighboring Towns

Town	Regulation	Requirement	Result for Proposal as Drafted	
Belmont	Zoning By-Law S. 5.1	discretion of building inspector		
Brookline	Zoning By-Law S. 6.01, 4 a.	minimum set by the building inspector		
Concord	Zoning By-Law 7.7.2.1	1 space for every teacher and employee +1 space for visitors +1 space for every six children based on the largest enrollment on site at any given time	**31** (13+1+17)	Planning Board may reduce number required, May require and retain control of a Parking and Traffic and Management Plan
Dedham	Zoning By-Laws 7.6.7	1 space for every teacher & employee +1 space for visitors +1 space for every 6 children based on the largest enrollment on site at any given time	**31** (13 + 1 + 17)	

[1] To be clear, this analysis used the proponent's staff numbers. Using an increased number of staff would raise the number of parking spaces required in these towns. In its original Traffic Impact Report, the proponent writes, "Over time, the location could accommodate 80 to 100 students although 120 appears to be allowed"(p.2). If the proponent's intention is to actually allow the operation of a program for 120 children, the number of parking spaces required by this larger program would be even larger in towns basing spaces on enrollment.

Lexington	Zoning By-Law S.135-5.1.4 And S.135-5.5.2	1 per 500 sq.ft. minimum +5 feet rows for snow storage during plowing	**20 minimum***	***Town requires submission of parking plan and traffic study for any permit
Medfield	General By-Laws S. 300-8.1	1 space per each full-time employee + 1 space per each shared part time position +1 per 300 sq ft of classroom space	**42** (13 + 28.3) 8500sf/300)*	***Estimated classroom space
Newton	Zoning Ordinance C. 30, S. 5.1.4.	1 space per employee plus 1 space for every 5 children	**33** (13 +20)	
Norwood	Zoning By-Law 6.1.3	1 space per employees on largest shift +1 space per every six children enrolled	**30** 13 + 17	
Sherborn	Zoning By-Law S.5.1.1 and 5.1.3	Minimum of 10 parking spaces and approval of a parking plan by the Planning Board	**Minimum of 10**	

Walpole	Zoning By-Law S. 8	Discretion of the Building Inspector or applicable Special Permit Granting Authority.		"Adequate parking for occupants, employees, members, customers, clients and visitors"
Wayland	By-Law S 198-506, 506.1.9	1 for every 4 persons of the facility's licensed capacity * + 3 designed for the safe and convenient loading and unloading of persons.	**32*** (100 students+13 staff)= 113/4= 28.25 + 3)	The licensed capacity of the building is likely higher than the 113 staff + children number used**.**
Wellesley*	Zoning By-Law S. 21	1 for each 150 sq. ft.* occupied by buildings but not less than 3.2 spaces per 1,000 sq. ft. of floor area of buildings.	**32**	*Rule only applies to Educational Districts A, Business Districts A, Industrial Districts A *Wellesley limits child care facility size in residential districts to 2,500 sq.ft. size in residential districts to 2,500 sq.ft.
Weston	By-Law VIII C. 1	Sufficient spaces to prevent any parking off site or on public way determined by inspector of buildings or Board with authority		
Westwood	By-Law 6.1.4.3	1 space per employee +2 spaces per classroom	**31** 13 + (2x9)	

4. All similarly sized child care facilities in Needham have more than 24 parking spaces available.

The need for more than the 24 spaces planned by the proponents is also demonstrated by the fact that the similarly sized child care programs in Needham operate with more than 24 parking spaces. The EEC lists six Needham programs licensed for between 85 and 149 children, and Needham's GIS mapping shows that all six operate at sites with access to more than 24 parking spaces. Table 4 below presents the name of each program, the number of children it may enroll according the ECC, and the number of parking spaces.

Table 4 Parking Availability at Similarly Sized Needham Child Care Programs

Program	Number of Children	Number of spaces	
Kindercare 1000 Highland Ave	93 children	49 parking spaces	
Tobin Boulder Schools dba Club 1458 1250 Great Plain Ave	85	Lot at Newman School	
Carter Center for Children & Carter Nursery School 800 HIghland Ave	119 total: Two groups: 59 & 60	33 spaces	One-way lot with separate entrance and exit
Chestnut Children's Center 167 Chestnut St	149	31 spaces + 13 spaces in next lot	One way with separate entrance and exit
Knowledge Beginnings 206 A St	117	31 spaces Next to another lot	Separate entrance and exit
Needham Children's Center 858 Great Plain Ave	113	3 next to building 30 in lot Second lot available	

5. The proponent's submissions indicate the plan requires more parking.

The "Traffic Impact Assessment'' submitted by the proponent affirms that the plan requires more parking. Starting with an analysis based on 80 children rather than the 100 children listed on the the building plans, the report goes on to state, "The parking could easily accommodate over 100 children without creating on site grid lock provided staff is available to assist children into the building where the staff members get that child settled and the initial staff member returns. If a parent insists on entering the facility, they will be directed to park in an unoccupied parking stall or enter the site all the way to the end… to block a staff member's car who is parked for the day" (p.2). The initial traffic impact study also writes that, "Over time, the location could accommodate 80 to 100 students although 120 appears to be allowed" (p.2). This statement raises questions about the actual intended size of the program, making even more concerning the submission's undercounting of necessary parking spaces.

Further, the Storm Water Report provides that, "Snow shall be plowed into wind rows at the edge of the paved areas. Excess snow shall be removed from the site and deposited in approved snow farms" (p.11.) The possibility of losing parking spaces to banked snow during the winter requires additional parking spaces in the plan, further confirming that this is a Major Project.

6. **The Needham Fire Department commented that parking near the building will need to be designated. "No parking- drop-off only".**

After reviewing the proposed plans, the Needham Fire Department commented that the spaces nearest the building will need to be designated as "no parking- drop off only." Chief Condon wrote that this would be necessary to insure access for ambulances or other fire department apparatus in case of any emergency. Designating these spaces as "drop off only" requires the addition of more spaces in order to provide the necessary capacity to allow families, visitors, deliveries and guests to park on site, and provides yet another reason why this project must be reviewed as a Major Project.

B. The proposed project is a Major Project because it involves an increase in gross floor area by 5,000 or more square feet.

As noted above, the Zoning By-Law defines a Major Project to include "[a]ny construction project which involves: the construction of 10,000 or more square feet gross floor area; ***or*** an increase in gross floor area by 5,000 or more square feet…."(emphasis added). The by-laws' definition of gross floor area the sum of the areas of the several floors of each building on a lot…". The definition of gross floor area makes clear that this determination is calculated using all of the buildings at a site. Currently, three buildings stand at 1688 Central Avenue: a single family home, a detached garage and a barn. According to the multiple listing service for the property, the house is 1661 sf. Using the Needham town GIS, the garage is approximately 1,200 sf and the barn is 2,320 sf, for a total of 5,181 sf on site, and a gross floor area of 3,981 sf (*i.e*., the garage is not included in gross floor area). The proponents plan to demolish the house and garage, and build a 9,966 sf building, parking areas, playgrounds and landscaped areas. The barn will be kept and used for "ancillary and storage purposes" (*See* Proponent's Traffic Impact Study, p.1). If built as designed, the project will increase the gross floor area on the lot by 8,305 sf, (the increase in square footage over the existing home). The proposal, therefore, meets the bylaw's definition of a Major Project because it involves an increase in the gross floor area ***at the site*** by more than 5,000 sf.

The proponent states that, "[p]ursuant to Section 7.4.2 of the Bylaw, this project qualifies as a "Minor Project" because it involves the construction of more than 5,000 but less than 10,000 square feet of gross floor area, and because it involves the creation of fewer than 25 new off-street parking spaces." (Mar 11, 2021 letter to Planning Board). Not only is this wrong because of the parking issue described above, it is wrong because it completely ignores the operative square footage language — regarding increases in gross floor area of 5000 sf or greater. To the extent the proponent contends that the project does not constitute a Major Project because it does not involve an increase in gross floor area ***of an existing building*** of more than 5000 sf, that contention would be based on a misreading of the language of the By-Law. The wording used in this section of the By-Law does not limit Major Projects to proposals for the expansion ***of existing buildings*** by more than 5,000 sf. The section uses more expansive language, as it includes any construction project that "involves...an increase in gross floor area by 5,000 or more square feet." If the intention was to limit this section to additions of existing buildings, the By-

Laws could simply have said so. In fact, the By-Laws do just that by defining a Major Project in a Business, Avery Square Business, or Hillside Avenue Business Districts as, "any construction project which involves a new building; or an addition which increases gross floor area ***of an existing building*** by 1,000 or more square feet." (Emphasis added). The difference in language makes clear that the relevant section of the By-Law here classifies projects such as this one, which increase the gross floor area ***on the site*** by 5,000 or more square feet, as Major Projects, rather than just applying to additions to existing buildings. [2]

This plain reading of the By-Law fits its purpose: to provide for a comprehensive review process for construction projects which assures compliance with the goals of the Master Plan and the Zoning By-Laws, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas. In this case, the proposed development project would construct a very large commercial project in a residential neighborhood which already has extreme traffic challenges and safety concerns. The By-Law recognizes the potential impact of large projects which expand the square footage on a site by more than 5,000 sf of gross floor area and classifies them as Major Projects. Any other reading leads to the anomalous conclusion that a smaller project, such as adding 5,000 sf of gross floor area to a 1,000 sf building, would be classified as a Major Project, while a project such as this one, which constructs a 9,966 sf building, stands next to another 2,320 sf two story building, and increases the gross floor area on the site by 8,305 sf, would receive the more limited review process of a Minor Project.

Larger projects merit the procedural safeguards included in the Major Project site review process, including the public notice requirements, written reports by reviewing departments, the right to a hearing by impacted residents and the issuance of a special permit to formally safeguard the interests protected by the By-Laws and to make representations enforceable. As proposed, this project would build a commercial building on a residential lot, with a footprint an order of magnitude larger than any other home on this section of Central Avenue. It proposes only a 35 foot setback from the street, far less than any other building on this part of Central Avenue. It increases the lot's grade by six feet. It has already cut down mature trees on the property and proposes to cut others. It will impact traffic and pedestrian safety for neighbors, Central Avenue and surrounding streets. The business will bring traffic into and out of the site throughout the day, as well as increase noise and light. This development fits the By-Law's definition of a Major Project and should be treated as such, with the appropriate safeguards to protect the interests of the neighbors and the town.

I. The Planning Board should reject the site plan because it does not present the accurate information necessary to assess the project's impact on traffic in the area as required by Needham Zoning By-Law 7.4.5.

[2] The By-Law defines a minor project as, ".. Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project." The Proponent gets no help from this provision, because it explicitly carves out projects "defined as a Major Project" and, as we point out above, this project ***does*** qualify as a Major Project.

Needham Zoning By-Law 7.4.5 requires an applicant to submit information concerning, "projected traffic volume in relation to existing and reasonably anticipated conditions; and... other information as may be necessary to determine compliance with the provisions of the Zoning By-Law." Section 7.4.6 establishes the review criteria, "In conducting the Site Plan Review, the Planning Board **shall** consider the following matters: ... (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets"(emphasis added). One of the most serious consequences of the proposed development that the Planning Board must evaluate is its impact on traffic on Central Avenue and the adjacent streets. Yet, the traffic impact statements submitted by the proponent are incorrect, contradictory, and incomplete.

A. Central Avenue is heavily traveled and congested in non-Covid 19 times and does not operate at anywhere near an "A" level of service.

The impact of this project on the surrounding neighbors on Central Avenue, adjacent streets and all users of this arterial road cannot be overstated. The proponent begins with the assumption that Central Avenue currently functions at an "A" level of service during peak hours, "with little or no delay during the weekday commuting peak hour"(Original Traffic Report, p.2, Revised Report Executive Summary). This is simply untrue. It is contradicted by the actual lived experience of town residents that use the road as well as by traffic studies done by the town. As the neighbors write in their letter to the Planning Board and Town Departments:

> We are deeply concerned about the impact the project will have on safety and traffic on Central Avenue and the surrounding streets.
>
> In normal, non-COVID, times, morning weekday traffic along Central Avenue in this area is extremely heavy and backed up. The morning rush hour extends from approximately 6:30 to 8:30 AM and regularly causes solid backups from the RTS to Temple Aliyah, and often from Newman School back to Temple Aliyah.
>
> To be blunt, during the weekday morning commute, Central Avenue is often an intermittent parking lot all the way to Cedar Street. Evening traffic congestion begins with the release of school and extends through approximately 6:30. Adding the additional vehicles in and out of the facility parking lot –whether coming from the south and joining the backed up traffic before entering the facility's driveway or coming from the north and needing to make a left turn across the backed up northbound traffic and exiting the facility to again add to the backed up traffic -- will make a bad situation much worse and severely impact the ability of neighboring residents to get into and out of their homes and as pedestrians attempt to safely try and cross Central Avenue at Charles River Street and elsewhere.
>
> In addition, Carleton Drive, Pine Street, Country Way, Charles River Street, Fisher Street, Village Lane, Russell Road, Walker Lane, and South Street will all be negatively impacted by the proposed facility, either trying to maneuver into an even denser traffic line on

> Central Avenue or trying to escape the traffic by cutting through roads not designed to handle heavy commuter traffic…
>
> Given the traffic line that occurs during normal weekday rush hour, the level of service for a turn into or out of the facility driveway and along Central Avenue itself, is likely an "E" or "F" without the childcare facility and will be made even worse with it. We are not traffic experts, but a short google search of conditions defining different roadway levels of service, seems instructive: (Graphic source: https://policymanual.mdot.maryland.gov/mediawiki/index.php?title=Roadways:_Facility_Selection).
> The illustration of Levels of Service E and F are what typifies the morning rush hour on Central Avenue in the vicinity of the facility during normal times.

As of this writing, more than 400 people have signed the letter.

The reality of the traffic issues on Central Avenue in general and on this section of Central Avenue in particular are well known in town. In 2014, the town commissioned Pare Corporation to analyze the likely impact of placing the Department of Public Works on Central Avenue at the site of the RTS. The report documents the impact of the operation of both the RTS and the Newman School on traffic. Pare wrote,

> The RTS currently has operating hours of 7:30 to 4:00pm Tuesday- Saturday. Based on correspondence with the town, the heaviest periods can be observed in the early morning, just after the RTS opens, and in the afternoon, just prior to closing. Tuesday and Fridays are typically busy days...Additionally, the Newman School is located approximately one-half mile north of the proposed site on Central Avenue. The Newman School is a heavy traffic generator in the hour surrounding the a.m. drop off period and the p.m. dismissal period.
> https://www.needhamma.gov/DocumentCenter/View/10910/015-Volume-3-Facilities-Master-Plan-2014-Traffic-Study?bidId=

At the time, vehicles exiting the site experienced "D" and "E" levels of service. Ultimately, the town opted not to place the DPW at the RTS due to concerns about the impact of traffic on the ability of town vehicles to enter and leave the site, as well as the impact the additional DPW traffic would have on the traffic. When the town added the John Cogswell Building to the DPW site, it was with the express representation that the new building would store seasonal equipment only and would not add to traffic on Central Avenue. The concerns of 2014 have not only not been alleviated, they have been exacerbated. The RTS and the Newman School both impact traffic in the neighborhood surrounding 1688 Central Avenue. Traffic to the RTS contributes to the area's backups. The neighborhood is in the Newman School district, and many cars headed to and from the school originate here. The town's fleet of school buses leave Newman onto Central Avenue early in the morning rush hour and then stop at individual houses along Central Avenue for safety reasons, all contributing to traffic delays. The Planning Board must address the impact of building a large daycare facility in a residential area facing these realities and an accurate traffic impact statement should be the starting point.

B. Other information shows that the proponent's updated traffic analysis undercounts traffic on Central Avenue.

The proponent's based their original report on observations made on February 4, 2021. That report stated 661 vehicles were observed traveling north on Central Avenue and 152 were traveling south between the morning peak hour of 7:30 to 8:30 am. (Figure 3 of proponent's Traffic Study p.12 and Projected Peak Hour Chart p.20). After being told that the observations during Covid would not be valid as they would severely undercount the true traffic, the proponent submitted a revised report which included pre-Covid traffic volumes from the Needham Engineering Division. Without explanation, the report states a 2016 count obtained just south of the RTS was the most useful. The report does not indicate when the count was taken. The report then uses a growth rate of 1.6% to extrapolate a morning peak hour of 1166 cars headed northbound and 295 headed south bound.

A traffic count conducted by Needham in 2006 at the intersection of Central Avenue and Charles River Street in preparation for the installation of a traffic signal suggests that this extrapolation may still undercount the traffic on Central Avenue. On October 11, 2006 the vehicle counts for the morning peak hour in front of 1688 Central Avenue were 974 headed North and 138 headed south.[3] Applying the proponent's growth rate of 1.6% annually would estimate the number of vehicles passing 1688 Central Avenue in 2021 during the morning peak hour would be 1236 vehicles traveling northbound and 176 southbound. This projection makes no allowances for any specific traffic generating activities or development that have occurred during the past 15 years. Changes in the operating hours of the Newman School and the elimination of free school bus transportation for much of the neighborhood have greatly increased peak hour traffic.

C. **The proponents present, without explanation, different numbers of expected site generated trips in its two reports.**

The Proponent's first report states, "that the project is expected to generate approximately 104 new morning peak trips with 55 inbound and 49 outbound " (p.2). In contrast, the second report states, "This project is expected to generate 76 new morning peak trips with 40 in bound and 36 outbound" (p 2). No explanation is offered for this change, which has nothing to do with the impact of the pandemic on Central Avenue traffic, and the Planning Board should press the Proponent on this point to ensure that it is not changing traffic numbers to artificially appear that its project will have a minimal impact traffic.

Under both scenarios, the trip generated during the peak hour will have a significant impact on the immediate neighbors and the traffic on Central Avenue. With 104 trips in the peak hour, 1.7 cars will

[3] The total number of cars headed north past 1688 Central is reached by adding the number of vehicles which went through the intersection on Central Avenue northbound, the number turning left from Charles River Street eastbound and the number turning right from Charles River Street westbound. The total number of cars headed southbound past 1688 Central Avenue is reached by using the number of cars on Central Avenue southbound that reached the intersection during the peak hour. (Central Avenue at Charles River Street Turning Movement Count (7:00-9:00 AM), attachment 3.)

be trying to enter or leave the center each minute. If the site generates 76 trips, 1.2 cars will try each minute.

D. The proponent's submission is incomplete because it provides no information about the project's impact on traffic flow on the neighbors.

The By-Laws require the consideration of any project's impact on traffic flow both on the site and on surrounding streets. The importance of traffic to this particular project was explicitly made known to the developer. Yet, the information submitted concerning traffic is incomplete. In its April 2 comments submitted on the proposal, the Department of Public Works noted the submitted traffic report does not include data about evening peak hour traffic conditions, accident data and details about the driveway opening and sidewalk improvements in front of the property.

In addition, the proponent's Traffic Impact Report fails to compare future expected traffic growth with and without the proposed building, and does not include a discussion of expected nearby off-site developments. The reports present no discussion of the increase in the number of daily trips generated by a building of this size and use compared to maintaining the parcel's current use as a residence. Using standard ITE formulas included in the proponent's report, a child care facility at 9,966 square feet generates 475 trips, a facility for 100 children generates 409, and a facility for 120 children generates 491 trips. In comparison, the ITE estimates a single family dwelling to generate 10 trips. These numbers present the increased level of traffic abutters and the neighborhood will endure throughout the day if the project is allowed to proceed at its proposed size. The By-Laws require the Planning Board to review the true impact of a proposed development on the area. The proponent has not done so; the Board must.

The site review application also omits any information about the impact of the placement of the driveway on surrounding homes and Temple Aliyah. While the DPW was particularly interested in the impact of the driveway design on the catch basin, the placement of the driveway is critical to the traffic flow and the ability of neighbors to enter and leave their own property safely. The By-Law specifically requires the Planning Board to review the placement of driveways in relation to traffic and adjacent streets. The proponents should demonstrate how the addition of a daycare center with 100 children and staff will allow neighbors to safely enter and leave their homes at all times. The operation of the day care center brings traffic into and out of the site during the highest traffic periods. The most recent report states the majority of site bound traffic will have to cross the heavier northbound traffic lane to enter the site in the morning. Simultaneously, other cars will be seeking leave, some trying to turn right and increasing the heavier northbound traffic, and others needing to cross the busier lane to turn left.

The impact of the driveway on neighbors is not a theoretical concern. Table 5 lists the placement of neighborhood driveways in relation to the proponent's design. This data makes clear that the family at 1681 will be blocked from entering Central Avenue each time a single car waits to enter the daycare center. The family at 1689 will be blocked if two cars headed south wait to turn into the center. The other homes on the street and the Temple will also be impacted by cars waiting to turn into the daycare's driveway, as well as by cars exiting the driveway and adding to the already existing backup along Central Avenue traveling north. The delay as cars wait to enter the facility will create a ripple effect in traffic that will impact the adjacent homes and streets. Moving the driveway simply shifts the brunt of the problem to different homes. Yet, the proponent's site review offers no information about the issue.

Further, the placement of the driveway impacts the light glare created by headlights onto neighboring properties. By-Law s. 5.3.4 requires off-site glare from headlights to be controlled by the

proponents. It is essential that screening be designed to shield all neighboring buildings from the impact of traffic coming onto and off site, including neighbors on the north side of the site and across the street. The submission does not address the impact of headlight glare.

The plan also gives no consideration to the activities which are conducted at Temple Aliyah, which will hopefully return to its normal activities once the pandemic ends. For example, how will the addition of the daycare center impact the traffic during after-school activities? The proponent also ignores the impact of the operation on pedestrian safety near the site. The proponents do not mention these issues in either of its Traffic Impact Reports, or in its March 11 letter to this Board. The site review should be rejected.

Table 5: Distance from Proposed Driveway to Existing Driveways

Address	Distance to Driveway	Direction from site	Number of Cars 16' length** 3 ft spacing	Number of Cars 17' length 3 ft spacing
1663 Central	Opposite		-	-
1681 Central	49.5'	North	2	2
1695	117	South	6	5
1703	157	South	8	7
1708 Central	172	South	9	8
1664 Central (Temple)	208'	North	10	10
1653 Central	246'	North	12	12
1652 Central	273'	North	14	13

*Standard length for a car: 15-16 feet
https://anewwayforward.org/average-car-length/
** Standard length for an Odyssey Minivan: 17'
https://owners.honda.com/vehicles/information/2020/Odyssey/specs#mid^RL6H9LKXW
Car numbers are rounded down to the lowest full car number.
The distance of the neighbors' driveways from that of the proposed project was measured using Needham's NSIS mapping.

E. The proponent's offer no information about the plan's impact on the adjacent streets.

The By-Laws require the proponent to provide the Planning Board with information concerning "reasonable anticipated conditions," but no information has been offered about the impact of the increased traffic and the increase in delays on the intersections of Central Avenue and Marked Tree, Pine

Street, Carleton Drive, Country Way and Charles River Drive. In the absence of this information the site review should be rejected.[4]

F. The Board should enlist the assistance of the Traffic Management Advisory Committee.

Finally, the By-Laws permit the Planning Board to send copies of any proposed building project to any town agency deemed appropriate. (s.7.4.4). The neighbors ask the Planning Board to enlist the comments of the town's Traffic Management Advisory Committee, which may offer information and perspective about the actual traffic conditions on Central Avenue and what, if any measures could be used to address the impact of the proposed project.

II. The Planning Board's review of the proposed design should find that the relationship of structures and open spaces to the natural landscape, existing buildings and other community assets is out of harmony with the surrounding area.

The building as proposed is out of harmony with the surrounding area. It is significantly larger than surrounding homes; it is closer to the street than any other building on this section of Central Avenue; and its grade is higher. Table 6 below reflects the footprints and setbacks of the proposed building, the nearby homes and the Temple as measured using the town's GIS map. The facts are that residences in this area have a smaller footprint than the proposed project and all buildings are set much further back than the design proposes. The general rule here is that larger buildings, including the Temple, are set further back from the street. In referring to its size, the proponent's March 12 letter to this board states that it is smaller than Temple Aliyah and that it is within the guidelines for residential homes in the area. Needham's zones this area residential, and it is important to consider the impact on the residential nature of the area of putting two large non-conforming buildings next to each other.

TABLE 6: Comparison of Footprint Size and Setback of 1688 Central Avenue to Neighboring Homes and Temple Aliyah

Address	Approximate Footprint	Proposed Footprint Is % Larger	Approximate Setback
1688 Central	9960 + 2835(existing Barn)= 12,795 sf	-	40'
1708 Central	1612 sf	794%	65'

[4] Any request by the proponent to waive submission of additional information should be denied, and the site plan as submitted should be rejected. *See Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283-284 n.9 (1986), which clearly states it is within the power of site plan review boards to reject a site plan that fails to furnish adequate information on the various considerations imposed by the by-law as conditions of the approval of the plan.

1652 Central	2714 (house) +830 (garage)= 3544 sf	361%	109’
1729 Central	3350 sf	382%	103’
1719 Central	2280 sf	561%	102’
1711 Central	2400 sf	533%	109’
1703 Central	2774 sf	461%	110’
1695 Central	2976 sf	430%	101’
1689 Central	2901 sf	441%	117’
1681 Central	2820 sf	454%	115’
1663 Central	2295 sf	557%	116’
1653 Central	3550 sf	360%	114’
1664 Central Temple Aliyah	20,844 sf	61%	213’

Furthermore, the entire project is front loaded on the site. From the street to the end of the proposed building and fenced playground is approximately 385 feet. The lot extends another 594 feet. The lot has the square footage to permit any building to be set further back on the property.
The Design Review Board’s comments call for the building to be re-situated, either by reconfiguring it or removing the barn. Moving the building back will also be in keeping with the requirements of By-Law s. 5.3.6, which states “Site arrangements and grading shall minimize the number of removed trees 8” trunk diameter or larger.” Requiring the building to be set back further could preserve a large tree currently destined to be removed, which is especially important given the number of trees that have already been cut. No reason has been offered for the designed placement of the building. Only a smaller, more appropriately sited building could come closer to the requirement of consistency with the residential neighborhood, while potentially reducing traffic impact. It is fully within the authority of the Planning Board and Building Officials to control both the size of the proposed building and its placement on the lot.

Conclusion

The Board should reject the proposed site review as a Minor Project, treat the proposal as a Major Project as required under the By-Law, follow that process to ensure full input from and protections of the neighbors, and carefully consider what changes in the plan and special permitting is necessary to preserve the interests of the residents of Central Avenue and the entire town.

ATTACHMENT 1

606 CMR: DEPARTMENT OF EARLY EDUCATION AND CARE

606 CMR 7.00: STANDARDS FOR THE LICENSURE OR APPROVAL OF FAMILY CHILD CARE; SMALL GROUP AND SCHOOL AGE AND LARGE GROUP AND SCHOOL AGE CHILD CARE PROGRAMS

610 CMR 7.10(9)(b)

(b) Fixed Age Groups. Children may be assigned to groups with others within their same age range, as specified by the Department provided the requirements of 606 CMR 7.10(9)(b)1. through 6. are met. The fixed age group ratios and groupings below may be used by large group and school age child care programs.

Regulation Number	Age Group/Full or Half Day Program	Maximum Group Size	Educator/Child Ratio	Educator Qualifications
606 CMR 7.10(9)(b)1.	Infants (up to 15 months old) (Full or Half Day)	7	1: 3, one additional educator for four – seven infants	At least one Infant/Toddler Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)2.	Toddlers (15 to 33 months) (Full or Half Day)	9	1:4, one additional educator for five – nine toddlers	At least one Infant/Toddler Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)3.	Preschoolers 33 months to school age (Full Day)	20	1:10	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b	Preschoolers 33 months to school age (Half Day)	24	1:12	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)5.	Kindergarten (attending first grade the following year)	30	1:15	At least one Preschool Teacher, per 606 CMR 7.09(18)(c)2.
606 CMR 7.10(9)(b)6.	School Age	26	1:13	At least one Group Leader, per 606 CMR 7.09(19)(a)2.

ATTACHMENT 2

Needham Children's Center, Inc.

858 GREAT PLAIN AVE Needham , MA 02492-3030

Program Information

Name: Carole Sullivan,Susanne Teachout

Capacity: 113

First Licensed On: 01/01/1981

Most Recently Renewed: 08/03/2020

EEC Licensor: Karen Lessard

EEC Regional Office Address:
324-R Clark Street , Worcester , MA 01606

Provider Number: P-170073

Type of Care: Large Group

Provider Status: Current

Umbrella: Needham Children's Center, Inc.

Full Year Schedule

Temp/Emergency:

Open Holidays:

Accepts Children:

Drop In Care Available:

Extended Day option available:

	HOURLY		DAILY		WEEKLY		MONTHLY		OTHER	
Age Group	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**
Toddler Age Group				$135.00		$520.00				
Kindergarten Age Group				$47.00		$160.00				
Preschool Age Group				$120.00		$454.00				
School Age Group				$62.00		$561.00				

Day	Start Time	End Time
Friday	07:30:00 AM	06:00:00 PM
Monday	07:30:00 AM	06:00:00 PM
Thursday	07:30:00 AM	06:00:00 PM
Tuesday	07:30:00 AM	06:00:00 PM
Wednesday	07:30:00 AM	06:00:00 PM

Ages Served and Capacity

Infant (birth - 15 mo)	7
Toddler (15 mo - 33 mo)	18
Preschool (33 mo - K)	52
Kindergarten	0
School Age (5 yr - 14 yr)	36
Infant Toddler (birth - 33 month)	0
Toddler Preschool 15 mo - k	0
Preschool SA 33 mo - 8 yr	0
Multi-Age Group (birth - 14 yr)	0

Needham Children's Center Inc.

23 Dedham Ave Needham , MA 02492-3007

Program Information

Name: Susanne Teachout

Capacity: 30

First Licensed On: 01/31/1989

Most Recently Renewed: 08/03/2020

EEC Licensor: Karen Lessard

EEC Regional Office Address:

324-R Clark Street , Worcester , MA 01606

Provider Number: P-170074

Type of Care: Large Group

Provider Status: Current

Umbrella: Needham Children's Center, Inc.

Full Year Schedule

Temp/Emergency:

Open Holidays:

Accepts Children:

Drop In Care Available:

Extended Day option available:

	HOURLY		DAILY		WEEKLY		MONTHLY		OTHER	
Age Group	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**
Preschool Age Group						$445.00				

Day	Start Time	End Time
Friday	07:30:00 AM	06:00:00 PM
Monday	07:30:00 AM	06:00:00 PM
Thursday	07:30:00 AM	06:00:00 PM
Tuesday	07:30:00 AM	06:00:00 PM
Wednesday	07:30:00 AM	06:00:00 PM

Ages Served and Capacity

Infant (birth - 15 mo)	0
Toddler (15 mo - 33 mo)	0
Preschool (33 mo - K)	30
Kindergarten	0
School Age (5 yr - 14 yr)	0
Infant Toddler (birth - 33 month)	0
Toddler Preschool 15 mo - k	0
Preschool SA 33 mo - 8 yr	0
Multi-Age Group (birth - 14 yr)	0

Source: https://eeclead.force.com/apex/eec_childcaresearchproviderdetail?id=001j000000qhjokAAA

Attachment 3
Traffic Count Conducted by the Needham Engineering Division
October 11, 2006

CENTRAL AVENUE AT CHARLES RIVER STREET TURNING MOVEMENT COUNT (7:00-9:00 AM)													
DATE	APPROACH	MOVEMENT	7:00-7:15	7:15-7:30	7:30-7:45	7:45-8:00	8:00-8:15	8:15-8:30	8:30-8:45	8:45-9:00			
10/11/06											AM PEAK HOUR		
	CENTRAL AVENUE SOUTHBOUND										7:30-8:30 (1487 VEHICLES)		
		LEFT	3		5	2		1	1	3			
		THRU	21	37	25	36	42	35	41	46	% H.V./BUS = 5.4%		
		RIGHT	3	4	4	4	4	5	3	8			
	CENTRAL AVENUE NORTHBOUND												
		LEFT	6	22	28	19	22	33	18	12			
		THRU	111	188	194	194	198	180	157	106			
		RIGHT		1	3	2	1	2	3	4			
	CHARLES RIVER STREET EASTBOUND												
		LEFT	21	53	53	57	42	45	42	37			
		THRU	10	27	27	37	29	30	31	34			
		RIGHT	7	8	3	11	6	7	6	11			
	CHARLES RIVER STREET WESTBOUND												
		LEFT					1		2	1			
		THRU	10	5	22	21	27	19	19	18			
		RIGHT	4		5	3	1	2	2	5			
			196	345	369	386	373	359	325	285			

May 13, 2021

Jeanne McKnight
Chair of Needham Planning Board,

Members of the Needham Planning Board,

Lee Newman
Director of Planning and Community Development
500 Dedham Avenue
Public Services Administration Building
Suite 118
Needham, MA 02492

RE: Proposed Project at 1688 Central Avenue

Dear Chair McKnight and All Planning Board Members,

Attached please find the detailed comments of neighbors of 1688 Central Avenue for consideration during the Planning Board's meeting on May 18, 2021 of the proposed project at that location. We ask that you give careful consideration to these comments and enter them, along with their attachments, into the formal record of your meeting should there need to be further proceedings on the matter. Thank you for your consideration.

Yours truly,

Holly Clarke

Response of Abutters and Neighbors of 1688 Central Avenue Project
to the Proponent's Letter of April 16, 2021.

The abutters and neighbors to the proposed 1688 Central Avenue project (the "Project") submit this response to the proponent's letter of April 16, 2021. The proponent advances a series of arguments that should be rejected. The proponent 1) misreads state law and Needham's Zoning By Law ("ZBL"), 2) would gut the Planning Board's clear authority to conduct a major site plan review of the Project and substitute a "process" with no standards or support under state law or the ZBL, 3) ignores entirely the consistent precedent of reasonable regulation of child care facilities by towns across the state, and 4) ignores the very real setback and traffic impacts of the Project. Finally, the process the proponent seeks would effectively eliminate all meaningful opportunity for abutters and neighbors to be heard.

In addition to encouraging this Board to commit legal error in its review of the Project, the proponent reverses his position on the Board's authority. Having acknowledged in his March 11 letter that the Board **should** review the Project according to the six site plan review criteria of ZBL Section 7.4.6., he now retreats from that position and argues in his April 16 letter that these criteria may not apply after all. That change of position, which amounts to the proponent's reneging on a promise to the town and, in particular, to the neighbors of this Project, to subject the Project to site plan review, should not be sanctioned by this Board.

The Planning Board should reject the Proponents application for minor site plan review, which is the application currently before the Board. To do anything else at this time would be in contravention of the bylaws, including giving public notice about the pending actions before the Planning Board.

Major Project versus Minor Project

Before setting forth in detail the flaws in the proponent's arguments, it is important to level-set on the process issues at stake in this case – which could well set a precedent for the Board in its consideration of other projects in the future. ZBL Sections 7.4.2 and 7.4.3 describe two, related types of site plan reviews: Major Projects and Minor Projects.[1] Both require the same information from a proponent. To be sure, the two types of projects call for different procedural safeguards, including a different role for the Planning Board. However, the ZBL Section

[1] We will not repeat our arguments about why this is a Major Project, and, instead, direct the Board to our letter of April 3, which we attach for ease of reference. We also incorporate all of our substantive comments about the project.

7.4.3 absolutely requires the Board's consideration of the six criteria for a site plan review for **both** types of project:

> In conducting the Site Plan Review, the Planning Board **shall** consider the following matters: (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air; (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly; (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises; (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site; (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets…. (emphasis added)

The Bylaw requires the Planning Board to consider these issues in all site plan reviews. Whether the Planning Board issues recommendations to the Building Inspector for a minor project or issues a Major Site Plan Special Project permit, the Board's examines and weighs the same factors. This is critical here because the Project in its present form so clearly fails to meet the above criteria.

After filing for site plan review as a minor project, the proponent received comments from town departments and neighbors challenging the filed plan and its status as a minor project. In response, he changed his plan to now include 30 parking spaces, which clearly qualifies the project for major site plan review. Instead of withdrawing his application as a minor project, the proponent now proposes that the Needham Zoning Bylaws simply do not apply to him at all, arguing for the first time that the Project is not only not a Major Project, but not a Minor Project either. Having dispatched the ZBL's site plan review, how does the proponent propose that the Board address the town's interests and the neighbors' real concerns? – according to his April 16 letter, that is "yet to be determined."

This attempted sleight of hand should be rejected by the Board.

I. Applying Needham's Site Plan Review to the Project is Entirely Consistent with MGL Ch 40A s3.

The proponent argues that MGL Ch 40A s. 3 prohibits the application of Needham's Site Plan Review to his Project. That argument is wrong as a matter of law. MGL Ch 40A s 3 provides:

> No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term ''child care facility'' shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

The plain reading of the statute forbids municipalities from requiring a special permit for the **use** of land or structures, or the expansion of existing structures **for the purpose of operating** a child care facility, while allowing municipalities to reasonably regulate the land and buildings in order to protect legitimate municipal interests embodied in local zoning laws. The statute creates a protected use, but balances that protection with the specific authorization for the application of reasonable regulations regarding issues such as bulk and setback on the structures and lots.

The proponent's argument amounts to a radical rewrite of the statute. He reads the statute as if it states, "No zoning ordinance or bylaw in any city or town shall require a special permit **related to**~~, the use of~~ land or structures, or the expansion of existing structures, ~~for~~ the primary, accessory or incidental purpose of **which is the** operati**on**~~ng~~ **of** a child care facility~~;~~ provided, however, that such land or structures may **only** be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." The Board should reject this invitation to rewrite state law to advantage the Project.

Needham's ZBL complies with MGL Ch 40A s.3. Section 3 of the ZBL designates child care facilities as a permitted use as of right in all districts. Child care operators simply are not required to obtain a special use permit in order to use their properties to operate a child care facility in Needham. In this case, the proponent is a real estate developer and not a child care operator. The law is not clear as to whether, as a developer, he is entitled to the special protection afforded child care facilities. The protection runs to the child care use, not to the developer, and the reasonableness of regulation is measured against the program's interests, not those of a

real estate investment. At the very least, the Board should insist on obtaining, and putting on the record, a copy of the lease between the proponent and the tenant to assess the duration of the lease and to ensure that the operation will be in keeping with the representations made in the Project application. Assertions should not substitute for the facts and the details critical to the neighborhood's interests and the Board's decision making.

Needham has elected to regulate the building projects for child care facilities just as it does all construction projects. Through its Site Plan Review process, Needham permissibly regulates all construction projects which exceed specified benchmarks in order to protect established and well recognized legitimate municipal interests. ZBL 7.2.3 provides, "A special permit shall be required for every Major Project, regardless of whether the contemplated use thereof is designated as permissible, as of right or by special permit, under the table of uses set forth in Section 3.2 of this By-Law." The two distinct references to "special permit" in this section underscore that the major project site review special permit is separate and different from special permits required for use.

The ZBL is a reasonable regulation aimed at addressing the consequences of construction projects which trigger concerns because of their bulk, setback, and other characteristics and not because of their use. The plain language of the Bylaws make clear that the Board looks to the construction aspects of the project and not to the intended use of the land following construction or improvement. Section 7.4.1 sets forth the purpose of the site review process, "to provide a comprehensive review procedure for **construction projects**, herein defined, to ensure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas."

Section 7.4.2 provides the definitions applicable to site review:

> For the purposes of this Section the following definition of terms should apply to **any construction project** excluding single and two family homes.
>
> MAJOR PROJECT – **Any construction project** which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces…
>
> MINOR PROJECT – **Any construction project** which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project.

By their plain terms, the ZBL regulates the size and bulk of any construction project, including a proposed child care facility, to assure the protection of legitimate municipal zoning objectives. The site plan review bylaws come into play only when a project is so large that it merits review beyond the application of the usual zoning bylaw requirements. The square footage of new construction, the total change in a project's resulting gross floor area, or the need for additional parking require site plan review. The building's proposed use is not even considered in this process. The "special permit" issued after site review simply provides the means for the town to enforce any reasonable conditions necessary to regulate the proposed construction project. It is not related to the underlying use.

In his attempt to evade site plan review, the proponent conflates the requirement of permitted use with regulation of construction, thereby misreading Ch 40A and ignoring the structure and applicability of the ZBL. He also misapplies relevant case law. The April 16 letter to the Planning Board misreads both *Petrucci v. Westwood,* 45 Mass. App. Ct. 818 (1998) and *Watros v. Greater Lynn Mental Health & Retardation Assn., Inc*., 421 Mass 106(1995). Both cases address attempts to prohibit the use of existing non-conforming structures as child care facilities. In *Petrucci*, the town and abutters objected to the use of an existing barn as a child care facility because it shared a residential lot with a single family home. The abutters in *Watros* similarly objected to the use of a rented barn as an educational facility because it shared the premises with a two-family building owned by another. The cases presented claims that the proposed buildings could not be classified as child care facilities because they shared lots with residential buildings, and asserted lots could not have two uses. The cases do not support the proponent's arguments.

In fact, when the proponent quotes from *Petrucci,* he omits the critical sentence. The full passage, including the critical sentence (highlighted) follows:

> **In dismissing the argument of abutters *who challenged the proposed use* on residential property of a barn to house and educate retarded adults - that the exemption applied only when the educational use occupied the entire property - the court in *Watros* stressed that the second paragraph, "speaks not once, but twice, of 'land or structures' as the focus of the exemption."** 421 Mass. at 113. The "constrictive result" flowing from the abutters' reading of the statute was "neither required by the language of the statute nor consistent with its purpose," id. at 114, which was "to prevent local interference with the use of real property" - whether of land or of structures thereon for the exempt purposes identified in the statute. Id. at 113. Here, also, the plain language of the statute (which, as in *Watros*, speaks not once but twice of "land or structures") and its manifest intent - to broaden, rather than narrow, the opportunities for establishing child care facilities in the Commonwealth… - overwhelm the board's constrictive ef-

fort to parse any substantial child care facility on a residential property out of the statute (emphasis added, 822-3).

The "constrictive result" referred to by the court concerned the attempt to limit the statute's application to the use of buildings as child care facilities only when they are the sole buildings on a lot, not to the application of legitimate town bylaws concerning the buildings' attributes. In sum, MGL CH40a s.3 deliberately and clearly separates use as a child care facility from reasonable regulations of structures.[2]

II. Child Care Facilities in Needham and Throughout the State Have Long Been Subject to Reasonable Regulations Such As Those Contained in Needham's Site Plan Review.

The proponent's arguments are also inconsistent with the established practice throughout the State of applying reasonable regulations to structures at which child care facilities are operated. In *Rogers v. Norfolk,* 432 Mass. 374 (2000)*,* the Court upheld Norfolk's bylaw limiting child care facilities to 2,500 square feet. The Court found the preservation of the town's residential character to be a legitimate municipal purpose and recognized the town's right to limit the placement of large structures in residential zones.

> A challenged provision in a zoning bylaw is presumptively valid, and a challenger bears the burden to prove otherwise. See *Johnson v. Edgartown*, 425 Mass. 117, 121 (1997 ...The provision focuses on the fact that child care facilities are commercial enterprises, and thereby have a greater potential than residential uses to disrupt, or detract from, the town's tranquility. A child care facility of larger dimensions will likely generate more traffic and create more noise, all of which may have greater impact on a town composed mainly of single-family homes.

Like Norfolk, some municipalities have enacted bylaws specific to child care facilities. For example, Wellesley requires day care facilities in residential districts to provide 10 foot setbacks

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[2] Even if it were determined that the Board could not issue a special permit for the Project, the rest of the ZBL would remain in force. Section 7.11 provides, "Severability: The invalidity of any section or provision of this By-Law shall not invalidate any other section or provisions thereof." The Board would still possess all of its authority under the ZBL to regulate the construction of the project and set reasonable terms. See: *Campbell v. Lynn*, 415 Mass. 772 (1993)(while enforcing setback requirements against non-conforming building used for educational purposes would be unreasonable because the building was already in existence, had this been a proposal to build a new building, the bylaws might have been enforceable and "local officials might be warranted in requiring that an educational user seek an alternative site."); *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283-284 n.9 (1986) ("authorities may reject a site plan that fails to furnish adequate information required by the by-law; impose reasonable conditions in connection with site plan approval, even at the expense of the applicant; and reject site plans where "although proper in form, (the site plan) may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable")

for playground areas, screened play spaces and parking spaces, specific fire alarm equipment, one off street parking space for every paid or unpaid employee on or off the premises to assure there will be no on-street parking, new buildings must meet all zoning bylaws, and facilities may be no larger than 2,500 sf. Newton's child care specific bylaw intends, "to distinguish between family child care homes and day care centers which are more intensely used, to encourage larger facilities to co-locate within other existing large institutions, to encourage safe access and egress, and to minimize potential congestion at drop-off and pick-up times." The City requires dense vegetative buffers to screen parking and playgrounds, one parking space for every five children, and the filing of formal parking and drop off plans. Medfield requires child care facilities to have designated pick up zones with a minimum of parking of 25% of the building capacity, separate entrances and exits, and minimum lot sizes.

Some towns use site plan review, either on its own or in addition to specific bylaws, to regulate child care facilities. For example, Westwood allows day care facilities in existing buildings as of right, but requires facilities in new buildings to get special permits. Brookline's administrative site review requires applicant's to provide the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground); employee and drop-off/pick-up parking, and a site plan showing the location of outdoor play space and parking. Newton's site review provides notice to the Ward Councilors and abutters, and addresses convenience and safety of streets, driveways, screening and avoidance of major topographical changes. Wayland 's Planning Board conducts site plan review of section 3 uses consistent with that section." The proponent writes that Framingham limits its approach to site review when applied to section 3 uses, and Framingham does do so for minor projects. When a proposed facility qualifies for major project status, Framingham exercises its authority to apply full site review.

Needham permissibly exercises its authority to regulate their bulk, height and other features through zoning bylaws applicable to all uses, including the site review process. The town need not have adopted bylaws specific to child care facilities in order to protect the well recognized and legitimate public interests implicated by any building project over a specific size, including those offered accommodation under ch 40a s.3. Needham's bylaws are in fact more lenient than the bylaw upheld in Rogers. Needham only applies s. 7 site review to construction projects of a certain size and bulk, and the process itself is nuanced and tailored to the degree that the size of the proposed project implicates legitimate municipal concerns. In the Residential A zoning district at issue, only construction projects involving new construction of more than 5,000 sf, or with a total size at completion of more than 5,000 gross floor area, are subject to site review.

Table 1 below reflects the number of child care facilities listed as licensed on the State Department of Early Education and Care website in the listed cities and towns. The chart includes each municipality's population, the total number of licensed child care facilities, the number of large child care facilities within each town, and applicable local zoning bylaws. This chart demonstrates that each town, including Needham, protects child care facilities as a use, but still enacts reasonable regulations on the characteristics of construction to protect local zoning interests. The reasonableness of Needham's approach is reflected by the fact that our town has the most large group child care facilities per capita of the town's listed.

Table 1

City/Town	Population	Number of Child Care Facilities Licensed by EEC*	Number of Large Child Care Facilities	Local Zoning By Laws
Newton	88,414	84	57	s. 6.3.4; 7.5
Framingham	74,416	115	25	s. IV,B, s.VI, F.2.a
Brookline	59,121	53	40	Art. IV, s. 603/4, s. 9.12
Lexington	33,132	32	25	s. 9.5.6
Natick	33,012	46	20	s. III-A.2 49, 11.7.2
Needham	31,388	36	26	7.4.2
Norwood	29,725	36	13	s. 10.5
Wellesley	28,670	30	21	S.II.3A, s.16
Belmont	26,116	34	21	s. 7.3
Dedham	25,219	45	11	Table 3, 7 s. 9.5.3
Walpole	25,200	37	10	s. 13
Concord	18,918	14	13	s. 4.3.2, s.11.8.7
Hopkinton	18,470	22	10	S, 210-124, 210-165, 210-133
Westwood	16,400	11	7	s.4.1.4.3

Holliston	14,939*	14	5	s.III,A, VII
Wayland	13,835	9	9	s. 603.3
Medfield	12,955	12	10	s. 5.
Weston	12,112	10	10	s. V.A.3, s. XI.K
Dover	6127	4	4	s. 185-10

* Large Group Child Care Facilities a redefined by the EEC.

III. The Proponent's Effort to Create a Site Plan Review Under MGL ch 40a s.3 Should be Rejected.

The proponent recognized the validity of the ZBL in his March 11, 2021 request for Site Plan Review as a Minor Project (emphasis added):

> Pursuant to Section 7.4.2 of the Bylaw, this project qualifies as a "Minor Project" because it involves the construction of more than 5,000 but less than 10,000 square feet of gross floor area, and because it involves the creation of fewer than 25 new off-street parking spaces. Pursuant to Needham Zoning Bylaw Section 3.2.1, the proposed use as a child care facility is allowed by right in this district, meaning that no Special Permit is required for this use. **Therefore, Minor Project Site Plan Review is appropriate**.

After the assumptions underlying his claim to be a Minor Project were challenged, and after conceding his project requires at least 30 parking spaces, the proponent now claims (emphasis added):

> The hearing on May 18 for this project is thus **neither minor nor major project plan review** under section 7.4 of the Bylaw. It is simply site plan review pursuant to c. 40A, section 3, during which process the Board may consider "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, set-backs, open space, parking and building coverage requirements."'
>
> Exactly what constitutes "reasonable regulation" of these aspects of this project **remains to be determined**….

MGL CH 4a s.3 simply does not mention site plan review, nor does any other section of state zoning law. Site plan review is a creation of municipalities endorsed by the courts to serve local zoning interests. Section 3 permits each municipality to pass bylaws to regulate the build-

ing issues related to child care facilities in their community. As discussed above, some have enacted bylaws which specifically regulate child care facilities, some regulate through site reviews and some towns use both. Section 3 does not permit a single proponent to craft his own approach to site plan review.[3]

There can be no question that the concerns addressed in Needham's bylaws are appropriately the subject of town zoning laws. The purposes of the site review process are, "to insure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas." S. 7.4. Needham's bylaws specifically delineate the municipal interests the site review process aims to protect, as well as set forth the six criteria the town must consider in making its assessment in ZBL 7.4.6 (see above).

Each of the identified considerations are recognized by state law, the bylaws and the Courts as important and legitimate municipal interests. MGL. Ch 40A s 1a defines zoning ordinances as using the, "...full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants." Courts addressing protected uses under MGL Ch 40A s3 stress the protection of the character and well-being of established neighborhoods as one purpose of the statute.

> "There is indication that the Legislature, in enacting G. L. c. 40A, § 3, second par., authorized municipalities to impose regulatory measures on educational and religious uses, in order to protect the character and well-being of established neighborhoods, as long as "the regulation will not seriously jeopardize the mission of the protected institutions." 1972 House Doc. No. 5009. *Campbell v. Lynn,* 415 Mass. 772 (1993).

In his separate opinion in *Trustees of Tufts College v. Medford*, 415 Mass 753 (1993), Justice O'-Connor quoted the House Report on the amendment of MGL Ch 40A with s3, which makes clear the statute's recognition of the well being adjacent neighborhoods as a legitimate public interest.

> It is unfortunate that the present state of the law is such that some communities may have legitimate doubts about the validity of regulations which would impose reasonable controls on institutions presently covered by the Dover amendment. The Department **would encourage the use of such control where essential to the well-being of the adjacent neighborhood,** and where the regulation will not seriously jeopardize the mission of the protected institutions. Thus, the Depart-

[3] If the Planning Board were to accede to the proponent's request, the contents of other towns bylaws might be helpful in fashioning reasonable regulations of a proposed new building in a residential zone.

> ment proposes to clarify the present language so as to achieve the aims of the general court in passing the original amendment while at the same time precluding unwise restrictions on the power of the communities to regulate the land use activities of churches and educational institutions. The proposed language, for example, would specifically authorize the imposition of reasonable regulations concerning density or intensity of occupancy, bulk and height [of] structures, yards and setbacks, **as well as limitations upon the location of assessory uses which traditionally have tended to be detrimental to adjacent property** (770-1) (emphasis added).

Massachusetts courts recognize that uses protected by section 3 may be regulated for the promotion of public health or safety, preservation of the character of an adjacent neighborhood (*Trustees of Tufts College v. Medford)*; preservation of residential neighborhoods (*Rogers v. Norfolk*); reduction of congestion in the streets, conservation of health, securing safety from fire and other dangers, provision of adequate light and air, prevention of overcrowding of land and avoiding undue concentration of population (*MacNeil v. Avon,* 386 Mass. 339 (1982); assuring safety, aesthetics and privacy, including distance from neighbors, shielding building visibility and prevention the loss of trees (*Petrucci v. Westwood)*, and protection of public convenience and safety by limiting crowded streets (*Radcliffe College* v. *Cambridge,* 350 Mass. 613 (1966).

Court decisions make clear that the reasonableness of a regulation is to determined after applying the bylaws as written and to measure reasonableness on a case by case basis. The test requires measuring the impact of the regulation on the protected use against the advancement of the municipal goal served by the regulation. See: *Trustees of Tufts College v. Medford*. The proponent seeks to gut the regulations before they are applied. This approach is incorrect and should be rejected.

IV. The proponent's attempt to evade application of the site review bylaw violates MGL Ch 40A s.4 requirement of uniform application of zoning requirements.

MGL Ch 40A s.4 requires, "Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." The requirement of uniformity extends to all classes and kinds of structures and uses, and the Courts make clear this extends to protected uses under s.3. In *Trustees of Tufts College v. Medford*, the Court stated, "Because local zoning laws are intended to be uniformly applied, an [applicant] . . . making challenges similar to those made by Tufts will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project." Similarly, in *Campbell v. Lynn*, the Court held,

> Local zoning requirements are meant to be applied uniformly, Trustees of Tufts College v. Medford…, and consequently, local officials may not grant blanket exemptions from the requirements to protected uses. The officials may, however, on an appropriate showing, decide that facially reasonable zoning requirements concerning bulk and dimension cannot be applied to an educational use occupying a particular site because application of the requirements would improperly nullify the protection granted to the use, or because compliance with the requirements would significantly impede an educational use, in either instance without appreciably advancing municipal goals embodied in the local zoning law.

The proponent's attempt to exempt his Project from the application of Needham's zoning bylaws ignores the uniformity requirement. By proposing a project of this bulk, the proponent becomes subject to the site review process, as well as all other zoning bylaws.

V. The Project Does Not Meet The Site Plan Review Criteria and should not be approved.[4]

A. Setback

The proposed building is out of harmony with the surrounding neighborhood. The proponent asks to place a large commercial project of more than 12,000 sf only 50 feet from Central Avenue and to raise the property's grade by six feet. In this residential area, no building is set back less than 65 feet, and the clear pattern is for larger buildings to be set much further back from the street. The setbacks create more visual space and contribute to the visual appeal of the neighborhood. The arrangement helps mitigate the impact of the traffic along Central Avenue, allowing better sight lines up and down the road and enhancing safety. The table below presents each building's footprint size, its relationship to the proposed project and set back.

[4] The Neighbors herein incorporate all of the issues identified in their April 3 letter.

Table 2: Comparison of Building Footprint Size and Setback of Project, Neighboring Homes and Temple Aliyah

Address	Approximate SF	Proposed Project is % Larger	Setback
1688 Central	9960 + 2835(existing Barn)= 12,795 sf	-	50’ (proposed)
1708 Central	1612 sf	794%	65’
1652 Central	2714 (house) +830 (garage)= 3544 sf	361%	109’
1729 Central	3350 sf	382%	103’
1719 Central	2280 sf	561%	102’
1711 Central	2400 sf	533%	109’
1703 Central	2774 sf	461%	110’
1695 Central	2976 sf	430%	101’
1689 Central	2901 sf	441%	117’
1681 Central	2820 sf	454%	115’
1663 Central	2295 sf	557%	116’
1653 Central	3550 sf	360%	114’
1664 Central Temple Aliyah	20,844 sf	61%	213’

Siting the project in accord with the established neighborhood pattern would be in harmony with the existing configuration and protect the aesthetics of the neighborhood. A larger setback would help create a buffer from the proposed commercial use, increasing both visual

screening and protection from protection from noise, activities and traffic for abutters and neighbors. Lengthening the driveway would make vehicle overflows onto Central Avenue less likely by moving on site traffic further onto the lot, create a longer driveway to help avoid any waiting vehicles from spilling over onto Central Avenue, and would enhance the safety of pedestrians and bicyclists passing the property. The bylaws protects these legitimate, critical municipal interests.

The municipal interests served by increasing the project's setback are extremely important. The lot has plenty of space to accommodate these legitimate concerns, whether by redesigning the project, adjusting the placement of the proposed buildings or removing the barn. No reason has been offered to not set the building back in accord with the neighborhood pattern, much less one that impacts the use of the building as a child care facility. The proponent may wish to reserve the rest of the lot for further development (he has avoided discussing his intent), but that is not an interest the statute or bylaw protect.

B. Traffic

The Planning Board must regulate the project in order to address the issues of traffic on Central Avenue, surrounding streets and on site. A day care center at the proposed size is expected to generate 480 traffic trips daily. The current single family use generates 10 trips.[5] This added traffic will exacerbate the current traffic conditions on Central Avenue and will impact the lives of everyone that lives near the site or travels the road. The need for a proposal to actually mitigate traffic concerns relates directly to public safety and can not be overstated. As the Police Chief notes, there have been 12 accidents between Pine Street and Charles River Street in the last five years, a period that includes more than one year with the pandemic- reduced traffic. At least one accident was at the foot of the driveway entrance to the Temple, a fact that should concern everyone. The number of accidents reinforces the critical need to properly mitigate the traffic impacts of the proposed project.

The project involves both onsite and offsite traffic issues. Both must be analyzed and solved. The traffic patterns on site and the need for the appropriate placement and number of parking spaces should be analyzed. Having first said the facility only required 24 spaces, the

[5] The estimates are made by the Institute of Traffic Engineers.

proponent now plans to have 30. The sufficiency of this number should be fully examined. We note that other nearby towns would require a facility of this size to have more parking spaces.[6]

To date, 483 neighbors and Needham residents signed the letter to the planning board and town departments sharing the facts of the current traffic situation on Central Avenue. The road is over capacity, requiring people to leave their homes much earlier in the morning to arrive at their destinations on time, and taking them much longer to return to their homes in the evening. The experiences the residents describe is substantiated by the 2016 traffic counts taken by the town in preparation for building the Jack Cogswell Building. The counts reflect the reality that there is more than a single peak hour in the morning and evening at this location. Traffic counts remain high for more than an hour. The phenomena of high traffic volumes expanding over longer periods occurs when drivers are required to allow more time to reach their destinations because of increases in traffic.[7] Addressing traffic congestion is a legitimate municipal interest. In fact, as a town, Needham recognized the impact of traffic on Central Avenue when it elected not to place the DPW building on Central Avenue in 2014. The town found that traffic would impact the DPW's to do its job, and opted to only place a storage facility on the site.

In addition to the added volume, the placement of the project's driveway will impact the ability of neighbors to enter and exit their homes. An analysis of the 2016 traffic counts collected by the town shows the amount of traffic and its impact the ability to enter and exit driveways along this stretch of road. Before any traffic added to the street by the proposed project, the average weekday morning peak hour traffic count is 1482.6 cars, equaling 25 cars/minute, or approximately 1 car every 2.4 seconds. Approximately 1167.2 of these cars are headed north each hour, equaling nearly 20 cars/minute or 1 car every 3 seconds. The south bound peak hour averages 299.8 cars, or 5 cars/minute or 1 car every 12.5 seconds. The child care facility will add even more cars to this already overburdened scene. The proponent projects the majority of the cars headed to the center will travel south bound, and will make a left turn across the heaviest lane of traffic to enter the facility. The drivers will wait for a break in the stream of 1 car every 3 seconds to enter the driveway, and will queue in the travel lane on Central Avenue. They must also negotiate the turns into the driveway with the drivers leaving the daycare center and returning to Central Avenue. As these vehicles wait on Central Avenue, they will block ongoing traffic and prevent residents from entering and leaving their homes. Preserving the neighbors'

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[6] Please see Neighbors letter of April 3. We note the DPW bases its comments on the sufficiency of 30 parking spaces on the staff and student numbers submitted by the proponent as part of its original submission to claim status as a minor project. The proponent should be required to provide all of the information necessary to make an accurate assessment of what is required to assure that safety and traffic concerns are fully addressed. The applicant's status as a developer rather than the child care provider again impacts this consideration.

[7] See Attachment 1 for analysis of Needham traffic counts taken by the RTS in 2016.

access to their homes is a critical municipal interest. It is unique circumstance particular to this site and must be addressed before the project is permitted to be built.

Traffic mitigation must also address afternoon and evening traffic. The 2016 counts indicate more cars on the road in the afternoon than in the morning. Further, Temple Aliyah's schedule releases their daycare program at 4:30pm Monday through Thursday, and 1:00 pm on Friday. Religious school classes run from 2:45-5:45pm on Monday and Thursday. The proponent's traffic study provides no analysis for the afternoon period, a deficiency noted by the DPW in its comments. The Planning Board should refuse to approve the site plan without this information and an enforceable strategy to address the project's impact on neighborhood traffic throughout the day.

The time to address the traffic issues is now- before any project is approved. A mitigation strategy must be identified, explored, and, if satisfactory, enforced. Central Avenue is too narrow to permit the addition of a lane, and there is no place to put a traffic light. Central Avenue is an arterial road and forbidding left turns into and out of the property would require town and perhaps state action, and would send traffic to neighboring streets, ill-equipped to handle it. The Police Chief acknowledges the traffic problems and the difficulty of neighbors entering and exiting their driveways, and references the proposed tenant's description of staggered drop offs as a mitigating strategy. The terms of the staggered drop off should be identified and analyzed to see if they can effectively address the traffic issues on the site and on Central Avenue. At the Design Review Board meeting on May 10, the proponent stated that the current design offered room for 10 cars to queue in the driveway, and twenty cars are slotted to arrive in each time slot. The Planning Board should require the proponent to provide full information before permitting the project to go forward.

The comments of the Police Chief indicate that the tenant was amenable to hiring a police detail for the first week of school. While the program's decision to pay a police detail to help orient families to on site operating procedures may increase on site efficiency for the daycare users, it will do nothing to help cars trying to maneuver through traffic on Central Avenue nor will it stop traffic long enough to allow neighboring residents to exit their driveways. The concept of a detail officer on Central Avenue to mitigate the impact of the project in the morning and evening should be fully vetted, with the recognition that the problem is real, immediate and permanent- it will not go away after one week.

One mitigation strategy – which the proponent has not acknowledged, but the Board should consider—is downsizing the building and thereby reducing the number of trips to the site.

As noted earlier, the proposed tenant is not even before the Planning Board, a fact that complicates the resolution of these issues.[8] What if the facility determines that the new setting does not permit the same practices as at the old address? What if drivers simply do not comply with the plan? What if a new tenant takes over the lease? Or the developer sells his interest? The Planning Board must require complete answers to these questions before approving any project for this site. Approval should not be given without the complete information necessary to assure the interests of the town are protected. If the problem is so intractable that it has no reasonable solution, the permit should not be granted. *Petrucci v. Westwood,* 45 Mass. App. Ct. 818 (1998).

VI. The Process Proposed by the Proponent Would Effectively Eliminate Any Opportunity For Neighbors and Residents to Be Heard About the Project.

The developer proposes to replace a single family home in a residential district with a commercial project of 12,795 square feet spread over two buildings, including a two story barn, and a parking lot for at least 30 vehicles. He has already cut down trees across the site, removed some of the screening that shielded the Temple, and changed the appearance of the neighborhood. The consequences for abutters, the surrounding neighborhood and the entire town stemming from this project can not be overstated. It will impact Central Avenue forever.

Perhaps one of the worst features of the proponent's proposal is the attempt to eliminate the residents' right to be heard about a project that impacts their daily lives. By first claiming to be a minor project, and now by attempting to rewrite the site review process altogether, the proponent has sought to avoid the concerns of the abutters, neighbors and residents of this town. The need for transparency and openness in governmental actions is axiomatic. Notice and the opportunity to be heard in a public forum are a fundamental part of fairness and insured by the Needham bylaws. The Major Site Plan Review Process guarantees a public hearing for all projects with great impact on the surrounding area and town. The requirement of public reports by departments, including the Design Review Board, fosters public confidence and trust in the process of decision making. Without any public input from anyone other than the proponent, government departments do not receive a complete picture of any project's ramifications. More information contributes to better developments, as well as assuring citizens that their concerns are in fact considered. Public meetings on proposals, without any opportunity for residents to voice their thoughts or objections do not insure the interests of Needham are served. Public meetings which only include only one-sided presentations skew the information relied upon and the resulting decisions that are made. While residents appreciate the ability to contact town

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[8] In assessing the reasonableness of the application of zoning provisions involving CH 40a s. 3 users, the Courts have suggested that the status as a tenant, and the option to chose to go to another site may weigh in support of a municipality enforcing a zoning requirement. See: *Campbell v. Lynn*, 415 Mass. 772 (1993), opinion of J. Wilkins.

officials and department employees, these conversations do not substitute for the public hearing the bylaws require for a project this size. Submitting written comments, either before or after a public meeting, does not substitute for the exchange of a public hearing. We put our faith in the Planning Board to allow meaningful public opportunity for residents to be heard, their concerns understood and their interests protected.

Thank you for your time and consideration.

Attachment 1: Traffic Counts Collected by Needham Near RTS, 2016

AM:

Monday May 16, 2016

5/16/2016	06:30 AM	217	25
5/16/2016	06:45 AM	255	47
5/16/2016	07:00 AM	269	51
5/16/2016	07:15 AM	254	62
5/16/2016	07:30 AM	273	61
5/16/2016	07:45 AM	276	60
5/16/2016	08:00 AM	265	70
5/16/2016	08:15 AM	220	63
5/16/2016	08:30 AM	213	67
5/16/2016	08:45 AM	166	79
5/16/2016	09:00 AM	154	72
5/16/2016	09:15 AM	150	61
5/16/2016	09:30 AM	123	57

Time	Vehicles North	Vehicles South	Total
6:45- 7:45	1051	221	1272
7:00- 8:00	1072	253	1321
7:15- 8:15	1068	253	1321
7:30- 8:30	1034	254	1288
7:45- 8:45	974	259	1233

Peak hour: 7:15- 8:15

Compounded to 2021*: 1483 total- 1175 north 279 south

24.71 vehicles/minute- 19.58 vehicles/minute north - 4.65 vehicles/minute south

***Compounding was done at the 1.6% annual rate suggested in the proponent's traffic impact study**

Tuesday May 10, 2016

5/10/2016	5/10/2017	5/10/2018	5/10/2019
5/10/2016	06:30 AM	227	23
5/10/2016	06:45 AM	261	27
5/10/2016	07:00 AM	278	47
5/10/2016	07:15 AM	265	48
5/10/2016	07:30 AM	292	71
5/10/2016	07:45 AM	279	59
5/10/2016	08:00 AM	232	79
5/10/2016	08:15 AM	277	64
5/10/2016	08:30 AM	175	61
5/10/2016	08:45 AM	244	73
5/10/2016	09:00 AM	213	70

Time	Vehicles North	Vehicles South	Total
6:45- 7:45.	1096	193	1289
7:00- 8:00	1114	225	1339
7:15- 8:15	1068	257	1325
7:30- 8:30	1080	273	1353
7:45- 8:45	963	263	1226

Peak hour: 7:30 8:30

Compounded to 2021: 1488 total- 1188 north 300 south

24.5 vehicles/minute- 19.8 vehicles/minute north - 4.65 vehicles/minute south

Wednesday, May 11, 2016

5/11/2016	06:30 AM	225	23
5/11/2016	06:45 AM	277	38
5/11/2016	07:00 AM	268	40
5/11/2016	07:15 AM	255	64
5/11/2016	07:30 AM	304	49
5/11/2016	07:45 AM	253	87
5/11/2016	08:00 AM	237	78
5/11/2016	08:15 AM	252	64
5/11/2016	08:30 AM	210	56
5/11/2016	08:45 AM	220	64
5/11/2016	09:00 AM	176	75
5/11/2016	09:15 AM	198	72
5/11/2016	09:30 AM	197	54

Time	Vehicles North	Vehicles South	Total
6:45- 7:45.	1104	191	1295
7:00- 8:00	1080	240	1320
7:15- 8:15	1049	278	1327
7:30- 8:30	1046	278	1324
7:45- 8:45	950	285	1235

Peak hour: 7:15- 8:15

Compounded to 2021: 1460 total- 1154 north- 306 south

24.33 vehicles/minute- 19.23 vehicles/minute north - 5.1 vehicles/minute south

Thursday, May 12, 2016

5/12/2016	06:30 AM	234	22
5/12/2016	06:45 AM	241	32
5/12/2016	07:00 AM	270	50
5/12/2016	07:15 AM	282	57
5/12/2016	07:30 AM	254	71
5/12/2016	07:45 AM	277	89
5/12/2016	08:00 AM	264	67
5/12/2016	08:15 AM	256	73
5/12/2016	08:30 AM	221	69
5/12/2016	08:45 AM	189	68
5/12/2016	09:00 AM	197	71
5/12/2016	09:15 AM	174	58
5/12/2016	09:30 AM	188	49

Time	Vehicles North	Vehicles South	Total
6:45- 7:45.	1047	210	1257
7:00- 8:00	1083	267	1350
7:15- 8:15	1077	283	1360
7:30- 8:30	1051	300	1351
7:45- 8:45	1018	312	1330

Peak hour: 7:15- 8:15

Compounded to 2021: 1545 total- 1185 north 311 south

25.75 vehicles/minute- 19.75 vehicles/minute north - 5.18 vehicles/minute south

Friday, May 13, 2016

5/13/2016	06:45 AM	217	38
5/13/2016	07:00 AM	241	52
5/13/2016	07:15 AM	248	54
5/13/2016	07:30 AM	279	59
5/13/2016	07:45 AM	266	82
5/13/2016	08:00 AM	244	66
5/13/2016	08:15 AM	242	69
5/13/2016	08:30 AM	216	83
5/13/2016	08:45 AM	186	85
5/13/2016	09:00 AM	190	81
5/13/2016	09:15 AM	184	64
5/13/2016	09:30 AM	175	67

Time	Vehicles North	Vehicles South	Total
6:45- 7:45.	985	203	1188
7:00- 8:00	1034	247	1281
7:15- 8:15	1037	261	1298
7:30- 8:30	1031	276	1307
7:45- 8:45	968	300	1268

Peak hour: 7:30- 8:30

Compounded to 2021: 1437 total- 1134 north 303 south

23.95 vehicles/minute- 18.9 vehicles/minute north - 5.05 vehicles/minute south

Saturday, May 14, 2016

5/14/2016	06:30 AM	43	15
5/14/2016	06:45 AM	61	16
5/14/2016	07:00 AM	42	16
5/14/2016	07:15 AM	47	18
5/14/2016	07:30 AM	76	26
5/14/2016	07:45 AM	119	40
5/14/2016	08:00 AM	139	40
5/14/2016	08:15 AM	141	35
5/14/2016	08:30 AM	146	34
5/14/2016	08:45 AM	151	74
5/14/2016	09:00 AM	141	80
5/14/2016	09:15 AM	181	61
5/14/2016	09:30 AM	171	61

Sunday, May 15, 2016

5/15/2016	06:30 AM	19	7
5/15/2016	06:45 AM	32	11
5/15/2016	07:00 AM	28	11
5/15/2016	07:15 AM	31	10
5/15/2016	07:30 AM	35	25
5/15/2016	07:45 AM	44	13
5/15/2016	08:00 AM	26	18
5/15/2016	08:15 AM	48	31
5/15/2016	08:30 AM	52	35
5/15/2016	08:45 AM	52	40
5/15/2016	09:00 AM	58	48
5/15/2016	09:15 AM	54	42
5/15/2016	09:30 AM	84	82

PM

Monday, May 9, 2016

5/9/2016	03:00 PM	104	153
5/9/2016	03:15 PM	112	141
5/9/2016	03:30 PM	76	201
5/9/2016	03:45 PM	111	195
5/9/2016	04:00 PM	87	226
5/9/2016	04:15 PM	67	222
5/9/2016	04:30 PM	68	250
5/9/2016	04:45 PM	88	247
5/9/2016	05:00 PM	90	270
5/9/2016	05:15 PM	114	243
5/9/2016	05:30 PM	110	268
5/9/2016	05:45 PM	81	243
5/9/2016	06:00 PM	108	237
5/9/2016	06:15 PM	90	230

Time	Vehicles North	Vehicles South	Total
4:30- 5:30	360	1010	1370
4:45- 5:45	402	1028	1430
5:00- 6:00	395	1024	1490
5:15- 6:15	413	1001	1414

Peak hour: 4:45- 5:45

Compounded to 2021 volume: 1573 total- 442 north 1131 south

26.21 vehicles/minute- 7.36 vehicles/minute north - 18.85 vehicles/minute south

Tuesday, May 10, 2016

5/10/2016	03:00 PM	128	165
5/10/2016	03:15 PM	134	136
5/10/2016	03:30 PM	130	186
5/10/2016	03:45 PM	130	210
5/10/2016	04:00 PM	115	219
5/10/2016	04:15 PM	106	229
5/10/2016	04:30 PM	82	218
5/10/2016	04:45 PM	97	230
5/10/2016	05:00 PM	107	230
5/10/2016	05:15 PM	123	269
5/10/2016	05:30 PM	96	250
5/10/2016	05:45 PM	107	211
5/10/2016	06:00 PM	80	261
5/10/2016	06:15 PM	85	215
5/10/2016	06:30 PM	70	193

Time	Vehicles North	Vehicles South	Total
4:30- 5:30	409	947	1356
4:45- 5:45	426	979	1405
5:00- 6:00	436	960	1399
5:15- 6:15	409	991	1400

Peak hour: 4:45- 5:45

Compounded to 2021: 1546 total- 469 north 1077 south

25.76 vehicles/minute- 7.81 vehicles/minute north - 17.95 vehicles/minute south

Wednesday, May 11, 2016

5/11/2016	03:00 PM	120	166
5/11/2016	03:15 PM	125	164
5/11/2016	03:30 PM	108	211
5/11/2016	03:45 PM	133	194
5/11/2016	04:00 PM	104	198
5/11/2016	04:15 PM	88	222
5/11/2016	04:30 PM	85	204
5/11/2016	04:45 PM	99	244
5/11/2016	05:00 PM	108	237
5/11/2016	05:15 PM	94	234
5/11/2016	05:30 PM	108	246
5/11/2016	05:45 PM	94	254
5/11/2016	06:00 PM	93	257
5/11/2016	06:15 PM	73	208
5/11/2016	06:30 PM	82	229

Time	Vehicles North	Vehicles South	Total
4:30- 5:30	386	919	1305
4:45- 5:45	429	961	1390
5:00- 6:00	409	991	1400
5:15- 6:15	424	971	1395

Peak hour: 5:15- 6:15

Compounded to 2021: 1540 total- 450 north 1090 south

25.66 vehicles/minute- 7.5 vehicles/minute north - 18.16 vehicles/minute sout

Thursday, May 12, 2016

5/12/2016	03:00 PM	127	165
5/12/2016	03:15 PM	147	144
5/12/2016	03:30 PM	128	189
5/12/2016	03:45 PM	129	209
5/12/2016	04:00 PM	105	220
5/12/2016	04:15 PM	93	229
5/12/2016	04:30 PM	93	235
5/12/2016	04:45 PM	102	255
5/12/2016	05:00 PM	115	266
5/12/2016	05:15 PM	123	243
5/12/2016	05:30 PM	103	240
5/12/2016	05:45 PM	107	240
5/12/2016	06:00 PM	99	227
5/12/2016	06:15 PM	100	217
5/12/2016	06:30 PM	77	220

Time	Vehicles North	Vehicles South	Total
4:30- 5:30	403	1004	1447
4:45- 5:45	443	989	1437
5:00- 6:00	448	989	1437
5:15- 6:15	432	950	1382

Peak hour: 4:45- 5:45

Compounded to 2021: 1591 total- 487 north 1104 south

26.51 vehicles/minute- 8.1 vehicles/minute north - 18.4 vehicles/minute south

Friday, May 13, 2016

5/13/2016	03:00 PM	163	168
5/13/2016	03:15 PM	130	122
5/13/2016	03:30 PM	131	215
5/13/2016	03:45 PM	129	220
5/13/2016	04:00 PM	105	231
5/13/2016	04:15 PM	102	228
5/13/2016	04:30 PM	86	267
5/13/2016	04:45 PM	96	233
5/13/2016	05:00 PM	68	228
5/13/2016	05:15 PM	89	254
5/13/2016	05:30 PM	107	243
5/13/2016	05:45 PM	112	240
5/13/2016	06:00 PM	97	239
5/13/2016	06:15 PM	82	199
5/13/2016	06:30 PM	74	167

One Hour Period	Vehicles North	Vehicles South	Total
4:30- 5:30	339	982	1321
4:45- 5:45	360	958	1318
5:00- 6:00	376	965	1341
5:15- 6:15	408	971	1379

Peak hour: 5:15- 6:15

Compounded to 2021: 1517 total- 449 north 1068 south

25.28 vehicles/minute- 6.8 vehicles/minute north - 16.1 vehicles/minute south

Saturday, May 14, 2016

5/14/2016	03:00 PM	154	101
5/14/2016	03:15 PM	173	97
5/14/2016	03:30 PM	184	98
5/14/2016	03:45 PM	220	102
5/14/2016	04:00 PM	206	109
5/14/2016	04:15 PM	87	96
5/14/2016	04:30 PM	78	100
5/14/2016	04:45 PM	74	85
5/14/2016	05:00 PM	68	90
5/14/2016	05:15 PM	70	109
5/14/2016	05:30 PM	94	118
5/14/2016	05:45 PM	91	103
5/14/2016	06:00 PM	85	91
5/14/2016	06:15 PM	79	91
5/14/2016	06:30 PM	80	86

Sunday, May 15, 2016

5/15/2016	03:00 PM	123	99
5/15/2016	03:15 PM	69	109
5/15/2016	03:30 PM	63	98
5/15/2016	03:45 PM	84	84
5/15/2016	04:00 PM	82	102
5/15/2016	04:15 PM	63	78
5/15/2016	04:30 PM	57	87
5/15/2016	04:45 PM	80	72
5/15/2016	05:00 PM	51	75
5/15/2016	05:15 PM	89	75
5/15/2016	05:30 PM	75	84
5/15/2016	05:45 PM	69	69
5/15/2016	06:00 PM	47	72

Joseph Abruzese
Margaret Abruzese
30 Bridle Trail Road
Needham, MA 02492
(617) 429-3964
jabruzese@yahoo.com

April 5, 2021

Kate Fitzpatrick
Town Manager
Needham Town Hall
1471 Highland Avenue
Needham, MA 02492
kfitzpatrick@needham.gov

Re: 1688 Central Avenue

Dear Ms. Fitzpatrick:

We are Needham town residents and are writing to you regarding our concerns about the proposed Day Care Center project at 1688 Central Avenue.

As you know Matthew Borrelli, a Town Selectman, is the developer. Mark Gluesing, the Chair of the Design Review Board, is the architect. The proposal is to construct a significant commercial building for a full time daycare center with a capacity to serve 120 children. In evaluating this proposal, the Town must evaluate what would happen at full capacity of 120 children. Statements that the daycare does not plan to enroll to full capacity are not binding on the daycare or any future tenants of the proposed building. If the Town does not plan for full building capacity, there is no way to address issues that arise when the building is used at full capacity after the fact. If the Town were to approve this proposal, it would be approving a 120 child daycare facility and it needs to be certain that a 120 child daycare facility could be supported in this location.

We are seriously concerned with the proposal, specifically regarding the substantial adverse impact it will have to the safety of residents in the surrounding location. The lack of infrastructure and the traffic congestion will make it extremely difficult for emergency vehicles to access the neighborhoods, including our own Bridle Trail neighborhood, should an emergency arise during peak traffic hours.

<u>Lack of Infrastructure</u>

1688 Central Avenue is in a residential area near the border of Dover and Wellesley. Nearly all of the properties, including 1688 Central, are residential single family homes. As such, the infrastructure in this area is limited:

- Central Avenue is a 1-lane road in both directions
- There are no medians or turning lanes
- There are no shoulders on either side of the road
- There are no sidewalks
- There are no crosswalks
- There are no stop signs in the area
- There are few traffic lights in the area
- All surrounding roads have similar characteristics

The streets cannot support a sizable commercial operation. This area of Central Avenue is not built to support a surge of cars entering and exiting a daily business establishment in an easy and safe way. Pedestrians, joggers and kids biking to school cannot safely proceed along the road with the addition of business traffic and cars turning in/out of a commercial driveway. A commercial daycare of the size proposed by Mr. Borelli needs to be in an area that has appropriate surrounding infrastructure that can safely accommodate this type of business.

It has been suggested that traffic can be mitigated by pushing the traffic flow into the neighboring streets by requiring right hand turns into/out of the center. This in fact will not address pedestrian safety issues or bicycle safety issues. A right hand turn only traffic flow will not protect pedestrians, joggers or bicyclists from the increased danger of vehicles turning into/out of a commercial daycare center. Furthermore, this approach will add pedestrian risks on additional side streets not suited for higher traffic volumes.

Traffic Congestion

Prior to the pandemic, during peak hours, traffic regularly backed up on Central Avenue from Great Plain Avenue to Temple Aliyah. Turning out of the Bridle Trail Neighborhood from Carleton Drive onto Central Avenue requires patience. Sometimes people are kind and let you in; sometimes you wait minutes before you can catch a break in the traffic. Once on Central Avenue headed toward Boston, one sits in bumper to bumper traffic at least until passing the light at Great Plain Avenue. This area of Central Ave is overburdened. The Town needs to consider how to relieve traffic in this area. There is no room to add additional cars racing to drop their children off at daycare and battle traffic to get to work.

The daycare center has stated they intend to stagger drop off times to ease road congestion. In reality, this will not provide relief to the traffic on Central Avenue. Central Avenue is already overburdened. The Town needs to consider how to improve traffic flow on Central Avenue itself. **Adding a large commercial daycare center to this area of Central Avenue, even a daycare center that unenforceably promises that it will have staggered drop off times, will only add traffic no matter the configuration or schedule**. The point of daycare is that parents need to drop their children off so they can go to work. There is no way to have a commercial daycare that does not have drop off during peak commuting hours.

Aside from being a commuting headache, congested traffic presents a significant safety issue for the Town. When there is standstill traffic, emergency vehicles have a difficult time getting through. Minutes count in an emergency. Should someone be suffering a stroke, an allergic reaction, a heart attack or other 911 emergency, minutes wasted trying to get around heavy traffic on a one lane road could mean the difference between full recovery and post emergency impairment, or even life and death.

We ask that the Town address the existing safety issues presented by the congestion on Central Avenue and reject a bid to add a large commercial daycare center at 1688 Central Avenue.

Sincerely,

Joseph Abruzese

Margaret Abruzese

Objection to Any Purported Agreement to Waive Major Project Review and/or Special Permit Requirements with Regard to Proposed Construction at 1688 Central Avenue

As neighbors to 1688 Central Avenue, we object to Selectman Borelli and Needham Enterprises attempt to insist that Needham's zoning laws and procedures to not apply to this project. The planning board must carry out its duty to protect the interests of Needham by doing a full Major Project review and subjecting the project to all the requirements of the Needham zoning laws. We are concerned about the safety and welfare of Needham residents which will be detrimentally affected by Selectman Borelli and Needham Enterprise's proposed construction at 1688 Central as set forth in our prior letter of April 5, 2021 (copy attached).

Contrary to what Selectman Borelli and Needham Enterprises are arguing in their letters to the Board, Massachusetts General Laws chapter 40A, section 3 (aka The Dover Amendment) does not magically release them from following the town's zoning processes and procedures. The Dover Amendment does not permit complete disregard for the zoning authority of the town by someone seeking to build a building that will be leased to a child care center.

First, the third paragraph of the Dover Amendment relied upon by Needham Enterprises and Selectman Borelli does not apply to construction of a new building. Second, the Dover Amendment does not prevent Needham from conducting a Major Project Review and Special Permit process for construction projects of a certain larger size, even if the building will eventually be used as a child care center.

1. <u>The Third Paragraph of the Dover Amendment Does Not Prohibit a Special Permit Process for What Needham Enterprises seeks here - Construction of a New Building</u>

M.G.L. 40A, s 3, third paragraph provides:

> No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, **the use of land or structures, or the expansion of existing structures**, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open

> space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D. (Emphasis added.)

In this matter, Selectman Borelli must follow the Major Project/special permit process **because he seeks to build a new building, and that building is of a certain class** (one that results in an increase in gross floor area of >5000 square feet and/or one that results in the creation of 25 or more new off street parking spaces) **triggering Major Project review**. The project at hand is new construction of a building. In conducting Major Project review, Needham is **not** prohibiting or requiring a special permit to allow the *use of land or structures for a child care center*, nor is it prohibiting or requiring a special permit for the *expansion of existing structures for use as a child care center*. Needham is requiring a special permit **for the construction of a new building**. Construction of a new building is not within the proscription of special permits in M.G.L. 40A, s. 3 third paragraph, regardless of whether proposed building is intended eventually to be used as a child care facility.

This point was discussed by the Land Court in the case of Primrose School Franchising Company et al v. Town of Natick et al. which can be found at http://masscases.com/cases/land/21/21lcr305.html The court distinguished cases where a child care center is attempting to use an existing structure or land, or it is attempting to modify an existing structure, from cases where a developer is attempting to build a new building or reconstruct existing structures.

M.G.L. 40A, s. 3 "[paragraph 3] protects only existing structures and expansions thereto but does not protect either (1) construction of a new structure or (2) reconstruction of existing structures." Primrose School Franchising Company et al v. Town of Natick, http://masscases.com/cases/land/21/21lcr305.html The court noted that a different paragraph of M.G.L. c. 40A, s. 3 protecting agricultural pursuits, paragraph 1, had been amended specifically to include new construction. It found that it was illustrative that the legislature did not so amend paragraph 3. For this reason, in Primrose School Franchising Company, the Land Court held that the Town of Natick was allowed to require a special permit for the construction of a new structure that was to be used as a child care facility.

Selectman Borelli and Needham Enterprise's assertion that the Planning Board cannot subject his project to review as a Major Project and require a special permit

is erroneous. Needham is allowed to require Major Project review and special permit for the construction of a new building.

2. The Third Paragraph of the Dover Amendment Does Not Bar a Town from Prohibiting or Requiring a Special Permit for Construction of Child Care Centers of a Particular Size

Even for cases that do deal with the use of an existing structure or land or the modification of an existing structure, the Commonwealth's highest court has held that restrictions in zoning laws that prohibit or require a special permit for child care facilities when they reach a larger size in a residential area can be permissible under M.G.L. 40A, s. 3, third paragraph. Rogers v. Town of Norfolk, 432 Mass 374, 383 (2000).

In Rogers v. Town of Norfolk, 432 Mass 374 (2000), Kristin Rogers sought to turn a dog kennel, that had been converted to a single family residence with a footprint of 3200 square feet, into a child care facility. The zoning bylaws in the Town of Norfolk prohibited child care facilities in buildings with footprints of larger than 2500 square feet. Because the footprint of the Rogers residence was greater than 2500 square feet, the building commissioner and the zoning board of appeals would not issue a building permit and other zoning approvals to allow her to use her residence as a child care center.

Rogers brought suit arguing that the Town of Norfolk is prohibited from having a zoning law that restricts child care centers to using buildings that are less than 2500 square feet because of the Dover Amendment. Rogers argued that the size limitation provision acts in such a way as to nullify the protection of child care centers under the Dover Amendment. Rogers, 432 Mass at 378.

The SJC found that the footprint restriction was facially valid. Rogers, 432 Mass at 383. The SJC held "A challenged provision in a zoning bylaw is presumptively valid, and a challenger bears the burden to prove otherwise." Rogers, 432 Mass at 379 citing Johnson v. Edgartown, 425 Mass 117, 121 (1997). "The proper test for determining whether the provision in issue contradicts the purpose of G.L.C. 40A, s 3, third paragraph, is to ask whether [the challenged provision] furthers a legitimate municipal interest, and its application rationally relates to that interest, or whether it acts impermissibly to restrict the establishment of child care facilities in the town, and so is unreasonable." Id.

The purpose of the Norfolk footprint restriction was to ensure that the size of child care facilities did not detract from Norfolk's predominantly residential character by inserting larger structures into residential zones. Rogers, 432 Mass at 380. The SJC found that preservation of the residential character of neighborhoods is a legitimate municipal purpose to be achieved by local zoning control and that the bylaw was a reasonable accommodation between the need to establish child care facilities and the need to preserve the predominant nature of Norfolk's residential zones. Id. Therefore, it held that the law was facially valid.[1] Id.

With regard to Selectman Borelli and Needham Enterprises, he cannot simply bypass the requirements for Major Projects by claiming he intends to construct a child care facility. Child care facilities do not hold a "get out of zoning law requirements free" card. Needham's zoning requirements are presumed to be valid. Rogers, 432 Mass at 379. Selectman Borelli and Needham Enterprises must demonstrate affirmatively that they are not. Id. To do so, **Selectman Borelli and Needham Enterprises must prove that the Major Project process does not further a legitimate municipal interest or that its application does not rationally relate to the legitimate interest but instead acts to impermissibly restrict the establishment of child care facilities in the town**. Id.

Selectman Borelli and Needham Enterprises have made no such showing. They have not alleged that the Major Project process does not further a legitimate municipal interest or that it impermissibly restricts the establishment of child care facilities in the town. They have argued only that the Dover Amendment *automatically* doesn't allow Needham to prohibit their massive child care center or subject it to a special permit process. This is incorrect. As the SJC held in Rogers, while a town cannot prohibit or subject to special permit process all child care centers, **it can prohibit or subject to a special permit process child care centers over a certain size**. Rogers, 432 Mass. at 383.

[1] While the court found that Norfolk could prohibit buildings with a footprint larger than 2500 square feet from being used as child care facilities in general, it did find that applying the regulation in the particular facts of that case only was unreasonable since the plaintiff was proposing to use an existing residential structure which did conform to the styles and character of the residences in the area, it was not structurally feasible to alter the existing structure to be under 2500 square feet and having that residence used as a child care facility would not affect the aesthetic appearance of the neighborhood in the way that the Norfolk bylaw was intended to discourage. This is very different from 1688 Central where the building has not been built, the proposal is for a building that is massively larger than any of the residences in the area and aesthetics is only one of several different municipal concerns that are to be protected by the Major Project review process.

Here, Needham is requiring Major Project process and special permit because the proposed building is over a certain size. Needham applies more scrutiny for projects over a certain size, Major Projects, because larger size projects are more likely to have detrimental effect and implicate valid municipal concerns.

The Major Project process in Needham's zoning bylaws furthers a legitimate municipal interest. Section 7.4.6 of the bylaws sets forth the municipal interests to be protected in a Major Project Site Plan Review.

> 7.4.6 Review Criteria
>
> In conducting the Site Plan Review, the Planning Board shall consider the following matters:
>
> (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;
>
> (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
>
> (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
>
> (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
>
> (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and
>
> (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

Without giving any examples or detail as to which pieces of the Site Plan Review they find objectionable, Selectman Borelli and Needham Enterprises broadly assert that the allowable subjects of reasonable regulation set forth in c. 40A, section 3

are not the same as the Section 7.4.6 Site Plan Review criteria. The Site Plan Review criteria enumerate the legitimate municipal interests that must be considered when reviewing the building proposal – it does not set forth particular regulations. Selectman Borelli and Needham Enterprises boldly assert that Needham zoning bylaw regarding Major Projects is to be completely disregarded and the criteria of section 3 somehow substituted for Needham's zoning bylaws. This approach is not supported by the case law. If they wish to argue that they do not need to follow Needham zoning bylaws, they must provide evidence that those bylaws and the Site Review Criteria do not further a legitimate municipal interest or that their application does not rationally relate to the legitimate interest and instead acts to impermissibly restrict the establishment of child care facilities in the town. Rogers, 432 Mass at 379. They have made no such showing.

For these reasons, the Planning Board must adhere to the bylaws in reviewing the Major Project proposal of Selectman Borelli and Needham Enterprises, hold Selectman Borelli and Needham Enterprises to the same level of scrutiny that it would hold any other project and protect the municipal interests of Needham and its residents.

Sincerely,

Margaret and Joe Abruzese
30 Bridle Trail Rd
Needham MA 02492

From: Lee Newman
To: "scohengold@rcn.com"
Cc: Alexandra Clee
Subject: RE: 1688 Central Ave withdrawal of current Minor Project application
Date: Monday, May 17, 2021 12:06:42 PM

Dear Ms. Gold:

Thank you for your email and your question.

"Major Project Site Plan Review" is the procedure set forth in Needham's bylaws to have this project properly before the Planning Board for its review. However, Massachusetts General Laws Chapter 40A, section 3, and the cases thereunder provide that child care facilities must be allowed "as of right", and the Town is limited in the areas which it can review and of which the Town can issue "reasonable regulations", as set forth in that statute and those cases, and the Town cannot subject the child care facility to a "special permit" (Holly Clarke argues that this "special permit" prohibition goes to "use" only, and not to those items listed in the statute and set forth in the cases for which "reasonable regulations" can issue). Unlike some other towns, Needham does not have a provision in its bylaws specific to review under that statute and those cases.

Our Major Project Site Plan Review bylaw provides the ability of the Town to regulate issues beyond that which are set forth MGL Chapter 40A, section 3, and it labels our decision as a "Site Plan Special Permit". The Planning Board agrees with the applicant that it is limited to the subjects which can be reviewed to those set forth at MGL Chapter 40A, section 3, and the cases thereunder, and that our decision whereby the Planning Board issues its "reasonable regulations" will not be called a "special permit". But by submitting the application to Major Project Site Plan Review, as opposed to Minor Project Site Plan Review, the applicant is agreeing to the procedure thereunder (including formal notice to the abutters, publication of the notice in the Needham Times, and a full hearing in which the public has the right to participate), and that the decision of the Planning Board, and the "reasonable regulations" issued thereunder, regulating those items which the Town is allowed to regulate by that statute and those cases, will be legally binding on the applicant. The Planning Board is comfortable with the language in Mr. Huber's letter, which they believe does no more than enumerate what is set forth here.

I trust this answers your questions.

Lee Newman

From: scohengold@rcn.com <scohengold@rcn.com>
Sent: Saturday, May 15, 2021 2:18:37 PM
To: Alexandra Clee <aclee@needhamma.gov>
Subject: RE: 1688 Central Ave withdrawal of current Minor Project application

Dear Ms. Clee,

Thank you for forwarding the letter. I have read the letter and don't understand part of it.

It says that an application for Major Project Site plan review will be submitted. However, it also states that the Town has agreed that the Planning Board will not review the plan based on Major Project Site criteria. Did the Town agree to this? Why did the Town agree to this? How does this help the neighborhood in its quest to have a fair review of the project?

I really don't understand this, so would appreciate clarification of what the next steps are and why the Town is doing it that way.

Thanks again for your help.

Sharon Cohen Gold
253 Charles River Street

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Friday, May 14, 2021 4:42 PM
Subject: 1688 Central Ave withdrawal of current Minor Project application

Dear all abutters/interested parties who have emailed me directly regarding the proposal at 1688 Central,

We have received the attached letter requesting withdrawal of the Minor Project application. I expect to have an application for Major Project Site plan review next week to be heard at the Planning Board's meeting of June 15.

Please share this information with neighbors.

Thanks, alex.

Alexandra Clee
Assistant Town Planner
Needham, MA
www.needhamma.gov

From: Meredith Fried
To: Planning; Selectboard; Alexandra Clee; Lee Newman
Subject: 1688 Central
Date: Tuesday, May 18, 2021 2:39:59 PM

Hi –

I am writing once again as a concerned neighbor regarding the proposal for development at 1688 Central Ave. I want to express my objection to any agreement to waive the Major Project review process and special permit requirements for this project. I want the planning board to retain their authority on this project so that they can review it properly and protect the interests of Needham overall and these abutting neighborhoods in particular.

Thank you very much for your attention to my concerns.

Regards,

Meredith

From: Lori Shaer
To: Planning; Lee Newman; Alexandra Clee
Subject: 1688 Central Ave. project
Date: Tuesday, May 18, 2021 3:00:31 PM

Good afternoon. As a neighbor to 1688 I strongly object to you waiving any facet of a Major Project Review for the proposed Borelli project. Thank you.

Best,
Lori Shaer
Bridle Trail Road

From: Sandy Jordan
To: Planning
Subject: 1688 Central Ave
Date: Tuesday, May 18, 2021 3:06:42 PM

Hello,

I am writing to voice my opinion about the 1688 central Ave project.

My main concerns are traffic. Leaving my Country Way neighborhood in the morning is already difficult. Traffic can back up to the horse farm on a normal day. I feel a new traffic study NEEDS to be completed now that a more normal traffic flow is back in place since the pandemic. Doing a study while schools are hybrid and a lot of people are still working from home is not showing true data. Adding anymore traffic to this already congested road is not feasible for the entire neighborhood.

Evening traffic can also be worse. The light at Charles River can back up to where I can't even get to my street, causing me to use south street, which already backs up at chestnut.

Please listen. Please help us. Having a day care this far out of town doesn't make any sense. Most parents will be looking for a daycare closer to a main road.

Also, the secondary plan of also opening a preschool on this property seems to be a sneaking an even bigger project onto the property.

Please take more time to study this project. It isn't small, it's large and it's getting even larger.

Thank you for your time,

Sandra Jordan
219 Stratford Road
Needham

From: Khristy Thompson
To: Planning
Subject: 1688 Central Avenue
Date: Tuesday, May 18, 2021 3:24:27 PM

Dear Planning Board Members,

I am writing to you as a concerned Needham resident and neighbor to the proposed project at 1688 Central Avenue. My family and I object to the waiving of the planning board's authority on this project. We are hopeful and believe that the planning board will want to protect the interests of Needham and of our neighborhood.

Sincerely,
Khristy J. Thompson
50 Windsor Rd.
Needham, MA 02492

From: Henry Ragin
To: Planning
Subject: 1688 Central
Date: Tuesday, May 18, 2021 3:41:30 PM

I am a resident of 25 Bennington st., Needham. I am writing to request that the Planning Board maintain the maximum control over the Central Avenue. project that is allowed by law. I recognize that there are legal complications, but it is my understanding that this position is allowable under Massachusetts law.
Thank you.

Henry Ragin
hragin@hotmail.com
781-686-0927

From:	David G. Lazarus
To:	Lee Newman; Alexandra Clee; Planning
Cc:	Selectboard
Subject:	1688 Central
Date:	Tuesday, May 18, 2021 4:07:04 PM

Good afternoon-

I have been informed that the Planning Board has officially decided on a legal position regarding 1688 Central Avenue. Specifically, among other things I have been told:

“The Planning Board agrees with the applicant that it is limited to the subjects which can be reviewed to those set forth at MGL Chapter 40A, section 3, and the cases thereunder, and that our decision whereby the Planning Board issues its “reasonable regulations” will not be called a “special permit”.”

This is incorrect as a matter of law and also violates the open meeting law by depriving the community of its due process. Apparently the Board has behind closed doors made a decision and a deal without a formal opinion from town counsel and without letting the community see what is happening. I request no deliberation and action be taken outside the confines of the open meeting law and that the planning board have a fair process open to the community. To the extent the Board has taken action, as evidenced further by Needham Enterprises letter providing that an agreement has been reached, I request the Board cease further activity on this project unless and until these significant process deficiencies are addressed.

It must be noted that no daycare is before the Planning Board - only a developer. If the daycare provider is central to the Board’s evaluation, they should be present and provide the lease and any other needed information.

Furthermore, to the extent current outside town counsel is subject to appointment by the Select Board (chaired by the developer of this very project) the legal contract should be put out for bids to avoid even the appearance of impropriety.

Respectfully,
David Lazarus
115 Oxbow Road, Needham
--
****
David G. Lazarus

From: John McCusker
To: Planning; Selectboard; Alexandra Clee; Lee Newman
Subject: Concerned Neighbor - 1688 Central Ave.
Date: Tuesday, May 18, 2021 4:53:35 PM

To Whom It May Concern,

I am writing this letter to express my strong opposition to the proposed development at 1688 Central Avenue. I have concerns about this proposed project (1688 Central Avenue) and object to any Agreement waiving the Major Project Review Process and Special Permit requirements. We have entrusted the Planning Board to protect the interests of our town and allowing this project to continue without listening to our concerns and the general welfare of this area sets a disappointing standard.

I live at the intersection of Charles River St. and Central Ave and can attest to the busy intersection as well as many cars speeding through to save seconds at a yellow or red light. With this project further slowing down traffic flow during pickup/drop-off and increasing volumes that are already incredibly high, I urge you to perform a full review of this project.

Sincerely,

John

John McCusker

248 Charles River St.

Needham, MA 02492

KeyCite Yellow Flag - Negative Treatment
Distinguished by Jewish Cemetery Ass'n of Massachusetts, Inc. v. Board of Appeals of Town of Wayland, Mass.Land Ct., August 13, 2010

8 Mass.App.Ct. 19
Appeals Court of Massachusetts, Berkshire.

The BIBLE SPEAKS
v.
BOARD OF APPEALS OF LENOX
(and four companion cases. [1])

Argued April 25, 1979.
|
Decided July 3, 1979.

Synopsis

Appeals were taken from a judgment of the Superior Court, Berkshire County, George, D. J., in consolidated cases involving a municipality's attempts to enforce zoning restrictions on a private nonsectarian educational institution. The Appeals Court, Greaney, J., held that provisions of municipality bylaw were invalid as going beyond scope of bulk, dimensional, and parking regulations permitted to be imposed on educational uses under statute and placed board of zoning appeals in position to act impermissibly to impede reasonable use of institution's land for educational purposes.

Order accordingly.

West Headnotes (3)

[1] Zoning and Planning Continuance or change of use in general

Exclusively church-like properties may continue projects under construction without encumbrance by local zoning bylaws until June 30, 1978, irrespective of a town's earlier acceptance of statute authorizing town to impose regulations on sectarian educational uses or other religious uses which were not intrinsically accessory to a church. M.G.L.A. c. 40A § 1 et seq.

9 Cases that cite this headnote

[2] Zoning and Planning Schools and education

Nonsectarian educational institution was not exempt by reason of statute from town's application of restrictions adopted under statute which permits educational land or structures to be subject to reasonable regulations concerning bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. M.G.L.A. c. 40A § 1 et seq.

26 Cases that cite this headnote

[3] Zoning and Planning Conformity to enabling statute

Provisions of municipality bylaw were invalid as going beyond scope of bulk, dimensional, and parking regulations permitted to be imposed on educational uses under statute and placed board of zoning appeals in position to act impermissibly to impede reasonable use of institution's land for educational purposes. M.G.L.A. c. 40A § 1 et seq.

27 Cases that cite this headnote

Attorneys and Law Firms

****279** ***20** Hugh C. Cowhig, Town Counsel, Lee (David O. Burbank, Pittsfield, with him), for defendants.

Andrew T. Campoli, Pittsfield, for plaintiff, submitted a brief.

Before ***19** ARMSTRONG, GREANEY and KASS, JJ.

Opinion

GREANEY, Justice.

These appeals raise the question whether a town may require an application for a special permit for all new religious and educational uses, or changes in such uses, in residential districts consistent with the provisions of G.L. c. 40A, s 3, as appearing in St.1975, c. 808, s 3. [2] Specifically, we must decide whether the plaintiff, a sectarian educational institution, should have been granted building permits for

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certain uses attendant to its softball field, which is utilized by its elementary, high school, and college students, without the necessity of first applying under the local by-law for a **280 special permit. We must also determine whether the Lenox board of appeals (board) could properly have conditioned the grant of permission to change the use of three of the plaintiff's existing buildings into classroom and dormitory space, either upon restrictions that affect the entire educational campus or upon restrictions that concern buildings which are not the subject of the special permit applications. All of these questions require examination of the extent to which a municipality by way of its zoning by-law may regulate sectarian and nonsectarian educational uses, a question that has remained relatively dormant since the decision in Radcliffe College v. Cambridge, 350 Mass. 613, 215 N.E.2d 892 (1966).

*21 We first summarize the facts and procedural history necessary to an understanding of these issues. The Bible Speaks is a nonprofit religious and educational corporation organized under the laws of the State of Maine which has filed a certificate as a foreign corporation doing business in the Commonwealth under the provisions of G.L. c. 181, s 4.[3] On its campus in Lenox (formerly the property of a private nonsectarian educational institution) it conducts a school for grades kindergarten through twelve (approved by the Lenox School Committee pursuant to the provisions of G.L. c. 76, s 1) and a three-year college to prepare students for the ministry.[4] On May 7, 1976, the town of Lenox (town) at its annual town meeting accepted the provisions of the new zoning enabling act, St.1975, c. 808 (hereinafter c. 808). At the same meeting the town amended its zoning by-law to include a section covering "Educational/Religious Use"[5] which imposed a limitation *22 **281 that all educational and religious purposes "may be permitted as a special exception only if the (board) so determines."[6] On July 23, 1976, the plaintiff applied to the board for a special permit to change the use of one of its buildings from a gymnasium to two classrooms for its college; on August 3, 1976, it further sought to change the use of two other buildings from classrooms and a chapel to small dormitories. On October 15, 1976, the board granted all three special permits, subject to the conditions *23 set out in full in the margin.[7] The board went on to state in its decisions that "(t)he petitioner has complied with the first two paragraphs of section 9.18 by filing" plans and information concerning the total operation of its campus as part of the applications for special permits for changes in use of the three existing buildings. The plaintiff filed a timely action in the Superior Court seeking review of the decisions and specifically objecting to the four general conditions (conditions 4A, B, C & D in the board's decision, note 7, Supra) upon which the special *24 permits were granted in all three change-of-use cases.

On May 25, 1977, the plaintiff applied to the building inspector for a building permit to erect hooded lights thirty-five feet high[8] on a softball field which is part of its campus. **282 The building inspector refused to grant the permit. On the same date, the plaintiff requested a building permit to convert an existing shed near its ballfield into a snack bar primarily for the benefit of its students and others using the field. This request was also denied. The plaintiff appealed from both actions of the building inspector to the board. On August 29, 1977, the board issued separate decisions on the two appeals which are reproduced, insofar as material, in the margin,[9] upholding the *25 building inspector's denial of building permits on the bases that a change in a religious or educational use required application for a special permit and that the operation of the softball field at night was not "reasonably necessary for the functioning of the religious or educational uses." The plaintiff brought separate complaints against the building inspector and the board in both the snack bar and lights cases testing the validity of these actions.

Those actions were consolidated for trial along with the pending complaints involving the three change-of-use cases. A district court judge sitting in the Superior Court under statutory authority ruled: (1) that the board had no authority to grant or deny the permit for the snack bar (as a consequence he ordered the board to refrain from interfering with the operation of the plaintiff's snack bar); (2) that the denial of a permit to erect the lights was *26 within the power of the board (as a result he affirmed the decision of the board); and (3) that the specific conditions imposed on the special permits for change of use of the three existing buildings were valid, as restatements of the substance of the plaintiff's applications, but that the remaining four general restrictions were attempts to impose limitations on the plaintiff's general educational activities and, as such, exceeded the authority of the board (as a result he ordered these conditions annulled). Judgments were entered accordingly. The board and the building inspector took appeals from the judgments in the snack bar cases; the board also appeals from the judgment in the change-of-use cases, and the plaintiff appeals from the judgment in the lights cases.

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In substance, we are content with the judge's rulings that the plaintiff may utilize its existing shed as a snack bar and that the board exceeded its authority in imposing general restrictions upon the plaintiff as preconditions to a change of use of its ****283** buildings. We disagree with the judge's conclusion that the board's decision as to the softball field lights was proper. Our disposition of the issues follows a different route from that taken by the judge below and is based on the conclusion that the local by-law exceeds tolerably permissible limits in its regulation of educational uses.

1. Applicability of G.L. c. 40A. At the outset we consider the plaintiff's contention that it is entirely exempt from the effect of the zoning enabling act, G.L. c. 40A, as formulated through c. 808, and as a result, that it is also exempt from any local zoning requirements enacted pursuant to c. 40A. It bases this contention in part upon the language which appears in c. 808, s 6, which provides, insofar as material, that "(t)he provisions of (G.L. c. 40A), as amended . . . shall not be deemed to affect any church or other facilities used for religious purposes in existence or under construction prior to (June 30, 1978)." It claims that the provisions of s 6 are designed to continue in effect the prior versions of G.L. c. 40A, which exempted ***27** religious and educational uses from zoning control under local by-laws.[10] In further support of this argument the plaintiff directs our attention to cases elsewhere which it cites as persuasive authority for the proposition that uses analogous to those present on its campus are primarily religious uses, exempt from any form of local zoning control. These decisions are four in number: ***28** Bishop v. Ashton, 92 Idaho 571, 574-575, 448 P.2d 185 (1968), which held that a recreational complex built by a religious organization on the same grounds as its church building was within the scope of the term "church" in an ordinance permitting church use in a residential zone; Slevin v. Long Island Jewish Medical Center, 66 Misc.2d 312, 317-319, 319 N.Y.S.2d 937 (Sup.Ct.1971), which determined that a drug rehabilitation center located in a church parish house was a religious use; Diocese of Rochester v. Planning Bd. of Brighton, 1 N.Y.2d 508, 522-526, 154 N.Y.S.2d 849, 136 N.E.2d 827 (1956), which concluded that the decision of a local zoning board denying a permit to erect a church and a parochial school in a residential zone was arbitrary and unreasonable, because a church could not be unreasonably excluded from a residential zone, and a parochial ****284** school was to be permitted wherever public schools were allowed; and State ex rel. Covenant Harbor Bible Camp v. Steinke, 7 Wis.2d 275, 281, 96 N.W.2d 356, 361 (1959), which held that a bible camp constituted a permissible use under an ordinance which authorized "churches . . . 'boarding-and-lodging parochial schools' (and) 'organized quasi-public recreational * * * buildings and grounds'," and became a nonconforming use upon passage of an amendment deleting these provisions.

The plaintiff's argument, reduced to basics, appears to draw on three premises: (1) that it is primarily a religious enterprise because its principal function is to educate and train people for the ministry; (2) that c. 808, s 6, is the legislative restatement of the Dover Amendment and exempts projects under construction by religious organizations if started prior to June 30, 1978, irrespective of the town's earlier acceptance of c. 808; and (3) that because its oar was in the water on all the proposed activities in issue prior to June 30, 1978, the town could not impose any restrictions on their completion. We are not persuaded by this argument.

The cases relied upon by the plaintiff, read in connection with the provisions of c. 808, s 6, to establish the proposition that religious uses are generally exempted ***29** from any zoning regulation, are all inapposite. The Bishop and Slevin decisions concerned themselves with proposed accessory uses to existing church facilities and did not involve sectarian educational facilities such as are in issue here. The Rochester decision is based on the peculiarities of the local by-law involved in that dispute, while the result in the Harbor Bible Camp case turns on the law relating to nonconforming uses.

Moreover, the plaintiff's argument also completely overlooks the presence of G.L. c. 40A, s 3, appearing in c. 808, s 3. This section provides, in pertinent part, that "(n)o zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by . . . a religious sect or denomination . . . provided however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." It is this section, not c. 808, s 6, that is intended to synthesize the Dover Amendment and case law construing it (see note 10, Supra). Section 6 must be viewed as a special nonconforming use provision of limited life to accommodate religious uses which were in the planning stage when c. 808 was enacted and which were likely to be built or under way by June 30, 1978.

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[1] **[2]** Reading ss 3 and 6 together, in the light of case law, and harmonizing the two sections in view of the purposes they seek to accomplish, we conclude that s 6 was designed to permit exclusively church-like properties to continue projects under construction without encumbrance by local zoning by-laws until June 30, 1978, irrespective of a town's earlier acceptance of c. 808, while s 3 was intended to authorize a town such as Lenox, upon its acceptance of c. 808, to impose the type of regulations described in that section on sectarian educational uses or other religious uses which were not intrinsically accessory ***30** to a church.[11] Considering the uses contemplated by the plaintiff against the broad definition of the term "education" fashioned by our case law (see e. g., Radcliffe College v. Cambridge, 350 Mass. at 618, 215 N.E.2d 892, 895, holding that parking, and the feeding and housing of college personnel is "within the broad scope of the educational powers," and ****285** Harbor Schs. Inc. v. Board of Appeals of Haverhill, 5 Mass.App. --, --[a], 366 N.E.2d 764 (1977), quoting from Mount Hermon Boys' Sch. v. Gill, 145 Mass. 139, 146, 13 N.E. 354, 357 (1887), stating that "(e)ducation may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all"), it is plain to us that all the plaintiff's proposed uses are educational in nature, as purposes directly related to the functioning of the sectarian educational institution maintained on its Lenox campus. It follows, as a consequence, that the plaintiff is not exempt by reason of c. 808, s 6, from the town's application of restrictions adopted under G.L. c. 40A, s 3, which permits educational "land or structures (to be) subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

2. Validity of the Lenox by-law. By employing the language just quoted, the Legislature set out the scope of permissible regulation of religious and educational land and structures. In the context of this case, Lenox may, through the mechanism of its zoning by-law, consistent with G.L. c. 40A, s 3, regulate the bulk of buildings on the plaintiff's campus and impose dimensional and parking ***31** requirements; and the building inspector may properly deny the plaintiff permits for any structure which does not comply with such "reasonable regulations." But the town may not, through the guise of regulating bulk and dimensional requirements under the enabling statute, proceed to "nullify" the use exemption permitted to an educational institution. Sisters of the Holy Cross of Massachusetts v. Brookline, 347 Mass. 486, 494, 198 N.E.2d 624 (1964).

We turn then to the question whether ss 6 and 9.18 of the town's zoning by-law, when taken together, impose the type of permissible bulk, dimensional, and parking limitations specified in G.L. c. 40A, s 3, as the defendants claim, or whether they impermissibly regulate the use of a sectarian educational institution, as the plaintiff claims.

The board points out that s 9.18 of the by-law sets out, under a heading of "Regulations," specific limitations of the sort expressly permitted under G.L. c. 40A, s 3 (see note 5, Supra). There would be no difficulty if these constituted the only limitations which the town applied to educational institutions such as the plaintiff's campus. However, the by-law imposes several other requirements which apply to the plaintiff's educational uses within s 9.18 and s 6. Section 9.18 also requires every nonmunicipal educational institution planning any change in its buildings and structures to file with the board a site plan and an informational statement designed "to minimize the probable impact of such uses upon the town in general and upon the character of the specific neighborhood." The site plan calls for a delineation of existing buildings, parking areas, sewer and water lines, trees over twelve inches in diameter, "and any other significant existing man-made or natural features"; the informational statement must include "the probable effects of the use on (such factors as) . . . changes in the number of legal residents, . . . increases in municipal service costs, . . . changes in tax revenue, . . . land erosion or loss of tree cover, . . . character of surrounding neighborhood, ***32** . . . master plan of the town, . . . (or) any pertinent regional plans."[12] The requirement of a site plan and the type of development prospectus required by the informational statement would be perfectly appropriate for consideration of proposed subdivisions under the Subdivision Control Law, G.L. c. 41, s 81K et seq., or for the evaluation ****286** of cluster and planned unit developments under the zoning law, G.L. c. 40A, s 9, as appearing in c. 808, s 3. But there is nothing in the language of G.L. c. 40A, s 3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses, and it is quite obvious that an educational campus of the type under consideration in this case is neither a subdivision nor a project in the category of a cluster or planned unit development.

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Section 9.18 in its entirety goes beyond a collation of all of the reasonable bulk and dimensional requirements which a by-law can legitimately impose on educational buildings and districts.

The full impact of the requirements of s 9.18 must also be appraised in light of the provisions of s 6 of the by-law, which makes educational uses, such as the plaintiff's, special exceptions dependent on the discretionary grant of a special permit by the board. [13] By reliance on the criteria spelled out in the informational statement, the board is essentially attempting to exercise planning board functions and pursuing its own notions of land use planning, and to the extent that those notions become inconsistent with the presence or expansion of educational ***33** institutions within the town, the board will be able to fashion restrictions that subordinate the educational use to the board's planning goals. Any such restrictions imposed under the authority of the by-law may well have the effect of nullifying, or seriously diminishing, the educational institution's entitlement to reasonable growth. It also, as a practical matter, enables the town to exercise its preferences as to what kind of educational or religious denominations it will welcome, the very kind of restrictive attitude which the Dover Amendment was intended to foreclose. The board's decisions in these cases bear out these observations by indicating that the board applied the by-law to make its own determination of what constituted an educational use, and once that determination was made, to impose conditions in areas outside of those specified in the enabling statute.

In our opinion, the provisions of the by-law taken together invest the board with a considerable measure of discretionary authority over an educational institution's use of its facilities and create a scheme of land use regulation for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by G.L. c. 40A, s 3. The Legislature did not intend to impose special permit requirements, designed under c. 40A, s 9, to accommodate uses not permitted as of right in a particular zoning district, on legitimate educational uses which have been expressly authorized to exist as of right in any zone. [14]

[3] We conclude, therefore, that the provisions of the Lenox by-law go well beyond the scope of bulk, dimensional, and parking regulations permitted to be imposed on educational uses by G.L. c. 40A, s 3, and place the board in a position to act, as it did in this case, impermissibly ***34** to "impede the reasonable use of the (institution's) land for its educational purposes." Radcliffe College v. Cambridge, 350 Mass. at 618, 215 N.E.2d at 896.

3. Relief. The question of a proper disposition of the cases remains. The plaintiff's multiple actions are susceptible to consideration as requests for declaratory relief (Woods v. Newton, 349 Mass. 373, 375, 208 N.E.2d 508 (1965)) and, in reaching a disposition, we consider it appropriate to treat them in that posture. Despite the presumption of validity accorded to municipal zoning ordinances (Crall v. Leominster, 362 Mass. 95, 102, 284 N.E.2d 610 (1972)), we are satisfied that portions of the Lenox by-law are in conflict with the zoning enabling act. It is also clear to us that those portions of s 9.18 of the by-law which impose bulk, ****287** dimensional, and parking restrictions on educational uses would be valid as the type of reasonable regulations authorized by G.L. c. 40A, s 3, if they stood apart from the embroidery contained in the provisions of the by-law requiring site plans, information statements, and special permits for educational uses. We determine, however, that the bulk, dimensional, and parking regulations are severable from the balance of s 9.18, and from the provisions in s 6, and are capable of enforcement as if they were limitations applicable to all structures of a particular class, including educational buildings and structures.

The judgments are reversed, and new judgments are to be entered, declaring that s 6 and those portions of s 9.18 of the Lenox zoning by-law which impose the requirements of a site plan, informational statement, and special permit before religious and educational institutions can expand their uses are invalid; that the provisions of s 9.18, imposing bulk, dimensional, and parking requirements are valid; that the plaintiff is not required to apply for a special permit as a condition precedent to obtaining a building permit for the construction of its softball field lights; that the plaintiff is not required to obtain either a special permit or a building permit in order to use its shed as a snack bar; and that the conditions annexed to ***35** the three change-of-use cases (denominated in the decisions dated October 15, 1976 as 4A, 4B, 4C and 4D) are annulled, with the notation that occupancy of the buildings can be conditioned on compliance with the applicable parking requirements in s 9.18. [15]

So ordered.

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All Citations

8 Mass.App.Ct. 19, 391 N.E.2d 279

Footnotes

1 Two of the companion cases are also against the board of appeals, and two are against the building inspector of Lenox.

2 That section provides in relevant part that "(n)o zoning ordinance or by-law shall . . . regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased . . . by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

3 The parties stipulated that The Bible Speaks was organized on February 21, 1973, under Me.Rev.Stat.Ann. tit. 13, s 71 (1965); that it was certified as a foreign corporation by the Secretary of the Commonwealth on March 8, 1976; and that in 1976 it received a certificate of exemption under G.L. c. 64H, s 6(D) and (E), from the Sales and Use Tax Bureau.

4 There appears to be no dispute that it conducts on its campus a bona fide educational enterprise.

5 Section 9.18 of the zoning by-law ("Educational/Religious Use") provides as follows:

"Any non-municipal educational use or any religious use is subject to the following regulations: recognizing that educational and religious uses may exist in residential areas, the following regulations are drawn to minimize the probable impact of such uses upon the town in general and upon the character of the specific neighborhood. In order to assess the probable impact, a site plan and informational statement must be presented to the permit-granting authority at the time of the initial filing. The site plan at a scale of 1 = 40', prepared by a registered architect, landscape architect, or civil engineer, must show existing buildings, roads, parking areas, sewer and water lines, drainage systems, water courses, trees over 12 in diameter at breast height, and any other significant existing man-made or natural features.

"The informational statement shall detail the probable effects of the use on the following: (1) attendance at public schools; (2) increase in vehicular traffic; (3) changes in the number of legal residents; (4) increases in municipal service costs; (5) load on public utilities or future demand for them; (6) public safety, police, and fire protection; (7) changes in tax revenue; (8) changes in surface drainage; (9) increased consumption of water; (10) increased refuse disposal; (11) land erosion or loss of tree cover; (12) character of surrounding neighborhood; (13) master plan of the town; (14) any pertinent regional plans."

"Any non-municipal educational use or any religious use is subject to the following regulations:

REGULATIONS

1. Maximum building height 2 stories or 35 feet.

2. Maximum building coverage 4%.

3. Setback two hundred (200) feet buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.

4. Major access roads and major parking areas subject to frequent use day or night shall be paved. Major roads are to be eighteen (18) feet wide and shall not exceed a 71/2% Grade.

5. Parking areas shall be screened as provided in Section 2 definitions screening (a) and (c).

6. Parking areas shall be within three hundred (300) feet of the building to be served.

7. Parking requirements:

A. Places of assembly 1 space for every three (3) seats.

B. Classrooms and/or dormitories

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Grades 1-10 1 space for each staff member;
Grades 10-12 1 space for each staff member plus 1 space for every two students.
College 1 space for each staff member plus two (2) spaces for every three (3) students.“

6 Section 6 of the zoning by-law of the town of Lenox (as amended 1976). This limitation was accomplished by amending the table of uses in s 6 of the by-law to indicate that educational or religious purposes in residential districts are “xa” uses, permitted only by special exception, as contrasted with “x” uses, which are permitted as of right.

7 “Oct. 15, 1976
“Decision of the Board of Appeals on the appeal and petitions of the Bible Speaks for
I. A change in use of Building No. I, The Old Gymnasium, to two classrooms and a lecture hall.
2. A change in use of Building No. 15, formerly Bassett Hall, from classrooms to dormitory rooms.
3. A change in use of Building No. 12, formerly Thayer Hall, from chapel and storage space to five dormitory rooms.“
“Special permits are granted for each of these three petitions, subject to the following restrictions:
I. Building No. I, The Old Gymnasium
A. The use and occupancy of this building is limited to 300 persons.
2. Building No. 15, formerly Bassett Hall
A. The occupancy of this building is limited to 13 couples and their children.
B. There shall be no kitchen facilities provided and meals shall not be served on the premises except in an emergency.
3. Building No. 12, formerly Thayer Hall
A. The occupancy of this building is limited to 3 couples and 10 single students.
B. There shall be no kitchen facilities provided and meals shall not be served on the premises except in an emergency.
4. The following restrictions apply to all three special permits:
A. Sufficient parking spaces are to be provided and screened to meet the requirements of the Zoning By-Laws, Section 9.18, Regulations 4, 5, 6, and 7. Reference is made to the parking site plan filed with the board.
B. The total number of students and staff living at the 40 Kemble Street facilities is limited to 325.
C. Any major differences in enrollment, residents, buildings, campus, or plans from those outlined in the master plan, drawings or informational statement presented to the Planning Board, dated June 16, 1976, shall be brought to the attention of the Planning Board and Zoning Board of Appeals immediately.
D. A sewer holding tank is to be constructed to collect the flow from Buildings No. 4 (St. Martin's Hall), No. 19 (Monks Hall) and No. 20 (Field House) during periods of high sewage flow and to release the sewage into the Town mains during periods of low volume flow. The capacity of this tank is to be determined by a licensed and certified engineer or the Tri-Town Sanitary Engineer.“
Other portions of the decision express the board's opinion that the proposed use of Building No. I as a dormitory for thirteen married couples is “marginal from the standpoint of the zoning by-laws, as it makes the use of the building very close to apartments,” but that the uses are “not deemed to be detrimental to the area or the community, subject to the restrictions and qualifications in this decision.”

8 Section 7.6.2 of the zoning by-law states that “(i)n all zoning districts, any private outdoor lighting fixture, whether temporary or permanent, shall be so placed or hooded that the light shall not be noxious or offensive to the neighborhood,” while s 8.4.5 provides that the maximum building or structure height in all districts is thirty-five feet.

9 “Decision
“The appeal of the Bible Speaks, 40 Kemble Street, from the refusal of the Building Inspector to issue them a permit for the erection of hooded lights at 35 ft. in height around their softball field, located in an area near Stockbridge Road, is Denied.

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"The Zoning Bylaws, as amended May 7, 1976 stipulate that changes in religious and educational uses require a specific permit in all zoning districts. It is the Board's opinion that the change from an unlighted softball field to one that is lighted, specifically for the purpose of extending the playing hours into the night, would constitute a significant change in use and therefore would require a special permit.

"The petitioner's point that the lighting of this softball field is an adjunct to the operation of its school was not proven. The lights are clearly meant for nightime use and the petitioner has stated that they will be used to extend the hours of play for the regional softball league (of which the Bible Speaks is a member). The operation of such lights is not considered to be reasonably necessary for the functioning of the religious or educational uses."

"Decision

"The appeal of the Bible Speaks, 40 Kemble Street, from the refusal of the Building Inspector to issue to them a permit to open a snack bar near their softball field is Denied.

"The Zoning Bylaws, as amended May 7, 1976 stipulate that changes in religious and educational uses require a special permit in all districts, (See Bylaw Sections 6.3 and 6.6B). It is the Board's opinion that the change from a storage shed (as indicated in their master plan) to a vending operation would constitute a change in use significant enough to require a special permit.

"Zoning Bylaw Section 9.18 on religious & Educational Uses requires that such an organization file a site plan and an informational statement with the Zoning Board of Appeals when it initially files a petition. The Bible Speaks filed such a site plan and informational statement on or about June 16, 1976. In these papers the old use of the building in question (Identified as No. 22 Boat House) was for storage . . . ."

10 The history of the special zoning status for religious and educational uses is familiar lore to those conversant with the topic of land use regulation and may be summarized as follows. In 1933, the town of Dover adopted a zoning by-law prohibiting the erection, alteration, or use of any building or premises in a residential district for any purpose except enumerated purposes which, in addition to "1. detached one-family dwellings," included "3. church," and "4. educational use." On March 4, 1946, this by-law was amended in subdivision 4, so that the subdivision read, "4. educational use; if non-sectarian and if not organized or operated for private profit." In 1950, St.1950, c. 325, inserted the following language in G.L. c. 40, s 25, a predecessor of the present c. 40A, s 3: "No by-law or ordinance which prohibits or limits the use of land for any church or other religious purpose or which prohibits or limits the use of land for any religious, sectarian or denominational educational purpose shall be valid." In Attorney General v. Dover, 327 Mass. 601, 100 N.E.2d 1 (1951), the Supreme Judicial Court was called upon to consider the impact of this amendment (which is widely referred to as the Dover Amendment) on the Dover by-law. The court stated that the effect of the by-law, if valid, "would be to prohibit any use of land or buildings in a residential district for sectarian educational purposes" and agreed with the Attorney General's contention that "if the amended (by-law) was ever valid, it became invalid immediately upon the taking effect of the statute of 1950." Id. at 603-604, 100 N.E.2d at 3. In Sisters of the Holy Cross of Massachusetts v. Brookline, 347 Mass. 486, 198 N.E.2d 624 (1964), the court struck down the application of single family residence dimensional requirements to a sectarian educational institution as having the effect of virtually nullifying the Dover Amendment, though stating in dicta that there might be instances in which a municipality might permissibly impose dimensional requirements upon buildings that serve educational or religious purposes. In Radcliffe College v. Cambridge, 350 Mass. 613, 215 N.E.2d 892 (1966), the court refused to construe the Dover Amendment as precluding the application of offstreet parking requirements contained in the Cambridge zoning ordinance to the plaintiff, ruling that the ordinance did not impede the reasonable use of the college's land for its educational purposes. Two other cases deal with peripheral aspects of the topic. See Worcester v. New England Institute and New England School of Accounting, Inc., 335 Mass. 486, 140 N.E.2d 470 (1957), Chicopee v. Jakubowski, 348 Mass. 230, 202 N.E.2d 913 (1964).

11 A simple example will elucidate the distinctions further. Lenox accepted c. 808 on May 7, 1976. From that date until June 30, 1978, a church if it desired could, by virtue of s 6, construct a fifty-foot steeple despite

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the imposition of height restrictions in the by-law. However, if it conducted a college, the church might not be able to construct a high rise dormitory on its campus by reason of the restrictions imposed under the authority of s 3. The two sections serve to denominate religious and sectarian educational uses as two separate categories.

a Mass.App.Ct.Adv.Sh. (1977) 1012, 1018.

12 In addition, the “informational statement” also requires the educational institution to include an assessment of the probable impact of its project on attendance in the public schools, increase in vehicular traffic, increases in municipal service costs, load on public utilities or the future demand for them, public safety, police and fire protection, changes in surface drainage, increased consumption of water and increase in refuse disposal.

13 The special exception provisions of the by-law are set forth in note 6, Supra.

14 The board's argument that G.L. c. 40A, s 9, authorizes a special permit mechanism to afford the town leeway in regulating uses not otherwise permitted as of right in a zone simply overlooks the limitations on the town's zoning power as to religious and educational uses contained in c. 40A, s 3.

15 Of course, all the proposed uses contemplated by the plaintiff in this case, and in particular the uses intended for the buildings, are subject to the requirements of any other applicable State or local codes such as (without limitation) health and sanitary codes, fire codes and regulations, and the State Building Code.

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KeyCite Red Flag - Severe Negative Treatment
Judgment Vacated by Jewish Cemetery Ass'n of Massachusetts, Inc. v. Board of Appeals of Wayland, Mass.App.Ct., March 7, 2014

2010 WL 3210726
Only the Westlaw citation is currently available.
Massachusetts Land Court.
Department of the Trial Court.

JEWISH CEMETERY ASSOCIATION OF MASSACHUSETTS, INC., East Beit Olam Cemetery Corporation, and West Beit Olam Cemetery Corporation, Plaintiffs,
v.
BOARD OF APPEALS OF the TOWN OF WAYLAND, E. Michael Thomas, James Grumbach, Eric Goldberg, Steve Fugarazzo, Jerry Boos, Aida Gennis, Linda Segal, and Shaunt Sarian, as Members and Alternate Members of the Wayland Board of Appeals, and the Town of Wayland, Defendants.

No. 08 MISC 386750(AHS).
|
Aug. 13, 2010.

West KeySummary

1 **Zoning and Planning** Mortuaries, Cemeteries, and Mausoleums

Under the plain language of the Dover Amendment, the use of land as a Jewish cemetery was subject to site plan review as long as such review was subject to reasonable regulations, and thus the owner of the cemetery was subject to a town zoning by-law restricting earth movement.

M.G.L.A. c. 40A, § 3.

DECISION

ALEXANDER H. SANDS, III, Justice.

***1** Plaintiffs Jewish Cemetery Association of Massachusetts, Inc. ("JCAM"), East Beit Olam Cemetery Corporation ("East Beit"), and West Beit Olam Cemetery Corporation ("West Beit") (together, "Plaintiffs") filed their unverified Complaint on October 29, 2008, appealing, pursuant to G.L. c. 40A, § 17, a decision of Defendant Board of Appeals of the Town of Wayland (the "ZBA") which required Plaintiffs to obtain an earth moving special permit with site plan approval for construction at cemetery property in Wayland (hereinafter defined as East Locus and West Locus). Plaintiffs also challenge, pursuant to G.L. c. 240, § 14A, and G.L. c. 231A, the validity and applicability of the Wayland Zoning By-laws (the "By-laws") to Locus. Defendant Town of Wayland (the "Town") and the ZBA (together, "Defendants") filed an Answer on November 21, 2008. A case management conference was held on January 7, 2009.

Plaintiffs filed their Motion for Summary Judgment on March 20, 2009, together with supporting memorandum, Statement of Undisputed Facts, and Affidavits of Stanley Kaplan (Executive Director of East Beit and West Beit), Rabbi Abraham Halbfinger, Rabbi Sally Rena Finestone, Rabbi Harman J. Blumberg, Reverend James J. Laughlin, JCL, Michael J. Coutu (landscape architect), Leslie Crossley (paralegal), and Sander A. Rikleen, Esq. On June 22, 2009, Defendants filed their Cross-Motion for Summary Judgment, together with supporting memorandum and Opposition. Plaintiffs filed their Opposition on July 10, 2009, together with Supplemental Affidavits of Michael J. Coutu, Sander A. Rikleen, and Stanley Kaplan. A hearing was held on all motions on July 27, 2009, and all motions were taken under advisement.

Summary judgment is appropriate where there are no genuine issues of material fact and where the summary judgment record entitles the moving party to judgment as a matter of law. *See Cassesso v. Comm'r of Corr.,* 390 Mass. 419, 422, 456 N.E.2d 1123 (1983); *Cmty. Nat'l Bank v. Dawes,* 369 Mass. 550, 553, 340 N.E.2d 877 (1976); Mass. R. Civ. P. 56(c).

This court finds that the following facts are not in dispute:

1. JCAM is a Jewish organization that cares for numerous Jewish cemeteries in Massachusetts, including the Beit Olam Cemetery ("Locus") located in Wayland, Massachusetts, which it owns and operates. There are few burial sites remaining at Locus. JCAM created East Beit and West Beit to

purchase land in Wayland adjacent to Locus for the purpose of expanding Locus' cemetery use.

2. JCAM formed East Beit in December 2006, after which, East Beit purchased 17.9 acres of land located east of, and adjacent to, Locus at 53 Old Sudbury Road, 22 Holiday Road, and on Concord Road ("East Locus").

3. JCAM formed West Beit in 2007, after which, West Beit purchased land containing 75,178 square feet, located west of, and adjacent to, Locus at 59 Old Sudbury Road ("West Locus").

4. Under the By-laws, a cemetery is a permitted use as of right on Locus, East Locus, and West Locus, subject to site plan approval. [1]

***2** 5. Pursuant to Section 198-504.1 of the By-laws (the "Earth Movement By-law"), adopted in 2004, a special permit is required to move in excess of 1,500 cubic yards on any parcel of land of 40,000 square feet or more in size. Land owned by the Town is exempt from this section of the By-laws. Section 198-504.2 states that "[n]othing contained in § 198-504.1 shall ... prevent the use of any land for ... cemeteries ... and such purposes as are incidental to, or usual in connection with, any of said purposes."

6. There will be no buildings on East Locus or West Locus. Both East Locus and West Locus meet all dimensional requirements of the By-laws.

7. JCAM filed an application with the Wayland Building Commissioner (the "Building Commissioner") on March 28, 2008, for site plan approval relative to the grading of East Locus and West Locus for cemetery purposes. This application called for the movement of more than 1,500 cubic yards of earth on both East Locus and West Locus. [2]

8. On June 2, 2008, the Building Commissioner ruled (the "Building Commissioner Decision") that a special permit was required for the movement of earth relative to the grading. The Building Commissioner Decision stated:

> After reviewing the calculations dated 4/28/08 prepared by Sullivan, Connors & Associates for the "West Beit Olam" parcel the earth movement exceeds 1,500 CY and would require a Special Permit pursuant to 198-504. The second set of calculations for the "East Beit Olam" indicate a -700 CY figure. In this calculation it looks as though they exempted the drainage structures. This is not an allowed exemption, when you add that figure into the calculation it also exceeds the provisions of 198-504 and would require a Special Permit.

After a request for reconsideration, on June 11, 2008, the Building Commissioner issued a similar decision.

9. On July 2, 2008, Plaintiffs filed an appeal of the Building Commissioner Decision with the ZBA.

10. By decision dated July 23, 2008, the Planning Board of the Town of Wayland approved the site plan review process for East Locus, subject to six general conditions and seven special conditions (the "Site Plan Approval"). [3] Plaintiffs did not appeal the Site Plan Approval.

11. By decision dated October 10, 2008, the ZBA upheld the Building Commissioner Decision by a 3-1 vote (the "ZBA Decision"). The ZBA Decision stated:

> Administrative appeal of the decision of the Building Commissioner is denied. Decision of the Building Commissioner is upheld that a Special Permit shall be required in the event that movement of earth in excess of 1,500 cubic yards is required for construction of a cemetery at the property, as indicated in the appellant's plan submitted to the Planning Board for Site Plan Approval.

The rationale of the ZBA Decision was as follows:

> The Board concluded that the massive earth moving contemplated in expansion of the Beit Olam Cemetery did not constitute use of land for "such purposes as are incidental or usual in connection with use of land for a cemetery". Rather, the Board concluded that the earth

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moving was use of land for conversion of the land from its previous use as residential land to its proposed new cemetery use. The Board concluded that the earth moving during the course of conversion of the land was not incidental to its use as a cemetery because the land was not used as a cemetery at the time the earth moving was performed.

***3** Plaintiffs argue that because the cemetery use of Locus, East Locus, and West Locus is for a religious purpose, such use is protected by the so-called Dover Amendment found in Chapter 40A, Section 3 of the General Laws and, thus, the Earth Movement By-law and site plan review should not apply to Locus. [4] Defendants claim that Plaintiffs' proposed use of East Locus and West Locus is not a primary use of land for a religious purpose within the meaning of the Dover Amendment, and that irrespective of such outcome, the earth movement on the land is not an accessory use to a cemetery use or a religious use. I shall look at each of these issues in turn.

Whether Plaintiffs' Use of East Locus and West Locus as a Jewish Cemetery is for a Religious Purpose and Protected Under the Dover Amendment.

Plaintiffs argue that the proposed cemetery use of East Locus and West Locus is for a religious purpose and reason that because both cemeteries meet all dimensional requirements of the By-laws, the Earth Movement By-law and site plan review do not apply. [5] Defendants note that cemetery uses and earth removal uses are separate principal uses under the By-laws and assert that the Earth Movement By-law regulates only the movement of earth within the cemetery, and not the use of land for cemetery or religious purposes.

Both parties indicate that there is little appellate case law on the issue of whether a cemetery use is a religious use. Plaintiffs argue that their use of East Locus and West Locus is protected under the Dover Amendment as use for a religious purpose, and cite several old cases in this regard. *See e.g., Commonwealth v. Viall,* 84 Mass. 512 (1861). Defendants claim that Plaintiffs' use of land for cemetery purposes is secular in nature.

Almost one hundred and fifty years ago, the Supreme Judicial Court (the "SJC") stated, "we think the devotion of a piece of ground to the purpose of burial includes much more than the mere interment of the remains of the dead.... With some religious denominations, the burial of the dead is a sacrament; and church-yards and cemeteries are consecrated by religious rites." *Viall,* 84 Mass. at 515 (interpreting a statute relating to the desecration of burial places). Plaintiffs produce numerous affidavits from representatives of the Jewish faith to indicate that the sacrament of burial is a sacred and religious rite, including the Affidavit of Rabbi Herman J. Blumberg, which states that cemeteries are "land used for a sacred and religious purpose, where only Jewish burial laws, rituals and customs are observed." The affidavits also describe the Jewish ritual for consecrating a cemetery prior to its use for burial, and state that once this is done, only Jewish religious laws, customs and rituals can be observed within the cemetery. Moreover, the affidavits point out that "[u]nder Jewish law, a Jewish cemetery is as holy and sacred as the land upon which sits the community's synagogue." Defendants do not counter these affidavits or produce their own affidavits. [6]

***4** In support of their argument that a religious organization's use of land for a cemetery is not protected by the Dover Amendment, Defendants cite *Foster v. Beverly,* 315 Mass. 567, 53 N.E.2d 693 (1944). In *Foster,* cemetery abutters attempted to overturn action of the City of Beverly which granted a religious corporation the right to maintain a cemetery on land formerly zoned for residential purposes. *Id.* at 568, 53 N.E.2d 693. Defendants appear to hang on language in the decision that cemeteries are subject to local zoning; however, this case was decided before the adoption of the Dover Amendment. [7] Moreover, in *Foster* the SJC addressed the zoning status of a cemetery and not the issue of whether a cemetery is a religious use.

With respect to use, the scope of the term "religious purpose," as used in the Dover Amendment, is an issue of law for courts to define. *Needham Pastoral Counseling Ctr., Inc. v. Bd. of Appeals of Needham,* 29 Mass.App.Ct. 31, 33, 557 N.E.2d 43 (1990). That said, "[i]t is not permissible for a judge to determine what is or is not a matter of religious doctrine." *Martin v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints,* 434 Mass. 141, 152, 747 N.E.2d 131 (2001). The term "religious purpose" "in a dictionary sense and without judicial gloss, means something in aid of a system of faith and worship, usually of a higher unseen power entitled to reverence .... Fidelity to a set of principles or rituals is a central characteristic." *Needham Pastoral,* 29 Mass.App.Ct. at 33, 557 N.E.2d 43. [8] Moreover, "[r]eligious activity, to be sure, may involve more than prayer

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and worship, ..." *Id.* at 37, 557 N.E.2d 43. In light of this legal standard, and in context of Plaintiffs' Affidavits, which I deem credible, I find that the use of East Locus and West Locus as a Jewish cemetery is for a religious purpose, in context of the Dover Amendment.

Given this determination that the use of East Locus and West Locus as a Jewish cemetery is a religious purpose, it follows that the next inquiry before this court is to determine the applicability of the By-laws to such use. The Dover Amendment states that protected uses may be subject to reasonable regulations relative to dimensional requirements both for the land and for any buildings thereon. The summary judgment record discloses that there will be no buildings on the land and that the land meets all dimensional zoning requirements. As a result, the only remaining issues involve the application of the Earth Movement By-law and site plan review to cemetery use of East Locus and West Locus.

Whether the Earth Movement By-law Applies to East Locus and West Locus.

As stated previously, the Earth Movement By-law requires a special permit to move in excess of 1,500 cubic yards on any parcel of land of 40,000 square feet or more in size. Section 198-504.2 of the By-laws exempts "the use of any land for ... cemeteries ... and such purposes as are incidental to, or usual in connection with, any of said purposes." [9] Plaintiffs argue that since raw land must be prepared for burials by grading in order to be used, such use must be incidental to the allowed cemetery use. Defendants claim that, irrespective of whether the cemetery use of land is a religious use, the earth removal contemplated by Plaintiffs is not a use incidental to the allowed as-of-right cemetery use of the land. [10]

***5** In support of their position that Plaintiffs' site preparation of East Locus and West Locus is not "incidental to, or usual in connection with" a cemetery use, Defendants cite to *Henry v. Bd. of Appeals of Dunstable,* 418 Mass. 841, 641 N.E.2d 1334 (1994). In determining the limits of an incidental use, the SJC noted that "[u]ses which are 'incidental' to a permissible activity on zoned property are permitted as long as the incidental use does not undercut the plain intent of the zoning by-law." *Id.* at 844, 641 N.E.2d 1334. This "is a fact-dependent inquiry, which both compares the net effect of the incidental use to that of the primary use and evaluates the reasonableness of the relationship between the incidental and the permissible uses." *Id.* In zoning parlance, an incidental use touches upon two concepts.

> It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance.... But "incidental," when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. [11]

Id. at 845, 641 N.E.2d 1334 (citing *Harvard v. Maxant,* 360 Mass. 432, 438, 275 N.E.2d 347 (1971)).

Henry addressed the issue of whether certain excavation and removal of gravel was incidental to an agricultural or horticultural use of land. *Id.* at 841-42, 641 N.E.2d 1334. [12] In *Henry,* the applicant, similar to Plaintiffs in the case at bar, proposed to move large amounts of fill in converting land from one use (general forest land) to another (establishment of a Christmas tree farm). The SJC found that the applicant met neither the subordinate nor the accessory aspect of an incidental use; it found that the net effect of the volume of earth to be removed, the duration of the project, and the scope of the removal project were inconsistent with agricultural use. *Id.* at 845, 641 N.E.2d 1334.

In the case at bar, preparing land for cemetery use is not attendant to the cemetery use. In the same way that the quarrying activity in *Henry* was necessary to prepare land for an agricultural use, *id.* at 843, 641 N.E.2d 1334, Plaintiffs' proposed site preparation is necessary to convert East Locus and West Locus from residential use to use as a cemetery. However, simply because a use is necessary does not result in an incidental or accessory use. *See Needham v. Winslow Nurseries, Inc.,* 330 Mass. 95, 101, 111 N.E.2d 453 (1953) ("An incidental or accessory use under a zoning law is a use which is dependent on or pertains to the principal or main use."). In fact, the site preparation proposed by Plaintiffs is not dependant on, or a part of, the cemetery use. Furthermore,

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such use is not even religious in nature. [13] Failing to require a connection linking an incidental use to an allowed use "would be to permit any use which is not primary, no matter how unrelated it is to the primary use." *Henry,* 418 Mass. at 845, 641 N.E.2d 1334 (citing *Maxant,* 360 Mass. at 438, 275 N.E.2d 347).

***6** Plaintiffs attempt to distinguish *Henry* and its progeny on the grounds that their proposed use of East Locus and West Locus will not result in "material amounts" of gravel or topsoil. The burden falls on Plaintiffs to prove they are protected from zoning under the Dover Amendment. *See Trustees of Tufts College v. Medford,* 415 Mass. 753, 759, 616 N.E.2d 433 (1993). Here, Plaintiffs fail to provide this court with estimates of the volume of earth proposed to be moved or a time frame during which the earth movement will proceed. This failure to provide such information precludes this court from finding that the material proposed to be moved as part of the cemetery expansion's site preparation is subordinate to cemetery use. Plaintiffs' claim that they do not anticipate selling gravel or topsoil as a part of the cemetery project does not minimize the quantity of material proposed to be moved. Furthermore, the scope of the proposed earth movement fails to address whether such use is accessory to a cemetery use, as discussed *supra.* [14]

As a result of the foregoing, I find that the grading and movement of materials related to the site preparation of East Locus and West Locus is not a use "incidental to, or usual in connection with" a cemetery or religious use, and, thus, is subject to the Earth Movement By-law. Given this court's finding that the Earth Movement By-law applies to the site preparation of East Locus and West Locus, I find that the ZBA Decision is not arbitrary and capricious or in excess of the ZBA's authority.

Validity of Site Plan Review. [15]

Plaintiffs also argue that as a use protected under the Dover Amendment, East Locus and West Locus, as Jewish cemeteries, are not subject to site plan review. At the same time, however, Plaintiffs' concede that East Locus and West Locus are subject to those regulations allowed for in the Dover Amendment, i.e. "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." Given that Plaintiffs did not appeal the Site Plan Approval, their argument with respect to the applicability of site plan review appears to focus solely on the issue of whether, in theory, a site plan review process can be validly applied to a Dover-protected religious use. This court concludes in the affirmative, as discussed below.

It is true that "towns may not, through the guise of regulating bulk and dimensional requirements under the [Dover Amendment], proceed to 'nullify' the use exemption permitted ...." *The Bible Speaks v. Bd. of Appeals of Lenox,* 8 Mass.App.Ct. 19, 31, 391 N.E.2d 279 (1979) (citing *Sisters of the Holy Cross v. Brookline,* 347 Mass. 486, 494, 198 N.E.2d 624 (1964)). However, the plain language of the Dover Amendment affords municipalities discretion in regulating religious uses as long as this regulation is reasonable. Plaintiffs appear to adopt the blanket assertion that Dover Amendment uses cannot be subjected to site plan review and, for support, cite to *The Bible Speaks,* 8 Mass.App.Ct. at 20, 391 N.E.2d 279, which, in part, involved the validity of a local bylaw in context of the Dover Amendment. In *The Bible Speaks,* the Appeals Court was called on to interpret a bylaw scheme that required a site plan in tandem with a special permit. *Id.* at 31, 391 N.E.2d 279. The court reasoned that, taken together, the local bylaw's site plan review provision and the special permit provision "invest[ed] the board with a considerable measure of discretionary authority over an educational institution's use of its facilities and create a scheme of land use regulation for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by [the Dover Amendment]." *Id.* at 33, 391 N.E.2d 279. [16] In conclusion, the Appeals Court held that the site plan/special permit bylaw at issue exceeded the Dover Amendment's allowance of reasonable regulations. *Id.* Even though the bylaw at issue in *The Bible Speaks* was found to be an unreasonable regulation in context of the Dover Amendment, such case does not stand for the proposition that all site plan review violates the Dover Amendment as an absolute matter of law. In light of the above, I find that uses protected by the Dover Amendment may be subject to site plan review as long as such review is limited to reasonable regulations.

Validity of the Earth Movement By-law.

***7** Plaintiffs argue that the Earth Movement By-law is invalid as applied to East Locus and West Locus because it unreasonable restricts the use of the cemetery land under the Dover Amendment. As discussed, *supra,* the Earth Movement

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By-law does not run afoul of the Dover Amendment and, as such, I find that the Earth Movement By-law is not invalid either facially or as applied.

Conclusion.

As a result of the foregoing, and consistent with the above, I ALLOW IN PART Plaintiffs' Motion for Summary Judgment with respect to whether Plaintiffs' use of East Locus and West Locus as a Jewish cemetery is for a religious purpose; I DENY IN PART Plaintiffs' Motion for Summary Judgment with respect to whether site plan review can apply to uses protected by the Dover Amendment; I ALLOW IN PART Defendants' Cross-Motion for Summary Judgment with respect to the applicability of the Earth Movement By-law to East Locus and West Locus and the validity of the ZBA Decision; and I DENY IN PART Defendants' Cross-Motion for Summary Judgment with respect to whether Plaintiffs' use of East Locus and West Locus as a Jewish cemetery is for a religious purpose.

Judgment to enter accordingly.

All Citations

Not Reported in N.E.2d, 2010 WL 3210726

Footnotes

1 Defendants concede that uses of land for cemetery or religious purposes are both permitted as a matter of right on Locus, subject to site plan approval.

2 Plaintiffs' application is not part of the summary judgment record before this court. However, the ZBA Decision, as hereinafter defined, states that Plaintiffs' proposed cemetery expansion calls for importing 5,500 cubic yards of fill material and for the stock-piling and reuse of 20,000 cubic yards of topsoil. Neither party objects to such estimate; Plaintiffs do assert that JCAM is not planning to mine, remove or sell gravel or topsoil as part of their cemetery expansion.

3 The summary judgment record includes only the decision concerning East Locus.

4 G.L. c. 40A, § 3 states as follows:

> No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes ... on land owned or leased ... by a religious sect or denomination ...; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

5 Plaintiffs also contend that the movement of earth within the cemetery is distinguishable from the Dover Amendment's allowable dimensional regulations and, thus, East Locus and West Locus are not required to obtain special permits or site plan approval. While this court agrees that the movement of earth is not a dimensional requirement, such conclusion does not necessarily free Plaintiffs from all regulation under the By-laws, as discussed *infra.*

6 Plaintiffs also supply an affidavit of a Catholic priest who states that "it is beyond question that under Catholic law and practice, a Catholic Cemetery is a religious use of land."

7 Defendants also cite to a Pennsylvania Supreme Court case, which found that a cemetery was not a religious use. *See* *Appeal of Russian Orthodox Church of Holy Ghost,* 397 Pa. 126, 129, 152 A.2d 489 (1959). On the other hand, Plaintiffs have provided this court with a New York case which, on facts similar to the ones in the case at bar, finds a cemetery use as a valid religious use. *See McGann v. Inc. Village of Old Westbury,* 186 Misc.2d 661, 719 N.Y.S.2d 803, 806 (Sup.Ct.2000). Regardless, such cases are not binding on this court, and while ancient, *Viall* sets the stage for a cemetery use as a religious purpose in Massachusetts.

8 The Appeals Court remarked that the process of defining the term "religion" "is all very heady business and defies precision, but we emerge with the understanding that what is religious requires a system of belief,

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concerning more than the earthly and temporal, to which the adherent is faithful." *Needham Pastoral,* 29 Mass.App.Ct. at 34, 557 N.E.2d 43.

9 Plaintiffs emphasize the punctuation in Section 198-504.2 in arguing that the phrase "or usual in connection with" allows for the proposed earth movement on East Locus and West Locus that accompanies site preparation. However, this court refrains from interpreting such phrase so broadly based on the placement of a comma. Rather, in context of the use of the word "incidental," the phrase "or usual in connection with" implies a customary or accessory use, the import of which is discussed, *infra.*

10 While Defendants concede that the digging of an individual grave would be considered incidental to, and a part of, the cemetery use, they claim that earth removal for site development in significant quantities is not.

11 BLACK'S LAW DICTIONARY 124 (7th ed.) defines the term "attendant" as "[a]ccompanying; resulting." BLACK'S defines the term "concomitant" is defined as "[a]ccompanying; incidental." *Id.* at 284, 557 N.E.2d 43.

12 The proposed use in *Henry* involved the removal of 460,000 cubic yards of fill over a two and a half year period. 418 Mass. at 846, 641 N.E.2d 1334.

13 Defendants note that there is nothing in the summary judgment record that indicates that certain grades or topography are required for cemetery use, i.e. that the grading is just a part of the construction phase of development.

Moreover, In the Affidavit of Rabbi Herman J. Blumberg, the rabbi states, "[o]nce the land has been acquired and it has been cleared and graded for use, a time honored ritual is required to consecrate and bless the new cemetery before it can actually be used for Jewish burials." It is clear that the religious use does not commence until after the grading of the property has been completed.

14 Moreover, based on the volume of material referred to in the ZBA Decision, the intended site preparation of East Locus and West Locus does not appear to be subordinate to a cemetery use. The ZBA Decision notes that the plans for construction of the cemetery expansion call for importing 5,500 cubic yards of fill material and stockpiling and reusing 20,000 cubic yards of topsoil. This is far in excess of the 1500 cubic yards of fill that is allowed under the Earth Movement By-law.

Plaintiffs point out that the entire project of conversion of both East Locus and West Locus to cemetery use was being done at one time rather than piecemeal, but this is irrelevant. It is Plaintiffs' choice whether to do the work in stages; moreover, Plaintiffs point out that even if done in stages, such work would involve more than the maximum set by the Earth Removal By-law.

15 Plaintiffs do not appeal the Site Plan Approval. As a result, the Site Plan Approval is binding and applicable to East Locus.

16 In its analysis, the Appeals Court noted that "there is nothing in the language of G.L. c. 40A, Section 3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses, ..." 8 Mass.App.Ct. at 32, 391 N.E.2d 279. However, it does not follow that the absence of an express reference to site plan review in the Dover Amendment automatically results in an unreasonable regulation. In fact, the site plan review process "implies regulation of a use rather than its prohibition." *Y.D. Dugout, Inc. v. Bd. of Appeals of Canton,* 357 Mass. 25, 31, 255 N.E.2d 732 (1970). It "contemplat[es] primarily the imposition, for the public protection, of reasonable terms and conditions upon the commercial use of land zoned for business." *Id.*

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Spectrum Health Systems, Inc. v. Town of Weymouth, D.Mass., December 4, 2006

415 Mass. 753
Supreme Judicial Court of Massachusetts, Suffolk.

TRUSTEES OF TUFTS COLLEGE
v.
CITY OF MEDFORD.

Argued March 2, 1993.
|
Decided July 9, 1993.

Synopsis
College brought action challenging application of dimensional, parking, and loading-space requirements of zoning ordinance to several construction projects. The Land Court, Suffolk County, Robert V. Cauchon, J., decided that ordinance could not for most part be validly applied to projects in question, and city appealed. The Appeals Court, 33 Mass.App.Ct. 580, 602 N.E.2d 1105, modified judgment, and further review was sought. The Supreme Judicial Court, Greaney, J., held that: (1) under reasonable construction of ordinance's definition of "lot," requirement regarding number of parking spaces could be applied to proposed library addition; (2) college failed to establish that application of ordinance provisions dealing with loading spaces and setbacks would be unreasonable; and (3) city could not be prospectively enjoined from applying ordinance to future construction projects in core area of campus or to future projects such as those that resulted in college's suit.

Affirmed as amended in part, vacated in part.

O'Connor, J., concurred in part, dissented in part, and filed opinion.

Procedural Posture(s): On Appeal.

West Headnotes (17)

[1] Zoning and Planning Applicability to Persons or Places

Local zoning requirements which are adopted under provision of Dover amendment authorizing municipality to adopt and apply "reasonable regulations" concerning bulk, dimensions, open space, and parking to land and structures for which educational use is proposed, and which would serve legitimate municipal purposes sought to be achieved by local zoning, such as promoting public health or safety, preserving character of adjacent neighborhood, or other statutory purpose, may be permissibly enforced against educational use. M.G.L.A. c. 40A, § 3.

24 Cases that cite this headnote

[2] Zoning and Planning Reasonableness in general

Zoning requirement that results in something less than nullification of proposed educational use may be unreasonable within meaning of Dover amendment. M.G.L.A. c. 40A, § 3.

1 Cases that cite this headnote

[3] Zoning and Planning Applicability to Persons or Places

Because local zoning laws are intended to be uniformly applied, educational institution challenging application of such laws to proposed educational use bears burden of proving that local requirements are unreasonable as applied to its proposed project; institution may do so by demonstrating that compliance would substantially diminish or detract from usefulness of proposed structure, or impair character of institution's campus, without appreciably advancing municipality's legitimate concerns, or by establishing excessive cost of compliance with requirement without significant gain in terms of municipal concerns. M.G.L.A. c. 40A, § 3.

15 Cases that cite this headnote

[4] Zoning and Planning Reasonableness in general

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For purposes of provision of Dover Amendment pursuant to which municipality may adopt and apply "reasonable regulations" to land and structures for which educational use is proposed, it is not necessary that local zoning requirements be drafted specifically for application to educational use in order to be considered reasonable. M.G.L.A. c. 40A, § 3.

9 Cases that cite this headnote

[5] **Zoning and Planning** Reasonableness in general

Proof that local zoning law could accomplish its purpose if it were drafted in terms other than those chosen will not suffice to establish that municipality's choice of regulation is unreasonable within meaning of provision of Dover Amendment pursuant to which municipality may adopt and apply "reasonable regulations" to land and structures for which educational use is proposed. M.G.L.A. c. 40A, § 3.

4 Cases that cite this headnote

[6] **Zoning and Planning** Variances and exceptions

Accommodation sought to be accomplished by Dover amendment, between educational use of property and matters of critical municipal concern, cannot be achieved by insisting that educational institution seek variance to obtain permission to complete its project. M.G.L.A. c. 40A, § 3.

2 Cases that cite this headnote

[7] **Zoning and Planning** Applicability to Persons or Places

Although court may consider municipality's proper concession that particular requirement of its zoning law is unreasonable as applied to proposed educational use, apart from such concession, remaining requirements of local zoning laws, if otherwise reasonable, still apply. M.G.L.A. c. 40A, § 3.

1 Cases that cite this headnote

[8] **Zoning and Planning** Effect of determination; res judicata and collateral estoppel

If variance is granted at request of educational institution, and not challenged by aggrieved party within time period permitted by statute, variance cannot thereafter be attacked as improper. M.G.L.A. c. 40A, § 3.

[9] **Zoning and Planning** Garages and parking

In context of provision of zoning ordinance dealing with number of additional parking spaces needed when construction was undertaken on lot, definition of "lot" as duly recorded parcel of land that was commonly owned and had definite boundaries and was not divided by street could reasonably be construed as treating discrete areas of university's core campus, bounded by streets, as single commonly owned lots; therefore, application of provision to proposed library addition that also called for new parking garage on same such lot was not unreasonable within meaning of statute dealing with application of ordinances to proposed educational uses. M.G.L.A. c. 40A, § 3.

2 Cases that cite this headnote

[10] **Zoning and Planning** Meaning of Language

Court should construe local zoning requirement in manner that sustains its validity if such can be done without straining common meaning of terms employed.

2 Cases that cite this headnote

[11] **Zoning and Planning** Garages and parking

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Parking, as it affects physical conditions on and around educational use, is legitimate municipal concern and proper subject of local zoning regulation. M.G.L.A. c. 40A, § 3.

1 Cases that cite this headnote

[12] **Zoning and Planning** Applicability to Persons or Places

College failed to establish that application of zoning ordinance to require additional loading spaces in connection with new construction would be unreasonable such that requirement could not be applied. M.G.L.A. c. 40A, § 3.

[13] **Zoning and Planning** Applicability to Persons or Places

When compliance by educational institution with zoning ordinance will involve no significant cost or other hardship to institution, and does not interfere to any appreciable extent with institution's plans, institution has failed to make out case that requirement as applied to it is unreasonable. M.G.L.A. c. 40A, § 3.

[14] **Zoning and Planning** Reasonableness

Evidence did not establish that zoning ordinance's setback requirement was unreasonable as applied to college's construction of parking garage; although it was claimed that compliance with ordinance would increase cost of project, no estimate as to amount of such increase was put in evidence, and municipality showed that its setback would permit vehicles easier access to garage and thus reduce congestion and enhance safety. M.G.L.A. c. 40A, § 3.

1 Cases that cite this headnote

[15] **Zoning and Planning** Injunctive relief

Where requirements of zoning ordinance did not facially discriminate against educational uses and were presumptively valid, municipality could not be prospectively enjoined from applying requirements to future construction projects in core area of college campus or to future projects similar to those which brought about college's challenge to application of requirements; whether application of neutral requirement to educational project was reasonable was fact-specific inquiry. M.G.L.A. c. 40A, § 3; c. 240, § 14A.

[16] **Zoning and Planning** Reasonableness in general

Whether requirements of local zoning law are reasonable cannot be decided in the abstract.

[17] **Zoning and Planning** Schools and education

Local zoning law that improperly restricts educational use by invalid means, such as by special permit process, may be challenged as invalid in all circumstances. M.G.L.A. c. 40A, § 3; c. 240, § 14A.

4 Cases that cite this headnote

Attorneys and Law Firms

****435** ***753** Eric W. Wodlinger, Boston (Robert J. Blumsack, City Sol., with him), for defendant.

Daniel J. Gleason, Boston (Donald R. Peck & Edward C. Mendler, with him), for plaintiffs.

***754** David R. Rodgers & Jeffrey Swope, Boston, for Association of Independent Colleges and Universities in Massachusetts, amicus curiae, submitted a brief.

John A. Pike, Boston, for Abstract Club & another, amici curiae, submitted a brief.

****436** Before LIACOS, C.J., and WILKINS, ABRAMS, NOLAN, LYNCH, O'CONNOR and GREANEY, JJ.

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Opinion

GREANEY, Justice.

This case concerns whether dimensional, parking and loading space requirements of the Medford zoning ordinance (ordinance) can be applied to several construction projects planned by Tufts College.[1] After a trial on a complaint brought in the Land Court by Tufts under G.L. c. 240, § 14A (1990 ed.), a judge of that court decided that the ordinance requirements could not, for the most part, be validly applied to Tufts' projects consistent with G.L. c. 40A, § 3, second par., as inserted by St.1975, c. 808, § 3 (generally referred to as the Dover amendment).[2] Medford appealed. The Appeals Court, relying on Medford's interpretation of the ordinance requirements and concessions made by Medford, determined that the judgment should be modified to permit application to Tufts' projects of some of the provisions. 33 Mass.App.Ct. 580, 602 N.E.2d 1105 (1992). We granted further appellate review. We agree with the Appeals Court that modification of the judgment is appropriate.

***755** The projects as to which there remains controversy[3] are a 96,000 square foot addition to the Wessell Library (Wessell), Tufts' undergraduate library, and a multi-level parking garage which is planned on the site of an existing building on the southern side of Boston Avenue. The garage will provide parking spaces initially for 290 vehicles with an ability to be expanded to 530 spaces. Both projects will be located in the core, or Hill, area of Tufts' campus, on land zoned by Medford for "Apartment–2 Residential" use. Tufts also sought a determination that requirements of the ordinance could not be applied to future, as yet unspecified, projects in the core area of its campus.

The requirements of the ordinance that remain at issue provide for: (1) a front-yard setback dependent on the size of the building and calculated by a formula (§ 6.3.5[c]); (2) one loading space (twelve feet in width and thirty feet in length) for each 50,000 square feet of new construction (§§ 5.3, 10.41 and 10.45);[4] and (3) one parking space for each 750 square feet of ****437** new construction which must be located ***756** either on the same lot as the new construction or within 200 feet thereof (§§ 5.3, 10.2 and 10.24). The ordinance defines the term "lot" as a duly recorded parcel of land which is commonly owned and has definite boundaries and is not divided by a street (§ 3.30).[5]

Application of these requirements to the Wessell addition would require Tufts to provide 130 new parking spaces on the Wessell lot (or within 200 feet thereof). Assuming that the ordinance could be construed as treating each building on the campus as occupying a separate lot, see note 5 *supra,* the Land Court judge interpreted the parking requirement as necessitating "postage stamp" parking lots adjoining each project Tufts might undertake in the core area of its campus. The judge considered this requirement to be incompatible with the character of the Tufts campus. In the judge's opinion, the proposed Boston Avenue garage provided a reasonable solution to the parking problem faced by Tufts, but it was not a solution permitted under the ordinance. The judge also concluded that Wessell did not need two additional loading spaces. He therefore ruled that provisions of the ordinance requiring off-street parking and loading spaces "did not rise to the level of 'reasonable regulations' within the meaning of G.L. c. 40A, § 3, and, accordingly, [were] inapplicable to Tufts' use of its land in Medford."

The ordinance also requires a fifty-foot setback from Boston Avenue for the new parking garage (§ 6.3.5[c]). Tufts proposes a thirty-foot setback for the garage. "The evidence was to the effect that there is no absolute physical impediment to constructing a garage of the planned dimensions with a setback of fifty feet, but the cost will be increased because of the sharply rising slope of the land behind the ***757** garage and because of the need that will be created to support the foundation of another building, a power plant, situated on the same hillside. No estimate of the expected cost increase was put in evidence...." 33 Mass.App.Ct. at 585, 602 N.E.2d 1105. The Land Court judge, who took a view of the campus, noted that the topography of the land at the proposed garage site might warrant the grant of a variance under G.L. c. 40A, § 10, from the setback requirement. Based on a need for a solution to a serious parking problem facing Tufts, and apparently assuming that the garage might not be built if the setback requirement was enforced, the judge concluded that full setback would unreasonably interfere with the use of Tufts' land. He declared, therefore, that the setback requirement could not be enforced. Finally, the judge extended his conclusion that the various requirements of the ordinance that were in contention could not be applied to any future construction that might be undertaken by Tufts in the core area of the campus, and, in a postjudgment order (entered on Tufts' request), the judge defined the area of Tufts that he considered to constitute the "core campus."

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1. *The Dover Amendment.* We first discuss generally applicable legal principles. The Dover Amendment bars the adoption of a zoning ordinance or by-law that seeks to prohibit or restrict the *use* of land for educational purposes. However, a proviso to the statute authorizes a municipality to adopt and apply "reasonable regulations" concerning bulk, dimensions, open space and parking, to land and structures for which an educational use is proposed. The whole of the Dover Amendment, as it presently stands, seeks to strike a balance between preventing local discrimination against an educational use, see *Newbury Junior College v. Brookline,* 19 Mass.App.Ct. 197, 205, 472 N.E.2d 1373 (1985), and honoring legitimate municipal concerns that typically find expression in local zoning ****438** laws. This case requires us to address that balance in practical terms.

[1] **[2]** Local zoning requirements adopted under the proviso to the Dover Amendment which serve legitimate municipal purposes sought to be achieved by local zoning, such as promoting ***758** public health or safety, preserving the character of an adjacent neighborhood, or one of the other purposes sought to be achieved by local zoning as enunciated in St.1975, c. 808, § 2A, see *MacNeil v. Avon,* 386 Mass. 339, 341, 435 N.E.2d 1043 (1982), may be permissibly enforced, consistent with the Dover Amendment, against an educational use. See *Radcliffe College v. Cambridge,* 350 Mass. 613, 215 N.E.2d 892 (1966); *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 31, 391 N.E.2d 279 (1979) (a building inspector may properly deny permits to an educational institution for a structure that does not comply with "reasonable regulations"). See also *Southern New England Conference Ass'n of Seventh–Day Adventists v. Burlington,* 21 Mass.App.Ct. 701, 710, 490 N.E.2d 451 (1986) (local zoning law protecting wetlands applied to property protected by Dover Amendment). The *Radcliffe College* case suggests that a local zoning provision that requires an educational institution to adapt plans for the use of its land may be enforced, so long as the provision is shown to be related to a legitimate municipal concern, and its application bears a rational relationship to the perceived concern. On the other hand, a zoning requirement that results in something less than nullification of a proposed educational use may be unreasonable within the meaning of the Dover Amendment. See *Radcliffe College v. Cambridge, supra,* 350 Mass. at 619, 215 N.E.2d 892 (concluding that a parking requirement could be applied, but suggesting that future application might be unreasonable if the result would require the educational institution to provide more parking spaces "than could in reason be deemed necessary to take care of the cars brought to the [area] by the use made of it by the college"). [6]

***759** **[3]** **[4]** **[5]** What we have said thus far suggests that the question of the reasonableness of a local zoning requirement, as applied to a proposed educational use, will depend on the particular facts of each case. Because local zoning laws are intended to be uniformly applied, an educational institution making challenges similar to those made by Tufts will bear the burden of ****439** proving that the local requirements are unreasonable as applied to its proposed project. The educational institution might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution's campus, without appreciably advancing the municipality's legitimate concerns. [7] Excessive cost of compliance with a requirement imposed on an educational institution, without significant ***760** gain in terms of municipal concerns, might also qualify as unreasonable regulation of an educational use. We reject the suggestion that only local zoning requirements drafted specifically for application to educational uses are reasonable within the scope of the Dover Amendment. Nothing in that statute mandates the adoption of local zoning laws which are tailored specifically to educational uses. See Report, *supra* at 26 (observing that *ideally* regulations should be specifically adapted to educational uses). Similarly, proof that a local zoning law could accomplish its purpose if it were drafted in terms other than those chosen will not suffice to establish that the municipality's choice of regulation is unreasonable. [8] See *Moss v. Winchester,* 365 Mass. 297, 299, 311 N.E.2d 555 (1974).

[6] **[7]** **[8]** The Appeals Court observed in this case that the Dover Amendment is intended to encourage "a degree of accommodation between the protected use ... and matters of critical municipal concern ...." (citations omitted). 33 Mass.App.Ct. at 584, 602 N.E.2d 1105. We agree with this observation, but add that such an accommodation cannot be achieved by insisting that an educational institution seek a variance to obtain permission to complete its project. [9] *Radcliffe College v. Cambridge, supra,* 350 Mass. at 619, 215 N.E.2d 892, citing *Russell v. Zoning Bd. of Appeals of Brookline,* 349 Mass. 532, 535, 209 N.E.2d 337 (1965). Additionally, a court may consider a municipality's proper concession, such as was made here in the course of litigation,

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that a particular requirement ***761** of its zoning law is unreasonable as applied to a proposed educational use. Apart from any concession, the remaining requirements of the local zoning law, if otherwise reasonable, would still apply. *Doliner v. Town Clerk of Millis,* 343 Mass. 10, 15, 175 N.E.2d 925 (1961) (zoning by-law provisions treated as separable). *Attorney Gen. v. Dover,* 327 Mass. 601, 608, 100 N.E.2d 1 (1951). We now consider application of the ordinance's requirements to Tufts' projects in light of these principles and the Appeals Court's modification of the Land Court judgment.

[9] 2. *Wessell addition. a. Parking.* The Appeals Court modified the judgment by deleting therefrom language that declared the ordinance's parking requirements inapplicable to the Wessell addition. As the basis for so doing, the Appeals Court agreed with Medford's contention that the ordinance's definition of the term "lot," see note 5 *supra,* could be construed as treating discrete areas of Tufts' core campus, bounded by streets, as single commonly owned lots. Under this interpretation, the proposed Boston Avenue garage and Wessell would occupy the same lot. The parking that will be provided by the garage (a minimum of 290 spaces) more than satisfies the ordinance's requirement that Tufts, in conjunction with the Wessell addition, provide a minimum of 130 new ****440** parking spaces on the lot containing Wessell.

[10] A court should construe a local zoning requirement "in a manner which sustains its validity," *Doliner v. Town Clerk of Millis, supra,* 343 Mass. at 15, 175 N.E.2d 925, if this can be done without straining the common meaning of the terms employed. *Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham,* 382 Mass. 283, 290, 415 N.E.2d 840 (1981). *Hall v. Zoning Bd. of Appeals of Edgartown,* 28 Mass.App.Ct. 249, 254, 549 N.E.2d 433 (1990). The ordinance's definition of lot logically applies to the part of the Tufts campus in which Wessell is situated and the parking garage will be located. [10]

***762** **[11]** Based on this interpretation, Tufts has not shown that the parking requirements of the ordinance are unreasonable as applied to the Wessell addition. It was properly found in the Land Court that there is a serious parking problem on Tufts' core campus and on public streets adjacent thereto. Parking, as it affects physical conditions on and around an educational use, is a legitimate municipal concern and a proper subject of local zoning regulation. *Radcliffe College v. Cambridge, supra,* 350 Mass. at 617 & n. 4, 215 N.E.2d 892. Compliance by Tufts with the parking requirements of the ordinance "would not require a greater number of spaces than could in reason be deemed necessary to take care of the cars brought to the [area] by the use made of it by the college." *Id.* at 619, 215 N.E.2d 892. While Tufts might prefer to defer addressing the parking problem, the ordinance's requirements can be satisfied by the construction of the parking garage, a use of Tufts' land recommended to the college by its consultants and found to be reasonable by the Land Court judge. We therefore agree with the Appeals Court that the requirements concerning parking are reasonable as applied to Tufts' campus, and that Medford can require Tufts to construct the Boston Avenue parking garage (or some equivalent which satisfies the ordinance's requirements) as a condition to building the Wessell addition.

[12] b. *Loading spaces.* The Land Court judge concluded that deliveries to Wessell would not be sufficient in number to justify the two additional loading spaces required by the ordinance. He determined, therefore, that the loading space requirements of the ordinance could not reasonably be applied to the Wessell addition. The Appeals Court revised this portion ***763** of the judgment because of "the ease with which compliance [with the loading space requirements can be] achieved." 33 Mass.App.Ct. at 586, 602 N.E.2d 1105. Tufts contends that the notion of "ease of compliance" is foreign to Dover Amendment jurisprudence. We disagree.

[13] On this aspect of the appeal, the Appeals Court simply expressed, in different terms, the principle that the burden of proving a local zoning requirement unreasonable under the Dover Amendment falls on the educational institution challenging the requirement. When compliance will involve no significant cost or other hardship to an educational institution, and does not interfere to any appreciable extent with the institution's plans, the institution has failed to make out a case that the requirement, as ****441** applied, is unreasonable. [11]

[14] 3. *Parking garage.* The Appeals Court also deleted the portion of the judgment that declared the ordinance's setback requirement inapplicable to construction of the Boston Avenue garage. As noted, the evidence was that the parking garage could be constructed with the fifty-foot setback required by the ordinance, but that compliance with the ordinance would increase the cost of the project. No estimate of the amount of the increase was put in evidence by Tufts. Medford, on the other hand, demonstrated that Boston Avenue, a major public way, has only one traffic lane in each direction and is heavily travelled, particularly at rush hours. The fifty-foot setback will permit vehicles

easier access to the garage reducing congestion and enhancing safety. With no particularized evidence in this case as to the cost and difficulty of compliance that can be measured against Medford's legitimate concerns as to traffic congestion and safety, the Land ***764** Court judge lacked an appropriate basis for the conclusion that Tufts had proved the setback requirement unreasonable as applied to construction of the parking garage. 33 Mass.App.Ct. at 585, 602 N.E.2d 1105. [12]

[15] **[16]** 4. *Future projects.* We also agree with the Appeals Court's decision to modify the judgment by deleting therefrom language declaring that Medford cannot apply ordinance requirements to future construction projects in the core area of Tufts' campus or to future projects similar to Wessell, Olin, or the parking garage. Whether requirements of a local zoning law are reasonable cannot be decided in the abstract. The central question is whether application of the requirements to a specific project in a particular setting furthers legitimate municipal concerns to a sufficient extent to warrant requiring an educational institution, a use granted special protected status by the Dover Amendment, to alter its development plans. As the Appeals Court correctly stated, this "is essentially a fact-based determination, one that cannot properly be made for possible future construction projects not detailed in the evidence." 33 Mass.App.Ct. at 583, 602 N.E.2d 1105.

Tufts argues nonetheless that the Appeals Court's deletion from the judgment of references to future, speculative projects is inconsistent with the scope of ***765** G.L. c. 240, § 14A, [13] the statute that confers ****442** authority on the Land Court to pass on the validity of local zoning requirements. This argument misconstrues the nature of the showing an educational institution must make to prevail when seeking a determination under G.L. c. 240, § 14A, as to the reasonableness of applying a local zoning law to its property.

[17] A local zoning law that improperly restricts an educational use by invalid means, such as by special permit process, may be challenged as invalid in all circumstances. In this case, for example, the Land Court judge properly declared invalid the site plan and special permit requirements of the ordinance as to present *and* future, unspecified projects on the Tufts campus. *The Bible Speaks v. Board of Appeals of Lenox, supra,* 8 Mass.App.Ct. at 32–33, 391 N.E.2d 279. The Appeals Court correctly did not disturb this aspect of the judgment. The other requirements of the ordinance (parking, setback and dimensional regulations) challenged by Tufts do not facially discriminate against educational uses and are presumptively valid under the proviso to the Dover Amendment. The relief sought by Tufts pursuant to G.L. c. 240, § 14A, was a determination that, *as applied,* ***766** the regulations were unreasonable. As has been said, like certain other kinds of challenges to the applicability of a local zoning law, this relief presents a question that can be properly resolved only by reference to specific facts. See *Sinn v. Selectmen of Acton,* 357 Mass. 606, 610, 259 N.E.2d 557 (1970) (validity of exemption of all municipal uses from use regulations "can be determined only by examining its application in particular cases"); *Aronson v. Sharon,* 346 Mass. 598, 603, 195 N.E.2d 341 (1964) (whether by-law is sustainable exercise of municipality's police powers or a deprivation of private property without compensation "often depends upon the facts of the particular case"). See *Southern New England Conference Ass'n of Seventh–Day Adventists v. Burlington,* 21 Mass.App.Ct. 701, 710, 490 N.E.2d 451 (1986). There the Appeals Court declined to rule whether boundary established by wetlands by-law was valid as applied to the church's land, stating: "In the absence of any evidence bearing on the issue of the lawfulness of the application of the by-law to set the wetlands boundary, any attempt at decision on this record would require speculation and would be unfair to one party or the other." The Appeals Court properly concluded that the Land Court's rulings embodied in the judgment as to future, unspecified, projects of Tufts lacked a proper factual foundation, and that such projects were not an appropriate subject for relief pursuant to G.L. c. 240, § 14A.

5. *Disposition.* The judgment is amended, in numbered paragraph 2, by striking the words, "and any other future structures or additions which may be similarly situated," and by striking numbered paragraphs 3, 4, and 5. The judgment is also amended to declare that the parking requirements of the ordinance are not invalid, and that as applied to Wessell these requirements can be met by construction of the requisite number of spaces in the proposed Boston Avenue parking garage or by an equivalent solution which satisfies the requirements. As so amended, the judgment is affirmed. The order defining the phrase "core campus" is vacated.

So ordered.

***767** O'CONNOR, Justice (concurring in part and dissenting in part).

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Statute 1950, c. 325, § 1, entitled "An Act prohibiting discriminatory zoning by-laws and ordinances," amended ****443** G.L. c. 40, § 25, a predecessor of G.L. c. 40A, § 3, by adding the following words: "No by-law or ordinance which prohibits or limits the use of land for any church or other religious purpose or which prohibits or limits the use of land for any religious, sectarian or denominational educational purpose shall be valid." In *Attorney Gen. v. Dover,* 327 Mass. 601, 100 N.E.2d 1 (1951), the court held that a town of Dover zoning by-law prohibiting the erection, alteration, or use of a building in a residential district for a sectarian educational use was invalid under St.1950, c. 325, § 1. That act subsequently became known as the Dover Amendment. *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 27 n. 10, 391 N.E.2d 279 (1979). Statute 1950, c. 325, § 1, was susceptible to an interpretation that would invalidate any zoning ordinance or by-law (regulation) that would have imposed on a sectarian, educational use any requirement concerning bulk and height of structures, yard size, lot area, setback, open space, building coverage or parking area. Indeed, that construction appears to have been urged by the plaintiff, and accepted by the Land Court judge, in *Radcliffe College v. Cambridge,* 350 Mass. 613, 614, 215 N.E.2d 892 (1966) ("The college claims to be exempt from art. VII, § 2 [an ordinance requiring off-street parking], by reason of G.L. c. 40A, § 2, as amended through St.1959, c. 607, § 1, which provides 'that no ordinance or by-law which prohibits or limits the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian, denominational or public shall be valid' ").

By St.1975, c. 808, § 3, the Legislature struck out G.L. c. 40A and inserted a new chapter 40A in its place. The new c. 40A provides in relevant part, "No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious ***768** sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." That provision, were it to be construed without reference to the proviso, would present the same ambiguity that was present in the Dover Amendment, St.1950, c. 325, § 1. Absent the proviso, the language of the statute could fairly be construed to mean that any requirement as to bulk and height of structures, yard size, lot area, setback, open space, building coverage or parking area, imposed on parcels of land devoted to religious or educational uses, is unauthorized. The obvious purpose of the proviso is to make clear that such requirements, if not intentionally or in practical effect discriminatory against the protected uses, and if rationally related to the purposes of zoning regulations enumerated in St.1975, c. 808, § 2A, are authorized, valid, and enforceable without reference to the use to which a particular parcel is put. [1] , [2]

****444** ***769** Nothing in G.L. c. 40A suggests that the Legislature intended to discriminate *in favor* of religious and educational uses. Yet, if the court is right in concluding that, in certain circumstances, a trial judge or appellate court must exempt a parcel, which is devoted to a protected use, from zoning regulations that are binding on parcels devoted to all other uses, such discrimination results. Surely, if parcels not committed to protected uses must comply with zoning regulations concerning off-street parking, setback of buildings, lot area and the like, regardless of the difficulty of compliance, but an educational institution is exempt if it demonstrates that "compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution's campus, without appreciably advancing the municipality's legitimate concerns," or that compliance would result in "excessive cost ... without significant gain in terms of municipal concerns," as the court states, *ante* at 439, discrimination occurs of a type that is the reverse of the discrimination targeted by the Dover Amendment.

General Laws c. 40A, § 3, is clear. No zoning ordinance or by-law may "prohibit, regulate or restrict the use of land or structures for ... educational purposes on land owned or leased by ... a nonprofit educational corporation" like Tufts College, but "such land or structures may be subject to reasonable regulations [that is, reasonable regulations, although not mandated, are authorized, and such land or structures are subject to them] concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." Nothing in chapter 40A authorizes a judge or a court to declare facially reasonable nondiscriminatory regulations inapplicable to a particular parcel, or to exempt a particular parcel from them, whenever the judge or court, acting as a master planner, decides that the "application of the

requirements to a specific project in a particular setting ***770** [would not] further[ ] legitimate municipal concerns to a sufficient extent to warrant" application and enforcement of the regulations. *Ante* at 441.

The challenged requirements of the ordinance in this case are reasonable. They do not discriminate against statutorily protected land uses either by expressed intention or in practical operation. The ordinance is use-neutral. Furthermore, the ordinance is rationally related to legitimate municipal zoning objectives. No one appears to contend otherwise. In my view, contrary to the thrust of the court's opinion, the court would have no right to declare the challenged requirements inapplicable to the Tufts College property. For that reason, and not for the reasons articulated by the court, I am satisfied that the challenged requirements apply in this case. Accordingly, to the extent that the court orders numbered paragraphs 3, 4 and 5 struck from the judgment, thereby achieving that result, I concur with the order. However, because the order striking language from paragraph 2 of the judgment is premised incorrectly, I believe, on the idea that future applicability of the challenged regulations must depend on facts yet to be developed and on a "balancing" of the extent of the imposition on the use represented thereby compared to municipal concerns, I dissent from the court's order insofar as it strikes language from paragraph 2 of the judgment.

APPENDIX.

HOUSE—No. 5009

"1. *Dover Amendment.* It is unfortunate that the present state of the law is such that some communities may have legitimate doubts about the validity of regulations which would impose reasonable controls on institutions presently covered by the Dover amendment. The Department would encourage the use of such control where essential to the well-being of the adjacent neighborhood, and where the regulation will not seriously jeopardize the mission of the protected institutions. ****445** Thus, the Department proposes to clarify the present language so as to achieve the aims of the general court in passing the original amendment while at the same time precluding unwise restrictions on the power of the communities to regulate the land use activities of churches and educational institutions. The proposed ***771** language, for example, would specifically authorize the imposition of reasonable regulations concerning density or intensity of occupancy, bulk and height [of] structures, yards and setbacks, as well as limitations upon the location of accessory uses which traditionally have tended to be detrimental to adjacent property. Ideally, this should be accomplished by adopting regulations specifically designed to apply to uses protected by the Dover Amendment located in otherwise restricted zones, thus avoiding the problem of attempting to apply the *same* bulk regulations to the protected uses as ordinarily apply to other permitted uses in the zone. For example, instead of attempting to apply residential dimensional regulations to churches or schools located in a residential zone (See, *Sisters of the Holy Cross v. Town of Brookline,* 347 Mass. 486 [198 N.E.2d 624] (1964)) the by-law or ordinance should establish dimensional regulations specifically applicable to churches or schools located in such zones."

All Citations

415 Mass. 753, 616 N.E.2d 433, 84 Ed. Law Rep. 430

Footnotes

1 Tufts' campus is partly located in the city of Somerville. Somerville was originally named as a defendant in Tufts' action, but Tufts and Somerville arrived at an agreement with regard to the construction that will occur in Somerville. The remaining matters affect the projects planned for the Medford portion of the campus.

2 The pertinent provisions of G.L. c. 40A, § 3 (1990 ed.), read as follows: "No zoning ordinance or by-law ... shall ... regulate or restrict the use of land or structures for religious purposes or for educational purposes ... by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." The history of the special zoning status

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granted to educational and religious uses of land is recounted in *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 27 n. 10, 391 N.E.2d 279 (1979).

3 Several matters that were the subject of controversy in the Land Court are no longer at issue. The ordinance contains a provision that requires site plan review in conjunction with an application for a special permit for projects having a significant impact on Medford. Relying on *The Bible Speaks v. Board of Appeals of Lenox, supra,* the Land Court judge concluded that the site plan review and special permit requirements of the ordinance could not be applied to Tufts' projects. Medford does not dispute this point.

Prior to trial, Medford granted Tufts a variance from the ordinance's parking and loading space requirements as to the construction of the Olin Language and Culture Center (Olin), a new classroom building. The Land Court decision nonetheless provided that the ordinance's parking and loading space requirements were inapplicable to Olin. Medford does not challenge this ruling.

Tufts also contested the application of dimensional and parking requirements to a proposed addition to its Cousens Gymnasium and Hamilton Pool facility. The judge concluded that the requirements could be applied to this project. Tufts no longer questions this conclusion.

4 A loading space is a striped-in area of pavement, adjacent to a building, reserved for trucks and other vehicles making deliveries to the building. The purpose of loading spaces is to provide off-street access to a delivery site and thus alleviate traffic congestion that may result when vehicles, particularly trucks, block busy streets while trying to make deliveries.

5 The ordinance also provides (§ 6.24[a]) that buildings on the same lot “shall not be less than the same distance from one another as if they were on separate lots.” The Land Court judge found that application of this provision would necessitate drawing imaginary “lot lines” on Tufts' campus for purposes of calculating the required distance between buildings. Medford has conceded that this provision is unreasonable as applied to the construction of Olin, Wessell, and the Boston Avenue parking garage.

6 The legislative history supports the conclusion that G.L. c. 40A, § 3, second par., is intended to incorporate the principles enunciated in *Sisters of the Holy Cross v. Brookline,* 347 Mass. 486, 198 N.E.2d 624 (1964), and in *Radcliffe College v. Cambridge,* 350 Mass. 613, 215 N.E.2d 892 (1966). In the Report of the Department of Community Affairs Relative to Proposed Changes and Additions to the Zoning Enabling Act (Jan.1972) (Report), which preceded enactment of the present Zoning Act, the statutory protection accorded educational uses was considered. See Report, 1972 House Doc. No. 5009. As to the then existing law, it was said (at p. 21) that “the scope of the [educational use protection], as presently worded, would seem to depend on whether or not the application of bulk regulations to the institution within the ambit of its protection has the effect of defacto prohibition on use as opposed to a channeling effect where alternative educational ... uses are available.” With regard to proposed § 3, the Report (at p. 26) “encourag[ed] the use of [reasonable bulk, dimensional and parking] control[s] where essential to the well-being of the adjacent neighborhood, and where the regulation will not seriously jeopardize the mission of the protected institutions.”

In maintaining that facially neutral zoning requirements automatically can be applied to an educational use, the dissent, *post,* fails to take into account this legislative history, and the cases cited above, which St.1975, c. 808, § 3, was intended to codify. See *Newbury Junior College v. Brookline,* 19 Mass.App.Ct. 197, 199 n. 4, 472 N.E.2d 1373 (1985); *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 29, 391 N.E.2d 279 (1979) (St.1975, c. 808, c. 3, synthesizes Dover amendment and case law construing it). The *Radcliffe College* and *Sisters of the Holy Cross* cases plainly provide that facially neutral requirements cannot be applied to educational uses without further inquiry into the outcome produced by such an application. Particularly where the requirements sought to be applied do not take into account the special characteristics of an educational use (such as on-campus living and dining arrangements and the need for large classroom and library buildings), as is the case here, application of the requirements to the property of an educational institution may be inappropriately restrictive. If the approach suggested by the dissent is followed, a set of

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facially neutral zoning requirements could be adopted that would, in practice, prevent almost any educational use of land.

7 For example, a showing that the parking requirements of the ordinance, as applied, would necessitate that Tufts pave over significant open areas of the campus, would demonstrate the unreasonableness of the ordinance in view of the fact that construction of the proposed garage will provide an adequate solution to the parking problem.

8 For example, the fact that the Medford ordinance might alleviate the parking problem on and around the Tufts campus by means of a regulation based on the size of the student population does not prove that requiring additional parking in association with new construction is an unreasonable means of addressing an existing parking deficiency.

9 However, if a variance is granted at the request of an educational institution, and not challenged by an aggrieved party within the time period permitted by statute, the variance cannot thereafter be attacked as improper. See *O'Blenes v. Zoning Bd. of Appeals of Lynn,* 397 Mass. 555, 492 N.E.2d 354 (1986); *Bjornlund v. Zoning Bd. of Appeals of Marshfield,* 353 Mass. 757, 231 N.E.2d 365 (1967).

10 Tufts suggests that another provision of the ordinance, (§ 7.51) which limits structures that may be built in a rear yard, prohibits more than one major structure on a single lot, and therefore forecloses application of the ordinance's definition of “lot” to areas of Tufts' campus already containing numerous major structures. As a matter of construction, we are not persuaded by Tufts' position. The provision in question must be read in conjunction with § 6.24(a), see note 5 *supra,* which *permits* multiple structures on a single lot. We think that § 7.51 only limits structures that can be built within the rear yard setback requirement imposed by the ordinance. More to the point, the record contains no evidence that Medford has invoked § 7.51 as a basis for blocking construction of the addition to Wessell or the parking garage. Thus, we do not have occasion to construe this provision, or to consider its reasonableness, as applied to Tufts' projects. See *Doliner v. Town Clerk of Millis, supra,* 343 Mass. at 10, 14–15, 175 N.E.2d 925.

11 *Tisbury v. Martha's Vineyard Comm'n,* 27 Mass.App.Ct. 1204, 544 N.E.2d 230 (1989), relied on by Tufts, is not to the contrary. In *Tisbury,* the evidence established that requiring compliance with by-law provisions governing the size of oil tanks would, in practice, prohibit the landowners from using their property for agricultural purposes (also protected by G.L. c. 40A, § 3). In other words, application of the by-law provisions would nullify a protected use. This is clearly distinguishable from a situation in which compliance does not encroach to any appreciable extent on an educational institution's right to set its own priorities for the use of its land.

12 The Appeals Court went on to observe that, although Tufts had not proved the ordinance unreasonable for purposes of the Dover Amendment, it might nonetheless be entitled under G.L. c. 40A, § 10, to a variance from the setback requirement because of the topography of the Boston Avenue site. It is obvious that the Appeals Court's conclusion that the setback requirement was reasonable did not rest on the possible availability of a variance for the structure. The Appeals Court properly observed that, even though Tufts had failed to prove the setback ordinance unreasonable as applied to the parking garage (for the reasons explained above), the particular characteristics of the lot might nonetheless entitle Tufts to obtain a variance. See *Josephs v. Board of Appeals of Brookline,* 362 Mass. 290, 285 N.E.2d 436 (1972) (variance granted due in part to sloping lot and increased cost of compliance); *Broderick v. Board of Appeal of Boston,* 361 Mass. 472, 280 N.E.2d 670 (1972) (same). Tufts thus has an independent means of seeking relief from application of the setback provision if it chooses to pursue the point.

13 In full, G.L. c. 240, § 14A, as amended by St.1975, c. 808, § 5, provides: “The owner of a freehold estate in possession in land may bring a petition in the land court against a city or town wherein such land is situated, which shall not be open to objection on the ground that a mere judgment, order or decree is sought, for determination as to the validity of a municipal ordinance, by-law or regulation, passed or adopted under the provisions of chapter [40A] or under any special law relating to zoning, so called, which purports to restrict

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or limit the present or future use, enjoyment, improvement or development of such land, or any part thereof, or of present or future structures thereon, including alterations or repairs, for determination of the extent to which any such municipal ordinance, by-law or regulation affects a proposed use, enjoyment, improvement or development of such land by the erection, alteration or repair of structures thereon or otherwise as set forth in such petition. The right to file and prosecute such a petition shall not be affected by the fact that no permit or license to erect structures or to alter, improve or repair existing structures on such land has been applied for, nor by the fact that no architects' plans or drawings for such erection, alteration, improvement or repair have been prepared. The court may make binding determinations of right interpreting such ordinances, by-laws or regulations whether any consequential judgment or relief is or could be claimed or not."

1 The court incorrectly states, *ante* at —— n. 6, that "[i]f the approach suggested by the dissent is followed, a set of facially neutral zoning requirements could be adopted that would, in practice, prevent almost any educational use of land." To the contrary, if the approach suggested by the dissent were to be followed, zoning regulations, such as those at issue in *Sisters of the Holy Cross of Massachusetts v. Brookline,* 347 Mass. 486, 198 N.E.2d 624 (1964), that would "in practice, prevent almost any educational use of land" would, for that very reason, be discriminatory against a protected use, and would therefore be unauthorized (invalid).

2 The court also states, *ante* at 438 n. 6, that "[i]n maintaining that facially neutral zoning requirements automatically can be applied to an educational use, the dissent fails to take into account" Report, 1972 House Doc. No. 5009. It is true that I do not consider that piece of legislative history significant. "Only if the statute is ambiguous, or couched in terms that suggests that [the court] do so, [does the court] look beyond the express statutory language." *Pobieglo v. Monsanto Co.,* 402 Mass. 112, 116, 521 N.E.2d 728 (1988). Neither condition for looking beyond the express statutory language is present here. However, even if one were to consider Report, 1972 House Doc. No. 5009, it would not suggest that the Legislature intended by St.1975, c. 808, § 3, to discriminate *in favor* of protected uses with respect to parking and setback and similar restrictions. The relevant recommendation contained in the Report at page 26 may be found in the appendix to this opinion.

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Vignaly v. Zoning Board of Appeals of the Town of West Boylston, Mass.Super., October 11, 2005

421 Mass. 106
Supreme Judicial Court of Massachusetts, Middlesex.

Gary WATROS & another [1]
v.
GREATER LYNN MENTAL HEALTH AND RETARDATION ASSOCIATION, INC., & others. [2]

Argued April 4, 1995.
|
Decided Aug. 10, 1995.

Synopsis
Landowners challenged decision by Board of Appeals of Winchester granting special permit to mental health association to renovate and use barn on abutting property to provide shelter and education to mentally handicapped adults. The Middlesex Superior Court, Katherine Liacos Izzo, J., granted landowners' motion for summary judgment. Association appealed. The Appeals Court, Laurence, J., 37 Mass.App.Ct. 657, 642 N.E.2d 599, reversed. The Supreme Judicial Court allowed landowners' application for further review and, per O'Connor, J., held that: (1) landowners were aggrieved persons with standing to challenge permit, but (2) local zoning laws could not be used to prevent association from using property for residence.

So ordered.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (7)

[1] **Judgment** Motion or Other Application

Defendant's presentation of and court's failure to exclude evidence outside pleadings did not require that motion to dismiss for lack of subject matter jurisdiction be treated as motion for summary judgment. Rules Civ.Proc., Rule 12(b), 43A M.G.L.A.

31 Cases that cite this headnote

[2] **Zoning and Planning** Permits, certificates, and approvals

Abutters to land, the lessee of which was granted special permit to renovate and use barn to provide shelter and education for mentally handicapped adults, were "aggrieved persons" within meaning of statute granting standing to challenge permit, absent evidence controverting presumption of aggrievement. M.G.L.A. c. 40A, §§ 11, 15, 17.

103 Cases that cite this headnote

[3] **Zoning and Planning** Permits, certificates, and approvals

Presumption that abutters to land are aggrieved persons with standing to challenge special permit recedes when defendant challenges plaintiff's status as aggrieved party and offers evidence supporting his or her challenge. M.G.L.A. c. 40A, §§ 11, 17.

162 Cases that cite this headnote

[4] **Zoning and Planning** Matters or evidence considered

On appeal of special permit, findings of board resulting in decision that plaintiffs are challenging cannot be given evidentiary weight.

8 Cases that cite this headnote

[5] **Statutes** Relation to plain, literal, or clear meaning; ambiguity

Strictly literal reading of statute should not be adopted if result will be to thwart or hamper accomplishment of statute's obvious purpose, and if another construction which would avoid this undesirable result is possible.

14 Cases that cite this headnote

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[6] **Zoning and Planning** Continuance or change of use in general

Zoning and Planning Enlargement or Extension of Use

Concluding portion of statute providing that, "Pre-existing, nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . . that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood" must be read as "shall not be substantially more detrimental than the existing, nonconforming structure or use to the neighborhood," in order to render statute intelligible and to effectuate its obvious purpose.

M.G.L.A. c. 40A, § 6.

3 Cases that cite this headnote

[7] **Zoning and Planning** Schools and education

Proposed use of barn by mental health association as residence for three mentally handicapped adults was protected use for educational purposes within meaning of statute prohibiting local officials from using local zoning laws to prevent educational organizations from using land for educational purposes.

M.G.L.A. c. 40A, § 3.

8 Cases that cite this headnote

Attorneys and Law Firms

****590** ***106** Frank J. Frisoli, Jr., Cambridge (Katharine M. Berlin, with him), for plaintiffs.

***107** Samuel A. Vitali, Lynn, for Greater Lynn Mental Health and Retardation Ass'n, Inc.

Scott Harshbarger, Atty. Gen., & Donna L. Palermino & Stanley J. Eichner, Asst. Attys. Gen., for Com., amicus curiae, submitted a brief.

Before WILKINS, ABRAMS, O'CONNOR and GREANEY, JJ.

Opinion

O'CONNOR, Justice.

The plaintiffs, Gary and Roberta Watros, filed a complaint in the Superior Court seeking review of a decision by the board of appeals of Winchester (board) granting a special permit to the defendant, Greater Lynn Mental Health and Retardation Association, Inc. (GLMHRA), to renovate and to use a barn located on land owned by the defendants Emanuel and Barbara Miliaras in order to provide shelter and education for up to three mentally handicapped adults. The plaintiffs own, and reside on, property abutting that of the Miliarases. The defendant board and the plaintiffs filed motions for summary judgment and the defendant GLMHRA filed a motion, pursuant to Mass.R.Civ.P. 12(b)(1), 365 Mass. 754 (1974), to dismiss the plaintiffs' complaint for lack of subject matter jurisdiction. A judge denied GLMHRA's motion to dismiss and the board's motion for summary judgment and, in response to the plaintiffs' motion for summary judgment, ordered judgment "annul[ling] ****591** the board's decision and revok[ing] the special permit."

GLMHRA appealed. The Appeals Court reversed the judgment without reaching the underlying merits of the case. Instead, the court concluded that the plaintiffs lacked standing to obtain judicial review of the zoning decision. *Watros v. Greater Lynn Mental Health & Retardation Assoc., Inc.,* 37 Mass.App.Ct. 657, 666–667, 642 N.E.2d 599 (1994). A court has jurisdiction to consider a zoning appeal only if it has been brought by a person with "standing," that is, by a person who has been "aggrieved" by a board's decision. G.L. c. 40A, § 17. *Green v. Board of Appeals of Provincetown,* 404 Mass. 571, 574, 536 N.E.2d 584 (1989). *Barvenik v. Aldermen of Newton,* 33 Mass.App.Ct. 129, 131, 597 N.E.2d 48 (1992). The Appeals Court reasoned that GLMHRA's motion to dismiss was an "erroneously labelled" motion for summary judgment because GLMHRA "presented ***108** matters outside the pleadings" which were "not excluded by the court" and which the judge considered in connection with her ruling on the several motions before her including the motion to dismiss. *Watros, supra* at 662, 642 N.E.2d 599. Treating the motion to dismiss as a motion for summary judgment, the Appeals Court reasoned that the plaintiffs' "presumptive standing as abutters receded and their burden of going

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forward on standing sprang up when their unsworn complaint assertions as to aggrievement were directly challenged by the denials and affirmative defenses in the defendants' answers." *Id.* at 666, 642 N.E.2d 599. The court concluded that the plaintiffs failed to carry that burden, *id.,* and accordingly ordered that "the judgments denying GLMHRA's motion to dismiss and granting summary judgment in favor of the Watroses [plaintiffs] are reversed; and a new judgment is to be entered dismissing the Watroses' complaint." *Id.* at 667, 642 N.E.2d 599. We allowed the plaintiffs' application for further appellate review. We shall conclude that the plaintiffs had standing to seek judicial review of the board's decision, but that the board did not exceed its authority. The board's decision to grant GLMHRA a special permit is affirmed.

[1] Before reaching the principal issue on appeal, we pause to discuss a matter which, although not critical to the disposition of this case, seems to us to require discussion. In our view, GLMHRA's motion to dismiss was not "erroneously labelled" as the Appeals Court's opinion states, and the judge's consideration of materials outside the pleadings did not require that the motion be treated as a motion for summary judgment. Rule 12(b) of the Massachusetts Rules of Civil Procedure, 365 Mass. 754 (1974), provides in relevant part that "[e]very defense, in law or fact, to a claim for relief in any pleading ... shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter; ... (6) Failure to state a claim upon which relief can be granted.... If, on any motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a ***109** claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 [Mass.R.Civ.P. 56, 365 Mass. 824 (1974)], and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Under rule 12(b), only a motion under subsection (b)(6) shall be treated as one for summary judgment as a result of the presentation of matters being presented by a party and not excluded by the court. The motion to dismiss in this case was made pursuant to rule 12(b)(1), not 12(b)(6), and therefore the presentation of, and failure to exclude, those materials did not require that the motion be treated as a rule 56 summary judgment motion.

We turn to the question whether the plaintiffs were "aggrieved persons" within the meaning of G.L. c. 40A, § 17, so that the Superior Court had subject matter jurisdiction. The judge, unlike the Appeals Court, determined that the plaintiffs were aggrieved persons and that, therefore, they had standing to challenge the board's decision. We agree. The following facts appear to be uncontroverted. Emanuel and Barbara Miliaras own property in Winchester at 12–14 ****592** Mount Pleasant Street in a single residence zoning district. GLMHRA is a private, nonprofit educational foundation, organized under G.L. c. 180, to engage in, among other things, educational activities. GLMHRA applied for a building permit and zoning compliance certificate to renovate a barn owned by the Miliarases. The barn, an existing nonconforming accessory building, was to be used to provide shelter and education for three mentally handicapped individuals and their caretakers. A five-year lease between the Miliarases and GLMHRA, effective as of July 1, 1991, was signed by the parties on January 2, 1992.

The barn is situated at the rear of the Miliarases' 18,503 square foot lot which also contains a twenty-room two-family residential dwelling situated at the front. The house contains two distinct dwelling units, one of which is occupied by the Miliarases, the other of which is rented to tenants. At the ***110** time of GLMHRA's application for the permit, the barn was in disrepair and, since 1962, had been used exclusively for storage.

On August 26, 1991, Winchester's building commissioner refused to issue GLMHRA the requested building permit and zoning compliance certificate on the ground that to do so would violate the zoning by-laws. GLMHRA appealed to the Winchester board of appeals under § 8.8 of the zoning by-law. At the same time, GLMHRA filed an application for a special permit for the proposed use.

The plaintiffs own and reside at 10 Mount Pleasant Street on property which abuts the Miliarases' property. As abutters and, therefore, parties in interest, the Watroses received notice of GLMHRA's request for a special permit pursuant to G.L. c. 40A, §§ 11 and 15.

On January 2, 1992, the board granted a special permit to GLMHRA to utilize the barn as a home for mentally handicapped persons. The board found that "the change, extension or alteration to the nonconforming structure is equally or more appropriate to the neighborhood than the existing structure, that the special permit would comply with all other provisions of this By-law and would not adversely affect the public health, safety, welfare, comfort

or convenience of the community; and that satisfactory arrangements [had] been made for ingress and egress from the property and proposed structures, off-street parking areas, refuse collection or disposal and service areas, screening and buffering, signs, required yards and other open space, and general compatibility with adjacent properties and other property in the district."

[2] General Laws c. 40A, § 15, provides that the board of appeals must hold a hearing on any appeal and must "cause notice of such hearing to be published and sent to parties in interest as provided in section eleven." Section 15 also provides that "notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven," and to others. General Laws c. 40A, § 11, states: " 'Parties in interest' as used in ***111** this chapter shall mean the petitioner, abutters" and others. Thus, by statute, the plaintiffs, who were abutters to the land in question, were entitled to notice of the hearing before the board and notice of its decision. There is a presumption, therefore, that the plaintiffs were aggrieved parties within the meaning of G.L. c. 40A, § 17, and therefore had standing to bring this action. See *Marotta v. Board of Appeals of Revere,* 336 Mass. 199, 204, 143 N.E.2d 270 (1958); *Barvenik v. Aldermen of Newton,* 33 Mass.App.Ct. 129, 131, 597 N.E.2d 48 (1992); *Gordon v. Zoning Board of Appeals of Lee,* 22 Mass.App.Ct. 343, 347, 494 N.E.2d 14 (1986).

[3] **[4]** The aforementioned presumption is rebuttable, however. The presumption recedes when a defendant challenges the plaintiff's status as an aggrieved person *and offers evidence supporting his or her challenge.* See *Barvenik, supra* at 131 & n. 7, 597 N.E.2d 48 (the presumption of aggrievement is destroyed upon the defendant's offer of evidence warranting a finding contrary to the presumed fact). See also *Marotta, supra* at 204, 143 N.E.2d 270. In this case, no evidence was presented at the hearing that controverted the plaintiffs' presumption of standing. The findings of the board, resulting in the decision that the plaintiffs are challenging, cannot be given evidentiary ****593** weight. *Josephs v. Board of Appeals of Brookline,* 362 Mass. 290, 295, 285 N.E.2d 436 (1972). *Marotta, supra* at 201, 143 N.E.2d 270. Therefore, the plaintiffs were entitled to rely entirely on their presumed status of being aggrieved parties. See *Rafferty v. Sancta Maria Hosp.,* 5 Mass.App.Ct. 624, 629, 367 N.E.2d 856 (1977).

Our determination that the plaintiffs are aggrieved persons and that, therefore, the Superior Court had jurisdiction to review the board's decision to grant GLMHRA a special permit, brings us to the second issue presented by this appeal, which is whether the board's decision exceeded its authority and for that reason was invalid. We hold that the decision was within the board's authority and was valid. We reverse the judgment entered in the Superior Court.

General Laws c. 40A, § 3, second par., inserted by St.1975, c. 808, § 3 (commonly referred to as the Dover Amendment), provides, in part, as follows:

> ***112** "No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

We agree with the Superior Court judge's statements in her memorandum of decision that "[t]here is no doubt that GLMH[RA] is a 'non-profit educational corporation' " and that "[t]he defendants have accurately referenced case law to support their contention that GLMH[RA]'s proposed use of the barn is considered educational for purposes of the statute. See *Campbell v. City Council of Lynn,* 32 Mass.App.Ct. 152, 154–155, 586 N.E.2d 1009 (1992)." Nevertheless, the judge concluded that GLMHRA was not entitled to the protection of G.L. c. 40A, § 3, because it had leased only a single, accessory structure on the Miliarases' property rather than the entire lot. The judge reasoned as follows:

> "The two-family dwelling unit is a pre-existing nonconforming use. The barn is a pre-existing nonconforming accessory structure which has been used for the past thirty years for storage. The proposed use by GLMH[RA] would convert a storage building to another dwelling unit. This conversion would greatly intensify the nonconforming use which presently exists on the locus and

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> essentially allow *three* residential dwellings on a piece of property which is zoned for only one residence. Section 3 of chapter 40A, was never intended to provide for such a result.... By GLMH[RA]'s leasing of just the Miliaras barn, and not the whole lot upon which it is situated, GLMH[RA] subjects itself to ***113** the Town's zoning by-laws which regulate such nonconforming structures."

The judge reiterated the thrust of her holding in a footnote, stating that "if GLMH[RA] was leasing the entire parcel of land owned by Miliaras and proposed to use the two-family residential dwelling for the aforementioned educational purposes, it is quite clear that the Town, under the provisions of Chapter 40A, Section 3, would be precluded from prohibiting such use."

[5] No authority supporting the judge's conclusion has been brought to our attention. The plaintiffs argue, however, that that conclusion finds support in a literal reading of G.L. c. 40A, § 3. We do not agree that, read literally, the statute says that, for the educational use of a structure leased to a nonprofit educational corporation to be protected, the entire lot must be owned by or leased to that corporation. In any event, it is a well-established canon of statutory construction that a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible. *Industrial Tech. Sch., Inc. v. Commissioner of Educ.,* 330 Mass. 622, 627, 116 N.E.2d 260 (1953). *Commissioner of Corps. & Taxation v. Boston Ins. Co.,* 328 Mass. 641, 646, 105 N.E.2d 382 (1952). ****594** *Frye v. School Comm. of Leicester,* 300 Mass. 537, 538, 16 N.E.2d 41 (1938). General Laws c. 40A, § 3, speaks not once, but twice, of "land or structures" as the focus of the exemption. Thus, "[n]o zoning ... by-law shall ... regulate or restrict *the use of land or structures* for ... educational purposes ...; provided, however, that such *land or structures* may be subject to reasonable regulation...." (Emphasis added.) G.L. c. 40A, § 3. No distinction is made by the statute regarding its applicability to "principal" or "accessory" buildings, and it is clear that the over-all intent of the Legislature was to prevent local interference with the use of real property for educational purposes. If we were to construe G.L. c. 40A, § 3, as the plaintiffs argue we should, a ***114** nonprofit educational corporation could be prevented by zoning restrictions from leasing a suite of rooms for an educational purpose within a larger building. Only those nonprofit educational corporations with sufficient financial resources to lease or purchase an entire property would enjoy the protection of G.L. c. 40A, § 3. Such a constrictive result is neither required by the language of the statute nor consistent with its purpose.

[6] The plaintiffs contend that G.L. c. 40A, § 6, which regulates the extension or alteration of preexisting nonconforming structures or uses, supports the proposition that c. 40A, § 3, requires ownership of, or a leasehold interest in, an entire lot. Section 6 provides:

> "Pre-existing, nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or bylaw that such change, extension or alteration shall not be substantially more detrimental than the existing, nonconforming use to the neighborhood."[3]

The plaintiffs argue substantially as follows: If the special permit is granted, thereby allowing GLMHRA to lease only a portion of the Miliarases' property, the premises will include the presently existing two-family house located at the front of the property plus a third residential unit (the barn). This would (the plaintiffs say) substantially increase the lot's nonconformity, to the plaintiffs' detriment, and it would violate ***115** G.L. c. 40A, § 6.[4] According to the plaintiffs, to hold that G.L. c. 40A, § 3, nevertheless entitles GLMHRA to the special permit would mean that § 3 supersedes § 6, which is untenable.

The plaintiffs argue that §§ 3 and 6 can only be construed harmoniously if § 3 is construed as requiring GLMHRA to lease the entire property for its educational purpose if it is to get the benefit of § 3. If GLMHRA were to do so, the plaintiffs say, the present nonconforming use (two residential units) would be replaced by another use (educational) of no greater intensity and § 6 would simply be inapplicable.

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[7] We are not persuaded. Permitting GLMHRA to use the barn for an educational purpose neither permits nor expands a nonconforming use. GLMHRA's proposed use of the barn as a residence for three mentally handicapped adults is a protected use for an educational purpose within the meaning of G.L. c. 40A, § 3. The proposed use does not violate any restriction of the local zoning laws, because, by virtue of § 3, local officials cannot apply a local zoning law to deny GLMHRA the right to use the property for its educational purpose. See *Campbell v. City Council of Lynn,* 415 Mass. 772, 777 n. 6, 616 N.E.2d 445 (1993). A nonconforming use, on the other hand, is a use which is excused from complying with a local zoning ****595** law because it was in existence prior to the enactment of the law. *Id.* Thus, it rightly cannot be said that GLMHRA's proposed educational use is a nonconforming use. Hence, contrary to the plaintiffs' contention, GLMHRA's proposed use of the barn for educational purposes would not increase a nonconforming use of the premises.

We conclude that the Superior Court judge was correct in holding that the plaintiffs had standing to bring this action and, accordingly, that the Superior Court had jurisdiction. However, we do not agree with the judge that GLMHRA was not entitled to the protection of G.L. c. 40A, § 3. The board's decision to grant GLMHRA the special permit was ***116** not in excess of the board's authority. Therefore, it was valid. The judgment of the Superior Court is reversed and the decision of the Winchester board of appeals is affirmed.

So ordered.

All Citations

421 Mass. 106, 653 N.E.2d 589

Footnotes

1 Roberta Watros. A suggestion of death was filed on January 30, 1995, as to Roberta Watros. We shall continue to use the term “plaintiffs.”

2 The board of appeals of Winchester and Emanuel S. Miliaras and Barbara A. Miliaras.

3 The concluding portion of the quoted provision must be read as follows: “shall not be substantially more detrimental than the existing, nonconforming *structure or* use to the neighborhood” (emphasis added). *Willard v. Board of Appeals of Orleans,* 25 Mass.App.Ct. 15, 21, 514 N.E.2d 369 (1987). This statute presents “one of those rare instances in which a court must overcome its reluctance to supply a word or words which were not employed by the Legislature (see, e.g., *Murray v. Board of Appeals of Barnstable,* 22 Mass.App.Ct. 473, 479, 494 N.E.2d 1364 [1986]) in order to render a statute intelligible and so effectuate its obvious intent.” *Id.*

4 The plaintiffs do not argue that the proposed educational use of the barn would result in a violation of Winchester's lot area requirements.

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75 Mass.App.Ct. 1103
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

Appeals Court of Massachusetts.

BAY FARM MONTESSORI ACADEMY, INC.
v.
TOWN OF DUXBURY & others. [1]

No. 08–P–1134.
|
September 16, 2009.

By the Court (COHEN, KATZMANN & GRAINGER, JJ.).

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

***1** Bay Farm Montessori Academy, Inc. (Bay Farm), is a nonprofit educational institution. As such, it falls under the protection of G.L. c. 40A, § 3, inserted by St.1975, c. 808, § 3 (Dover Amendment), which provides:

> "No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for ... educational purposes on land owned or leased by ... a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

Bay Farm sought to construct a new athletic/multipurpose building and a new academic building on its existing campus in Duxbury. [2] It applied to the planning board (board) for the town of Duxbury (town) for site plan approval, even though, per the Dover Amendment, it did not believe it was required to do so. After several public meetings, the board denied Bay Farm's application based on Duxbury's site plan review by-law (by-law). The denial of site plan approval precluded Bay Farm from beginning its construction. Pursuant to G.L. c. 40A, § 17, Bay Farm filed a three-count complaint in the Land Court, appealing from the board's denial of its application. In two separate decisions, the judge granted summary judgment to Bay Farm on count I and count III of the complaint. The town, the board, and the interveners (collectively, defendants) appeal.

Discussion. The defendants challenge the judge's determination that the by-law was facially invalid when applied to an exempt use under the Dover Amendment. They argue, collectively, that: (1) the by-law was a valid exercise of municipal power, (2) the judge should have done a fact-specific analysis on the reasonableness of the by-law's regulations in light of the Dover Amendment, and (3) Bay Farm's complaint should have been dismissed for failure to exhaust administrative remedies.

A. *Duxbury site plan review by-law.* Section 615 of Duxbury's site plan review by-law applies to educational institutions, like Bay Farm, and requires them to obtain site plan approval under certain circumstances listed in the by-law. In making its decision here, the board applied the by-law to the activities and uses covered under the Dover Amendment. As the judge determined, this was improper under *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 391 N.E.2d 279 (1979). There, we quashed a by-law that required site plan review for educational uses. *The Bible Speaks, supra* at 34, 391 N.E.2d 279 (declaring that "those portions ... of the Lenox zoning by-law which impose the requirements of a site plan, informational statement, and special permit before religious and educational institutions can expand their uses are invalid"). The rationale for that holding, applicable here, was two-fold. First, "there [was] nothing in the language of G.L. c. 40A, § 3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses." *Id.* at 32, 391 N.E.2d 279. Second, these site plan requirements "invest the board with a considerable measure of discretionary authority over an educational institution's use of its facilities and create a scheme of land use regulations for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by G.L. c. 40A, § 3." *Id.* at 33,

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391 N.E.2d 279. See *Trustees of Tufts College v. Medford,* 415 Mass. 753, 765, 616 N.E.2d 433 (1993) (citing *The Bible Speaks, supra,* in holding that the Land Court judge properly declared invalid the site plan and special permit requirements of the ordinance as applied to any future, unspecified projects on Tufts campus). See also *Trustees of Boston College v. Aldermen of Newton,* 58 Mass.App.Ct. 794, 802, 793 N.E.2d 387 (2003).

***2** While the defendants are correct that neither of these two cases quashed a site plan review provision that did not exist in connection with a special permit requirement, the judge here properly noted that the defendants failed to point to any precedent that suggests that a site plan provision on its own might be valid. In any event, we need not address the question whether under the Dover Amendment, a site plan provision might pass muster in the context of a different by-law scheme that is consistent with reasonable regulation relating to an educational use, i.e., one that is limited to "the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." G.L. c. 40A, § 3.[3] As this case has been presented to us, it has not been shown that the judge erred in granting summary judgment to Bay Farm, or in observing that "[t]he legitimate municipal concerns manifested in local zoning by-laws are properly served by the involvement of the zoning enforcement officer, rather than the exercise of discretion by an elected or appointed board."

B. *Exhaustion of administrative remedies.* The defendants' last argument is that, pursuant to G.L. c. 40A, § 7, before bringing a case in the Land Court, Bay Farm should have filed for a permit with the town's building inspector and then filed an appeal to the zoning board of appeals if the building inspector failed to grant them a permit. We disagree. The Land Court judge had jurisdiction under G.L. c. 40A, § 17, to annul the board's decision and it was proper for Bay Farm to directly appeal the decision to that court. See *Quincy v. Planning Bd. of Tewksbury,* 39 Mass.App.Ct. 17, 20, 652 N.E.2d 901 (1995) (Land Court had jurisdiction over property owner's appeal from town planning board's denial of request for site plan approval of a proposed shopping center expansion despite the fact that owner did not appeal decision to town's board of appeals).

Judgment affirmed.

All Citations

75 Mass.App.Ct. 1103, 912 N.E.2d 1040 (Table), 2009 WL 2948591

Footnotes

1 Planning Board of Duxbury, David Tearse, Selden Tearse, Mark Dunn, Kathy Dunn, Warren Richards, Christine Richards, Jay Cook, Kim Cook, Theresa Courtiss, and Kristen Boonisar, interveners. The interveners all are immediate abutters to Bay Farm.

2 Bay Farm lacked indoor space for athletic and theater arts programming, all-school assemblies, school social events, and graduation ceremonies. Also, Bay Farm decided to construct a new academic building because its current building was 150 years old, was difficult to maintain, and was no longer adequate to satisfy its needs for academic space. The expansion plan included a new parking and traffic circulation plan.

3 We need not address Bay Farm's alternative argument that the by-law is invalid because it imposes unreasonable discretionary regulation. See *Trustees of Tufts College v. Medford, supra* at 759–760, 616 N.E.2d 433. See also *Rogers v. Norfolk,* 432 Mass. 374, 378, 734 N.E.2d 1143 (2000). In their briefing here, the defendants have not addressed or countered this argument with any specificity.

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64 Mass.App.Ct. 1107
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Paul CALHOUN & others [1]
v.
ZONING BOARD OF APPEALS
WELLESLEY & another. [2]

No. 04-P-292.
|
Aug. 31, 2005.

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

***1** Plaintiffs, a group of neighbors (Neighbors) residing in the town of Wellesley, appeal the grant of summary judgment by the Land Court in favor of the Wellesley zoning board of appeals (ZBA). In the Land Court, pursuant to G.L. c. 40A, § 17, the Neighbors had appealed from the ZBA's decision to uphold issuance of a building permit to construct a child care center in a residentially zoned area. The Neighbors' primary contention was that the ZBA should have required site plan review of the proposed construction before approving issuance of the permit. On cross motions for summary judgment, a Land Court judge denied the Neighbors' motion and granted the ZBA's motion, upholding its decision and concurring with its reasoning. We affirm.

Background. The Neighbors object to Jyotsna Sawhney'S proposal to construct a child care center on two parcels of land located at 26 and 28 Abbott Road in Wellesley, in an area zoned as a single residence district. (RA.89) The building permit upheld by the ZBA called for the demolition of the house at 26 Abbott Road, and the combined use of both lots for the proposed facility by expanding the house located at 28 Abbott Road. The Neighbors' appeal to the Land Court was based on this decision.

Town of Wellesley zoning bylaws (bylaws) § II sets forth the conditions required for projects in a single residence district, and, § II.A.3A, more specifically, sets forth the conditions a proposal must meet in order to site a child care facility in a single residence district. (RA.36). This subsection does not require proposals to complete the more rigorous and wide-ranging site plan approval process.

The Neighbors do not argue that Sawhney's revised proposal failed to meet the requirements of subsection 3A. Their complaint is that Sawhney's proposal did not go through the site plan approval process. They contend that the provisions of § XVIA of the bylaws ("Site Plan Approval"), apply generally for all projects governed by § II. (RA.102-04) They cite § II.B, which states simply that: "The provisions of SECTION XVIA. SITE PLAN APPROVAL. shall apply." (RA.42).

The conclusion reached by the ZBA and accepted by the Land Court judge in his order granting summary judgment is meritorious. First, the ZBA found that site plan approval is not set forth in § II as a condition with which a child care facility in a single residence district must comply, that under § XVIA site plan approval constitutes the granting of a special permit, and that G.L. c. 40A, § 3 (the "Dover Amendment," discussed below), prohibits the requirement of a special permit for a child care facility, and hence site plan approval could not be required for the proposed child care facility. In upholding the ZBA and the court, we give deference to the ZBA's reasonable construction of the bylaws it was charged with implementing. See *APT Asset Mgmt., Inc. v. Board of Appeals of Melrose,* 50 Mass.App.Ct. 133, 138 (2000).

Second, the third paragraph of the Dover Amendment, inserted by St.1990, c. 521, § 2, provides in relevant part: "No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility." Thus, the prohibition against special permits is plain on the face of the statute. See *Trustees of Tufts College v. Medford,* 415 Mass. 753, 765 (1993) ("A local zoning law that improperly restricts [a protected] use by invalid means, such as by special permit process, may be challenged as invalid in all circumstances"); *Rogers v. Norfolk,* 432 Mass. 374 (2000). (RA.105) Section XXV.B.3 of the bylaws states in relevant part: "The approval of plans by the Special Permit Granting Authority in accordance with SECTION XVIA. SITE PLAN APPROVAL. shall constitute the granting of a special permit." (SA.12) Given this straightforward statement in the bylaws and the prohibition in the Dover Amendment, the judge properly determined that a site plan approval requirement is prohibited.

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***2** The Neighbors counter that, notwithstanding explicit language within bylaws § XVIA stating that site plan approval constitutes a special permit, a process that reasonably regulates a protected use and that does not operate to prohibit such a use, is permissible under the Dover Amendment even if it calls itself a special permit. (PB.11) However, as the judge noted, the site plan approval process in Wellesley goes well beyond the reasonable regulation permitted under the Amendment. (RA.105-108).

First, bylaws § XVIA.C allows a permitting authority the discretion to outright deny the proposed use. Such plenary power to reject a use protected by the Dover Amendment is ultra vires. *The Bible Speaks v. Board of Appeals of Lenox,* 8 Mass.App.Ct. 19, 32-33 (1979). See also *Osberg v. Planning Bd. of Sturbridge,* 44 Mass.App.Ct. 56, 57 (1997) (noting that generally, site plan review is characterized by regulation of permitted uses, and special permits and variances are characterized by prohibition of uses). [3]

Second, the judge stated that "[t]he wide-ranging review established by the bylaw for site plan and design review in Wellesley is inconsistent with the strict, narrow limits the Legislature has imposed on municipal zoning regulation of child care facilities." (RA.108) They go well beyond the regulation permitted under paragraph 3 of the Dover Amendment, which, by its terms, only allows "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." [4]

Conclusion. The Land Court judge's conclusion that Wellesley's site plan approval may not be applied to a child care facility proposal protected by the Dover Amendment is affirmed.
Judgment affirmed.

All Citations

64 Mass.App.Ct. 1107, 833 N.E.2d 693 (Table), 2005 WL 2096651

Footnotes

1 Barbara Calhoun, Robert Mandel, Joyce Mandel, Mark Claflin, Nancy Claflin, Giovanni Castelluci, Veronica Castelluci, Ingunn Sturlaugsdottir, Haukur Thorgilsson, Edward Cale and Jody Cale.

2 Jyotsna Sawhney.

3 Regarding the permitting authority's discretion to deny a proposed child care facility, we are unpersuaded by the Neighbors' attempt to read such discretion out of the bylaw, even though it was clearly granted. (PB.24-27) This is not a case where some easily severable provision of a bylaw may be held in abeyance by a court while it applies the remainder of the bylaw.

4 As for the scope of Wellesley site plan approval, we do not find merit in the Neighbors' contention that the judge misconstrued the limits on the scope of matters properly regulated under paragraph 3. (PB.19). Moreover, Wellesley's site plan approval process allows restriction of protected uses for reasons beyond what is facially permitted under paragraph 3. *Trustees of Tufts College v. Medford,* 415 Mass. 753 (1993), and *Rodgers v. Norfolk,* 432 Mass. 374 (2000), are of no assistance to the Neighbors.

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45 Mass.App.Ct. 818
Appeals Court of Massachusetts,
Suffolk.

Joseph M. PETRUCCI
v.
BOARD OF APPEALS OF WESTWOOD.

No. 97–P–1057.
|
Argued May 27, 1998.
|
Decided Nov. 30, 1998.

Synopsis
Property owner challenged decision by Board of Appeals of Westwood denying his application for building permit to renovate and use barn on lot zoned for "single residence" as child care facility. The Land Court Department, Suffolk County, Leon J. Lombardi, J., ordered board to issue the requested building permit. Board appealed. The Appeals Court, Laurence, J., held that: (1) proposed use of barn as child care facility qualified for statutory child care facility exemption, and (2) evidence established that imposition of town's dimensional setback and height zoning requirements on proposed use of barn was unreasonable.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (6)

[1] **Zoning and Planning** Other particular cases

Zoning and Planning Uses permitted or excluded

Proposed use of barn on lot in "single residence" zoning district as child care facility fell within statutory child care facility exemption providing that no zoning ordinance or bylaw shall prohibit use of land or structures for primary, accessory or incidental purpose of operating a child care facility. M.G.L.A. c. 40A, § 3.

3 Cases that cite this headnote

[2] **Statutes** Similar or Related Statutes

Statutes Plain, literal, or clear meaning; ambiguity

Although clear statutory language ordinarily obviates the need to resort to rules of interpretation, both related statutes and legislative history may be referenced by way of supplementary confirmation of the intent reflected in the words used.

4 Cases that cite this headnote

[3] **Statutes** Subject or purpose

Statutory canon that use of different language in related statutes dealing with the same subject matter ordinarily indicates that different meanings were intended does not apply when the statutory language is so clear as to make extrinsic aids unnecessary, especially an aid whose application would be contrary to the Legislature's undoubted purpose.

2 Cases that cite this headnote

[4] **Statutes** Relation to plain, literal, or clear meaning; ambiguity

Strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible.

[5] **Zoning and Planning** Architectural and Structural Designs

Zoning and Planning Residential facilities and daycare

Evidence established that imposition of town's dimensional setback and height zoning requirements on property owner's proposed use of barn as child care facility was unreasonable, where barn was rare building form that possessed historic and architectural merit deserving of protection, compliance with dimensional by-law was possible only by physically relocating barn on lot, cost of relocating barn would exceed cost

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of renovating it to serve as child care facility, town's concerns of safety, aesthetics, and privacy served by dimensional restrictions would be negatively affected by relocation of barn, and if barn was not moved and child care facility abandoned, all present zoning infirmities would continue to exist. M.G.L.A. c. 40A, § 3.

6 Cases that cite this headnote

[6] **Zoning and Planning** Permits, certificates, and approvals

Land Court judge did not abuse his discretion or erroneously deprive abutting landowner's of their appellate rights by ordering Board of Appeals to issue property owner a building permit to renovate barn into child care facility, rather than remanding matter to board, where board failed to state that any such potential abutters existed or to suggest any additional issues that might be raised by such hypothetical abutters. M.G.L.A. c. 40A, §§ 3, 17.

9 Cases that cite this headnote

Attorneys and Law Firms

****48** ***818** Thomas P. McCusker, Jr., Boston, for defendant.

Mark Bobrowski, Foxboro, for plaintiff.

Before BROWN, GREENBERG and LAURENCE, JJ.

Opinion

LAURENCE, Justice.

Joseph Petrucci and six family members reside in his home on a 53,000 square foot lot in Westwood's "single residence" zoning district. In 1995, he proposed to establish a child care facility in a barn located on his property. After interior renovations to the barn that would leave its exterior and footprint unchanged, the facility would serve forty-seven children daily and be staffed by six adults. The Westwood building ***819** commissioner (commissioner) denied Petrucci's application for a building permit to begin the renovations. The denial was affirmed by the Westwood board of appeals (board), which agreed with the commissioner that Petrucci ****49** was not entitled to the "child care facility exemption" he was relying on under G.L. c. 40A, § 3, third par., because the proposed use was not properly either "primary, accessory or incidental." [1] Following Petrucci's appeal pursuant to G.L. c. 40A, § 17, a Land Court judge agreed with Petrucci that the claimed exemption for a child care facility under § 3 applied and granted him partial summary judgment allowing the desired use.

The judge remanded the matter to the commissioner for review of Petrucci's application on the issue of the applicability of the "reasonable regulations" that the statute permits municipalities to impose on such a facility (see note 1, *supra*). The commissioner thereafter rejected the application because the barn failed to comply with the zoning by-law's rear yard, side yard, and height requirements. The board again affirmed the commissioner. After trial on the issue of the reasonableness of applying those regulations to the proposed project, the Land Court judge again upheld Petrucci, ruling that the imposition of the town's dimensional restrictions was unreasonable and ordering the board to issue the requested building permit. On the board's appeal, we affirm.

1. *Applicability of the § 3 exemption.* The commissioner initially denied Petrucci's application on his view that the proposed use "would result in the establishment of two princip[al] uses" on the property and was "not clearly accessory or incidental to a residential use." The board concurred, ***820** because the proposed facility "was so intensive" as to constitute a primary use of the property, and it could find "no authority" for "two ... primary uses [to] ... be situated on one property." The board further determined that the facility was not sufficiently "subordinate and related to the primary [residential] use of the property ... [to] be construed [as] ... accessory or incidental." The judge concluded that the board's reasoning was legally erroneous. He observed that nothing in the zoning by-law prohibited either child care facilities or the existence of more than one primary or principal use on a lot. He noted that the by-law even appeared to contemplate the possibility of multiple primary uses. [2]

The judge's chief basis for endorsing Petrucci's reliance on the § 3 exemption, however, was his rejection of the board's restrictive construction of the statute. The board focused (both below and here) on the words "primary, accessory or

incidental" in the third paragraph of § 3. It contended that the difference between those terms and the language of the immediately preceding (second) paragraph of § 3, providing a zoning exemption for educational or religious uses, [3] betokened a much narrower exemption intended by the Legislature for child care facilities.

The board's argument runs thus: Whereas the exemption of the second paragraph of § 3 speaks broadly and generally of "use for **50 religious ... or for educational purposes," the third paragraph requires that the child care facility "use" be either "primary, accessory or incidental." Each of those words must be read literally so as to give them their customary meaning. *821 Since the principal use of the Petrucci property is already residential, the child care facility cannot be a "primary" use, because "[i]t is ... clear that you cannot have two primary uses [of the property] either under the by-law or by definition." [4] Nor can the facility pass muster as an "accessory" or "incidental" use under the zoning decisions construing those terms, which hold that such a use not only must be minor in significance to the primary use but also must have a normal or customary subordinate relationship to that use. Compare *Harvard v. Maxant,* 360 Mass. 432, 438, 275 N.E.2d 347 (1971); *Henry v. Board of Appeals of Dunstable,* 418 Mass. 841, 844–846, 641 N.E.2d 1334 (1994); *Gallagher v. Board of Appeals of Acton,* 44 Mass.App.Ct. 906, 907, 687 N.E.2d 1277 (1997); *Maselbas v. Zoning Bd. of Appeals of N. Attleborough*, 45 Mass.App.Ct. 54, 56–57, 694 N.E.2d 1314 (1998). Given the size of the facility (six adults and forty-seven children) in relation to the several Petrucci family members already there engaged in "typical family" residential living, it will be so comparatively large, intensive, and separate an operation as to be neither accessory nor incidental. [5]

[1] Assuming, without deciding, that the proposed child care facility cannot be deemed "accessory" or "incidental" to a residential use, we nonetheless conclude that the board was wrong and the judge correct in determining that the facility qualified for the exemption of the third paragraph of G.L. c. 40A, § 3. We need look no further than the language of the statute, which states that a zoning by-law may not "prohibit, or *822 require a special permit for, the use of ... structures, or the expansion of existing structures, for the primary ... purpose of operating a child care facility." Petrucci's proposal falls squarely within that injunction. His existing structure, the barn, will be used (whether or not expanded) for the primary, indeed the sole, purpose of housing a child care facility operation; it cannot, therefore, be prohibited or subject to special permit requirements. [6]

Even were the board correct in its assertion that the Westwood by-law does not permit multiple primary uses on a single lot, such a prohibition is exactly what the statute declares impermissible with respect to child care facilities. The board's reiterated assertions that the exemption applies only where the child care facility can be characterized as the sole primary use "of the property" overlook the second half of the disjunctive statutory phrase, "use of land or structures." The board thereby runs afoul of *Watros v. Greater Lynn Mental Health & Retardation Assn., Inc.,* 421 Mass. 106, 653 N.E.2d 589 (1995), dealing with the educational purpose exemption of the second paragraph of § 3.

[2] **[3]** **[4]** In dismissing the argument of abutters who challenged the proposed use on **51 residential property of a barn to house and educate retarded adults—that the exemption applied only when the educational use occupied the entire property—the court in *Watros* stressed that the second paragraph "speaks not once, but twice, of 'land or structures' as the focus of the exemption." 421 Mass. at 113, 653 N.E.2d 589. The "constrictive result" flowing from the abutters' reading of the statute was "neither required by the language of the statute nor consistent with its purpose," *id.* at 114, 653 N.E.2d 589, which was "to prevent local interference with the use of real property"—whether of land or of structures thereon—for the exempt purposes identified in the statute. *Id.* at 113, 653 N.E.2d 589. Here, also, the plain language of the statute (which, as in *Watros,* speaks not once but twice of "land or structures") and its manifest intent—to broaden, rather than narrow, the opportunities for establishing child care facilities in the Commonwealth [7]—overwhelm the board's constrictive effort to parse any *823 substantial child care facility on a residential property out of the statute. [8]

*824 2. *Reasonableness of regulations.* As in *Campbell v. City Council of Lynn,* 415 Mass. 772, 777 & n. 6, 616 N.E.2d 445 (1993), we are concerned with a prior nonconforming structure. Despite the *Campbell* precedent, however, there was no inquiry as to whether alterations necessary to transform the barn **52 into a child care facility

would take it outside the protection granted by G.L. c. 40A, § 6, to prior nonconforming structures. Pursuant to G.L. c. 40A, § 3, there could be no denial of the right to use the barn as a child care facility. Accordingly, analysis pursuant to § 6 would not turn on any impact of the *use* of the barn as a child care facility but on whether the barn *structure,* as altered, would be substantially more detrimental to the neighborhood than the existing nonconforming structure.

This case was decided in the Land Court solely on the basis of G.L. c. 40A, § 3, third par., and, while it appears unlikely that the proposed renovations of the barn would fail the § 6 test, the record does not invite resolution under § 6. In any event, we conclude that Petrucci is entitled to relief based on § 3 and that there is no reason to require proceedings under § 6. See *Campbell v. City Council of Lynn,* 415 Mass. at 777–778 n. 6, 616 N.E.2d 445.

The judge ruled that Petrucci had successfully demonstrated the unreasonableness of the dimensional requirements that the commissioner and the board imposed upon the barn. The relevant sections of the by-law require a side yard width of twenty feet and a rear yard depth of thirty feet, with a maximum building height of twenty-five feet. The barn is over thirty-four feet high and is located only twelve feet from both the side and rear lot lines. Compliance with the zoning requirements is possible only if the barn is physically relocated on the lot. [9]

The parties agree that the controlling authority on the reasonableness ***825** of the application of zoning regulations to exempt uses under G.L. c. 40A, § 3, is *Trustees of Tufts College v. Medford,* 415 Mass. 753, 616 N.E.2d 433 (1993), [10] which announced an ad hoc, fact-specific approach to resolving disputes in most § 3 situations:

> "[T]he question of the reasonableness of a local zoning requirement, as applied to a proposed ... [exempt] use, will depend on the particular facts of each case. Because local zoning laws are intended to be uniformly applied, an [applicant] ... making challenges similar to those made by Tufts will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project. The ... [applicant] might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the ... [applicant's property], without appreciably advancing the municipality's legitimate concerns. Excessive cost of compliance with a requirement imposed [by the zoning ordinance] ..., without significant gain in terms of municipal concerns, might also qualify as unreasonable regulation of an ... [exempt] use." (Footnote omitted.)

415 Mass. at 759–760, 616 N.E.2d 433. The judge's conclusion, that enforcing Westwood's dimensional controls in Petrucci's circumstances would be unreasonable, represented a proper application of the factors set forth in *Tufts College.*

[5] Based upon the trial testimony of Petrucci's expert witnesses on zoning issues and historic buildings and of Petrucci himself (who had been in the construction business ****53** for thirty-five ***826** years), [11] the judge relied on the following findings and undisputed facts: [12] The two-story, 4,960 square foot barn was built between 1840 and 1850 and is "a wonderful example" of the transitional "Greek Revival Italianate" style. As such, it is "a rare building form" that possesses historic and architectural merit deserving of preservation. It is surrounded by mature trees and particularly dense foliage on the sides closest to adjoining lots. In order to comply with the by-law by relocating the barn elsewhere on Petrucci's lot, numerous mature trees would have to be cut down and removed (from both the old and the new locations), a new foundation excavated, the entire barn lifted up and moved to the new foundation, and its roof reconstructed to lower its height. All of that compliance work not only would destroy the barn's unique Italianate cupola and Palladian window, but also would adversely change the massing of the structure, disturb the sense of the building's continuity, and ruin both its historical character and architectural integrity. The cost to Petrucci to move the barn would be approximately $150,000, beyond the cost of renovating it to serve as a child care facility. [13] The municipality's legitimate concerns served by the setback and height requirements in the by-law —safety, aesthetics, and privacy [14] —would all be negatively affected by the ***827** relocation of Petrucci's barn. In its new, unscreened location, the barn would be significantly closer and more visible to Petrucci's residence and to neighboring homes. As a result, the potential fire danger would be increased, the privacy of the Petruccis and their neighbors would be reduced, and the loss of so many trees would adversely impair the community's character. Were the barn

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not moved and the child care facility abandoned, all of the present zoning infirmities would continue to exist.

In light of this evidence, the judge determined that imposition of the town's dimensional requirements on the project would levy excessive costs of compliance on Petrucci and effectively deny the use of the premises for a child care facility; would serve no valid goals of municipal zoning regulation, see *Campbell v. City Council of Lynn,* 415 Mass. at 779, 616 N.E.2d 445; and would, in fact, detrimentally affect neighborhood safety, aesthetics, and privacy. Therefore, he was satisfied that Petrucci had carried his burden under *Tufts College* of showing the unreasonableness of requiring compliance with those requirements. We agree.[15] Contrast ****54** *Tufts College,* 415 Mass. at 762–764, 616 N.E.2d 433 (challenged zoning requirements were not shown to be unreasonable as applied to project because applicant failed to put in any evidence regarding estimated cost or difficulty or hardship of compliance, whereas municipality demonstrated that compliance would enhance safety and ease serious parking problems in the affected area).

[6] 3. *Judge's ordering of the permit.* The amended final judgment ordered the board, over its objection, to issue Petrucci a building permit for the child care facility. The board charged that such an order erroneously deprived abutters of their appellate ***828** rights under G.L. c. 40A, § 17. The board's theory was that so long as it was defending its decisions upholding the commissioner, abutters were adequately represented and not aggrieved; but that they might become aggrieved, on bases other than those relied on by the board, when the board issued the building permit. The judge observed that the board had failed to state that any such potential abutters even existed (much less to identify them or their supposedly novel, separate grievances) or to suggest any additional issues that might be raised by such hypothetical abutters. Consequently, he rejected the board's position as sheer speculation supported by no relevant authority. He was satisfied that the facts in this case encompassed every criticism of the project which an abutter might reasonably raise in a § 17 appeal and reflected the board's protective persistence in pursuing all legitimate issues. The judge's refusal to allow further delay in implementing Petrucci's lawful project appears eminently sound to us. It was an exercise of his discretion under § 17 to grant such relief "as justice and equity may require," since it is clear from the record that the same ultimate result would ensue from an unspecific remand as that effected by the challenged order. See *Chira v. Planning Bd. of Tisbury,* 3 Mass.App.Ct. 433, 439–440, 333 N.E.2d 204 (1975), and cases cited; *Selectmen of Stockbridge v. Monument Inn, Inc.,* 8 Mass.App.Ct. 158, 163, 391 N.E.2d 1265 (1979), and cases cited, *S. C.,* 14 Mass.App.Ct. 957, 438 N.E.2d 365 (1982). Cf. *Lapenas v. Zoning Bd. of Appeals of Brockton,* 352 Mass. 530, 533–534, 226 N.E.2d 361 (1967); *MacGibbon v. Board of Appeals of Duxbury,* 369 Mass. 512, 520, 340 N.E.2d 487 (1976); *Leominster Materials Corp. v. Board of Appeals of Leominster,* 42 Mass.App.Ct. 458, 463, 677 N.E.2d 714 (1997).

Judgment affirmed.

All Citations

45 Mass.App.Ct. 818, 702 N.E.2d 47

Footnotes

1 General Laws c. 40A, § 3, third par., inserted by St.1990, c. 521, § 2, provides:
"No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the *primary, accessory or incidental* purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term 'child care facility' shall mean a day care center or a school age child care program, as those terms are defined in section nine of chapter twenty-eight A." (Emphasis added.)

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2 The judge quoted § 5 of the by-law, which states, in pertinent part: "No building or structure shall be constructed, and no building, structure or land shall be used, in whole or in part, for any purpose other than for *one or more* of the uses hereinafter set forth as permitted in the district in which said building, structure or land is located, or set forth as permissible by special permit in said district ...." (emphasis added).

3 General Laws c. 40A, § 3, second par., sets forth the so-called "Dover Amendment," inserted by St.1950, c. 325, and reinserted by St.1975, c. 808, § 3, which provides, in pertinent part, that no zoning bylaw shall "prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or ... by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

4 The board cites no statutory or decisional authority for this proposition. As indicated in note 2, *supra,* it was not at all "clear ... under the by-law."

5 There are no Massachusetts cases explicating the status or character for zoning purposes of a child care facility located on residential property. *Woodvale Condominium Trust v. Scheff,* 27 Mass.App.Ct. 530, 533–535, 540 N.E.2d 206 (1989), dealing with the question whether a family day care business was permissible in a unit of a condominium, the master deed of which stated that the unit could be used "solely for residential dwelling purposes," is as close as we can find. There, the court concluded that the many distinctions between normal, residential use and a busy day care operation made the latter so different from the former that it could not be deemed a usual incident of residential living. Cases in other jurisdictions appear divergent. Compare *Schofield v. Zoning Bd. of Adjustment of Dennis,* 169 N.J.Super. 150, 154–155, 404 A.2d 357 (1979) (home day care of twelve to eighteen children is not incidental to residential use), and *Metzner v. Wojdyla,* 125 Wash.2d 445, 452, 886 P.2d 154 (1994) (even small-scale child care incompatible with covenant restricting use of the property to residential purposes), with *People v. Bacon,* 133 Misc.2d 771, 776–778, 508 N.Y.S.2d 138 (N.Y.Dist.Ct.1986) (home day care of children is a permissible accessory use in a residentially zoned district).

6 The judge did not rely on the plain language of the statute in rendering judgment for Petrucci, but his correct decision may be sustained on appeal on any sound basis. See *Hickey v. Commissioner of Pub. Welfare,* 38 Mass.App.Ct. 259, 263, 647 N.E.2d 62 (1995).

7 Aside from the very fact that it creates an exemption from local zoning restrictions, G.L. c. 40A, § 3, third par., defines "child care facility" as a "day care center" as that term is used in G.L. c. 28A. Chapter 28A, § 1(4), inserted by St.1972, c. 785, § 1, states that it is the policy and purpose of the Commonwealth to "promote the development of day care services in order to provide that such services shall be available in every community for all families which express a need for them." Although clear statutory language ordinarily obviates the need to resort to rules of interpretation, *Bronstein v. Prudential Ins. Co. of America,* 390 Mass. 701, 704–705, 459 N.E.2d 772 (1984), both related statutes, see *Plymouth County Retirement Assn. v. Commissioner of Pub. Employee Retirement,* 410 Mass. 307, 309–312, 571 N.E.2d 1386 (1991); *Civitarese v. Middleborough,* 412 Mass. 695, 700–702, 591 N.E.2d 1091 (1992), and legislative history, see *Commonwealth v. Gove,* 366 Mass. 351, 354–355 & n. 4, 320 N.E.2d 900 (1974), may be referenced by way of supplementary confirmation of the intent reflected in the words used.

8 The board cites *Watros* as supportive of its position, because of the court's incidental observation there, 421 Mass. at 113, 653 N.E.2d 589, that the educational use exemption of G.L. c. 40A, § 3, second par., does not distinguish between "principal" and "accessory" uses, while the third paragraph of § 3 explicitly does. The board's invocation of *Watros* fails precisely because it rests on the assumption, rejected by *Watros,* that an entire parcel of "land" must be used to benefit from the exemption and ignores the presence of the word

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"structure" in the statute. The board cites no other relevant authority for its statutory construction argument, but presumably relies on two standard canons. First, the use of different language in related statutes dealing with the same subject matter ordinarily indicates that different meanings were intended. See 2B Singer, Sutherland Statutory Construction § 51.02 (5th ed. 1992). Cf. *Beeler v. Downey,* 387 Mass. 609, 616, 442 N.E.2d 19 (1982). However, like all such canons, this one does not apply when (as here) the statutory language is so clear as to make extrinsic aids unnecessary, especially an aid whose application would be contrary to the Legislature's undoubted purpose. See *Brady v. Brady,* 380 Mass. 480, 483–484, 404 N.E.2d 75 (1980); *Commonwealth v. Fall River Motor Sales, Inc.,* 409 Mass. 302, 315–316, 565 N.E.2d 1205 (1991). Second, "[w]henever possible, we give meaning to each word in the legislation; no word in a statute should be considered superfluous." *International Org. of Masters, Mates & Pilots, Atl. & Gulf Maritime Region, AFL–CIO v. Woods Hole, Martha's Vineyard & Nantucket S.S. Authy.,* 392 Mass. 811, 813, 467 N.E.2d 1331 (1984). Again, even if applicable, this is not an ineluctable doctrine, see *Bartlett v. Greyhound Real Estate Fin. Co.,* 41 Mass.App.Ct. 282, 289, 669 N.E.2d 792 (1996), and in any event must yield to the even more fundamental precept, expressly relied on by the Land Court judge, that "a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible." *Watros,* 421 Mass. at 113, 653 N.E.2d 589. In light of our holding above, we do not have to depend upon the judge's rationale—that by use of the words "primary, accessory or incidental" in the statute "the legislature intended to cover all bases ... and to leave no type of [child care facility] use beyond the reach" of the exemption—although we find the judge's construction of this remedial statute persuasive. See *Champigny v. Commonwealth,* 422 Mass. 249, 251, 661 N.E.2d 931 (1996); *Wonderland Greyhound Park, Inc. v. State Racing Commn.*, 45 Mass.App.Ct. 226, 233, 696 N.E.2d 964 (1998). We note, in this connection, that the board has failed to identify any use or purpose that might be but was not included or encompassed within the words "principal, accessory or incidental."

9 The commissioner and the board determined that, short of relocation, Petrucci would have to obtain a variance, after site plan review. On Petrucci's second motion for partial summary judgment, the judge ruled that the proposed exempt use could not be made subject to either variance procedures or site plan review, a conclusion in accord with *Trustees of Tufts College v. Medford,* 415 Mass. 753, 760, 765, 616 N.E.2d 433 (1993). The board has not questioned that ruling in this appeal.

10 In his first partial summary judgment decision, the judge ruled that the *Tufts College* analysis, though arising in an educational use context, was applicable to child care facilities (another ruling unchallenged here). The basic rationale of *Tufts College* has been applied to another provision of G.L. c. 40A, § 3. See *Prime v. Zoning Bd. of Appeals of Norwell,* 42 Mass.App.Ct. 796, 802, 680 N.E.2d 118 (1997) (involving the agricultural use exemption of the first paragraph). Given the identity of the language of the "reasonable regulations" provisions in the second and third paragraphs of § 3, the teaching of *Tufts College* regarding the scope of the educational exemption vis-à-vis local zoning regulation was properly invoked by the judge. See *Insurance Rating Bd. v. Commissioner of Ins.,* 356 Mass. 184, 188–189, 248 N.E.2d 500 (1969); *Green v. Board of Appeals of Provincetown,* 404 Mass. 571, 573, 536 N.E.2d 584 (1989).

11 At the trial on the issue of the reasonableness of requiring Petrucci's compliance with Westwood's rear yard, side yard, and building height requirements, the board called no witnesses and adduced no evidence to show how the imposition of those limitations on Petrucci's project would advance legitimate municipal concerns.

12 The board does not complain that any of the judge's findings or the evidence presented by Petrucci's witnesses on which the judge relied was erroneous, except with respect to the finding regarding the estimated cost of compliance to relocate the barn. The board's challenge in that respect is wrong (see note 13, *infra*).

13 The board incorrectly maintains that the evidence regarding the cost of the barn's relocation (and, hence, the "cost of compliance" highlighted by the Supreme Judicial Court in the *Tufts College* test) was tainted by hearsay. This assertion overlooks the fact that Petrucci testified to his own understanding of the cost to move the barn, based on his thirty-five years of experience as a licensed builder. See *Colangeli v. Construction Serv. Co.,* 353 Mass. 527, 529–530, 233 N.E.2d 192 (1968); *Varney v. Donovan,* 356 Mass. 739, 255 N.E.2d

605 (1970); *Larabee v. Potvin Lumber Co.,* 390 Mass. 636, 643, 459 N.E.2d 93 (1983). The judge noted that this testimony was received without objection. In any event, the judge ruled, quite appropriately in our view, that "it is a matter of common sense that the cost to move a structure of the size and age of this barn would be significant."

14 The board does not disagree that these are the municipal purposes served by the relevant by-law requirements.

15 The board's sole criticism of the judge's decision on the issue of regulatory reasonableness (other than its misplaced assertion that Petrucci's cost of compliance evidence was hearsay, see note 13, *supra*) is that Petrucci did not demonstrate what the profits might be from his venture, which, the board suggested, might easily support the cost of compliance and make it reasonable. The board's critique fails in two respects. First, it rests on the assumption, contrary to the record, that the child care facility would be a commercial, for-profit enterprise. Second, it is based on the premise that different standards for gauging the costs of compliance ought to apply for proprietary as opposed to nonprofit chid care facilities. That premise finds no support in the language of the statute, nor in its purpose. Such a discrimination on the basis of corporate form would tend to create a significant disincentive for the private sector to address the public purpose of making child care services as widely available as their need requires. See note 7, *supra.*

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NEEDHAM
ZONING BOARD OF APPEALS
AGENDA

THURSDAY, May 20, 2021 - 7:30PM

Zoom Meeting ID Number: 869-6475-7241

For PB Use Only

To join the meeting link at: https://us02web.zoom.us/j/86964757241

Minutes	Review and approve Minutes from April 15, 2021 meeting.
Case #1 – 7:30PM	**33 Fenton Road –** Public notice is hereby given that Andrew McKinney, applicant, has made application to the Board of Appeals for a Special Permit under Sections 3.1.5, 7.5.2 and any other applicable Sections of the By-Law to allow the addition of an Accessory Dwelling Unit. The property is located at 33 Fenton Road, Needham, MA in the Single Residential B District.

Next Meeting: **June 17, 2021, 7:30pm**

TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS

APPLICATION FOR HEARING

IT IS STRONGLY RECOMMENDED THAT APPLICANTS CONSULT WITH THE BUILDING INSPECTOR PRIOR TO FILING THIS APPLICATION.

Note: Application must be complete, with certified plot plan attached, and application fee included, or application will not be accepted.

Date: 4/2/21

Name of Applicant or Appellant: ANDREW MCKINNEY

Address: 300 2ND AVE, APT 4113

NEEDHAM, MA 02494

E-mail address: ATTYMCKINNEY@GMAIL.COM

Daytime telephone: _____

Cell phone: 617-501-0233

Additional contact information, (ie: contractor ☐ , architect ☐ builder ☐ attorney ☐):

_____

_____

Address/Location of Property 33 FENTON RD, NEEDHAM MA 20494

Assessor map/parcel number MAP 123, PARCEL 30

Zone of property: SR-B

Is property within 100 feet of wetlands, 200 ft. of stream or in flood plain? ☐ Yes ☑ no

Applicant is: ☑ owner ☐ tenant ☐ prospective tenant ☐ licensee ☐ prospective purchaser

Type of Permit requested: ☑ residential or ☐ commercial

If residential renovation, will renovation constitute "new construction"? ☑ yes ☐ no

If commercial, please consult with building inspector regarding parking issues

Select one: ☑ Special Permit ☐ Variance ☐ Comprehensive Permit, M.G. L Ch. 40B

☐ Amendment ☐ Appeal Building Inspector Decision*

*(For an appeal from decision of Building Inspector, attach copy of the decision or other written notice received from the Building Inspector.)

Existing Conditions: EXISTING SINGLE FAMILY HOME

Statement of relief sought: BUILDING AN ADU WITHIN THE NEW CONSTRUCTION TO REPLACE EXISTING HOME

Applicable Section(s) of Zoning By-Law: ADU Special Permit

If application under Zoning Section 1.4, listed immediately above:

List nonconformities related to lot/structure(s) in application: _____

Date structure(s) on lot constructed (including any additions): NEW CONSTRUCTION TO BE BUILT

Date lot created:

A certified plot plan, prepared by a registered surveyor, must be attached to this application at time of filing. An application will be returned if a copy of the plot plan is not attached to the application.

- **Applications for Comprehensive permits under M.G.L. Ch. 40B require a copy of plot plan.**

Please feel free to attach any additional information/photos relative to the application.

Additional information may be requested by the Board at any time during the application or hearing process.

A hearing before the Board of Appeals, with reference to the above noted application or appeal, is requested by

Signed Andrew Mckinney

Title OWNER

An application must be submitted to the Town Clerk's Office at townclerk@needhamma.gov and to the ZBA Office at dcollins@needhamma.gov

ADU – ZBA Special Permit Application

Owner's Name	ANDREW MCKINNEY						
Address	300 2ND AVE, APT 4113, NEEDHAM MA 02494						
Phone	617-501-0233	E-mail	ATTYMCKINNEY@GMAIL.COM				
ADU's Resident Name	ELLEN MCKINNEY						
Phone	508-785-8058	E-mail	ERMCKIN@GMAIL.COM				
ADU Resident Relationship to Owner *(Select one)*	☐spouse ☑parent ☐sibling ☐child ☐grandchild	Spouse of: ☐parent ☐sibling ☐child ☐grandchild	Child of: ☐parent ☐sibling ☐child ☐grandchild	☐Caregiver. If caregiver, select type of caregiver: ☐Elderly ☐Chronically Ill ☐Disable Owner			
Total Occupants in Principal Dwelling Unit and ADU	3	Total Occupants not related to Owner *(not to exceed five*	1	Owner to occupy: ☑Principal Unit ☐ADU			

ADU Information

Map & Page ID	MAP 123, PARCEL 30	Zoning District	SR-B
Size of ADU *(not to exceed 850 sq. feet)*	625 SQF	Location of ADU: ☐basement, ☐attic, ☑1st floor, ☐2nd floor	

Does ADU have separate provisions for *(ADU limited to one bedroom)*:

Living ☑Yes ☐No; Sleeping ☑Yes ☐No; Cooking ☑Yes ☐No; Eating ☑Yes ☐No

Number and location of Means of Egress: 2 - 1ST FLOOR (OFF LIVING ROOM AND OFF ADU KITCHEN AREA)

Describe where the interior door access between ADU and Principal Dwelling Unit is?

BY THE MUD-ROOM, NEAR GARAGE

Total number of off-street parking for Principal Dwelling Unit and ADU:

4 OR 5

I attest that the information in this application is true and accurate to the best of my knowledge and understanding:

Andrew Mckinney 4/2/2021

Owner's Signature/Date

)

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A-201 Exterior Elevations
A-202 Exterior Elevations
A-203 Interior Elevations
A-204 Interior Elevations

TOWN OF NEEDHAM, MASSACHUSETTS

Building Inspection Department

Assessor's Map & Parcel No. ***MAP NO. 123, PARCEL 30***

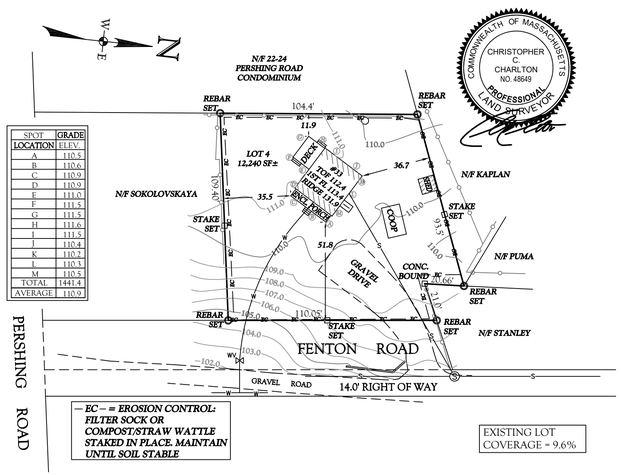
Building Permit No. _____ Zoning District ***SR-B***

Lot Area ***12,240 S.F.*** Address ***No. 33 FENTON ROAD***

Owner ***MARK HARDING*** Builder _____

EXISTING CONDITIONS PLOT PLAN

40' Scale

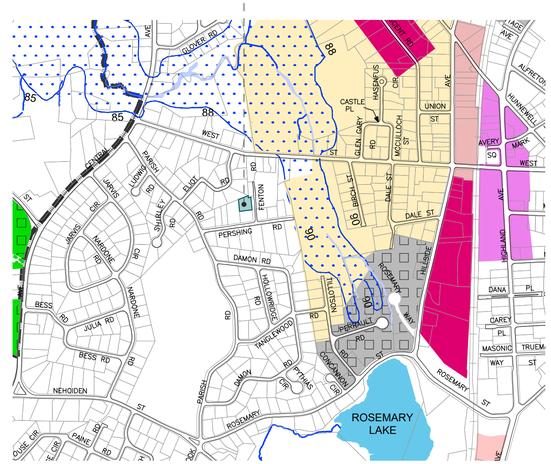


SPOT LOCATION	GRADE ELEV.
A	110.5
B	110.6
C	110.9
D	110.9
E	111.0
F	111.5
G	111.5
H	111.6
I	111.5
J	110.4
K	110.2
L	110.3
M	110.5
TOTAL	1441.4
AVERAGE	110.9

Note: Plot Plans shall be drawn in accordance with Sections 7.2.1 and 7.2.2 of the Zoning By-Laws for the town of Needham. All plot plans shall show existing structures and public & private utilities, including water mains, sewers, drains, gaslines, etc.; driveways, septic systems, wells, Flood Plain and Wetland Areas, lot dimensions, lot size, dimensions of proposed structures, sideline, front and rear offsets and setback distances, (measured to the face of structure) and elevation of top of foundations and garage floor. For new construction, lot coverage, building height calculations proposed grading and drainage of recharge structures. For pool permits, plot plans shall also show fence surrounding pool with a gate, proposed pool and any accessory structures*, offsets from all structures and property lines, existing elevations at nearest house corners and pool corners, nearest storm drain catch basin (if any) and, sewage disposal system location in areas with no public sewer.
(*Accessory structures may require a separate building permit — See Building Code)

I hereby certify that the information provided on this plan is accurately shown and correct as indicated.
The above is subscribed to and executed by me this ***12 th*** day of ***NOVEMBER*** 20 ***20***.
Name ***CHRISTOPHER C. CHARLTON*** Registered Land Surveyor No. ***48649***
Address ***105 BEAVER STREET*** City ***FRANKLIN*** State ***MA*** Zip ***02038*** Tel. No. ***(508) 528-2528***
Approved _____ Director of Public Works Date _____
Approved _____ Building Inspector Date _____

Site Location



Vicinity Map



Gross Floor Area		
	Calculated Area	Max GFA
Area 1st Floor		
	2,407.33	
Area 2nd Floor		
	1,994.01	
Area Garage		
	590.76	12,240 x 0.36
	4,992.10 sq ft	< 5006.4 ✓

Lot Coverage		
	Calculated Area	Max Lot Coverage
Area 1st Floor		
	2,407.33	
Area Garage		
	590.76	12,240 x 0.25
	2,998.09 sq ft	< 3060 ✓

Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

Drawings and Specifications as instruments of service are and shall remain the property of the Architect. They are not to be used on extensions of the project, or other projects, except by agreement in writing and appropriate compensation to the Architect.

The General Contractor is responsible for confirming and correlating dimensions at the job site. The Architect will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the project.

© Contact Company

NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION

ISSUED:

3/26/2021 (Issue to SE)

Cover Sheet

G-001

Printed: 3/26/21



Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

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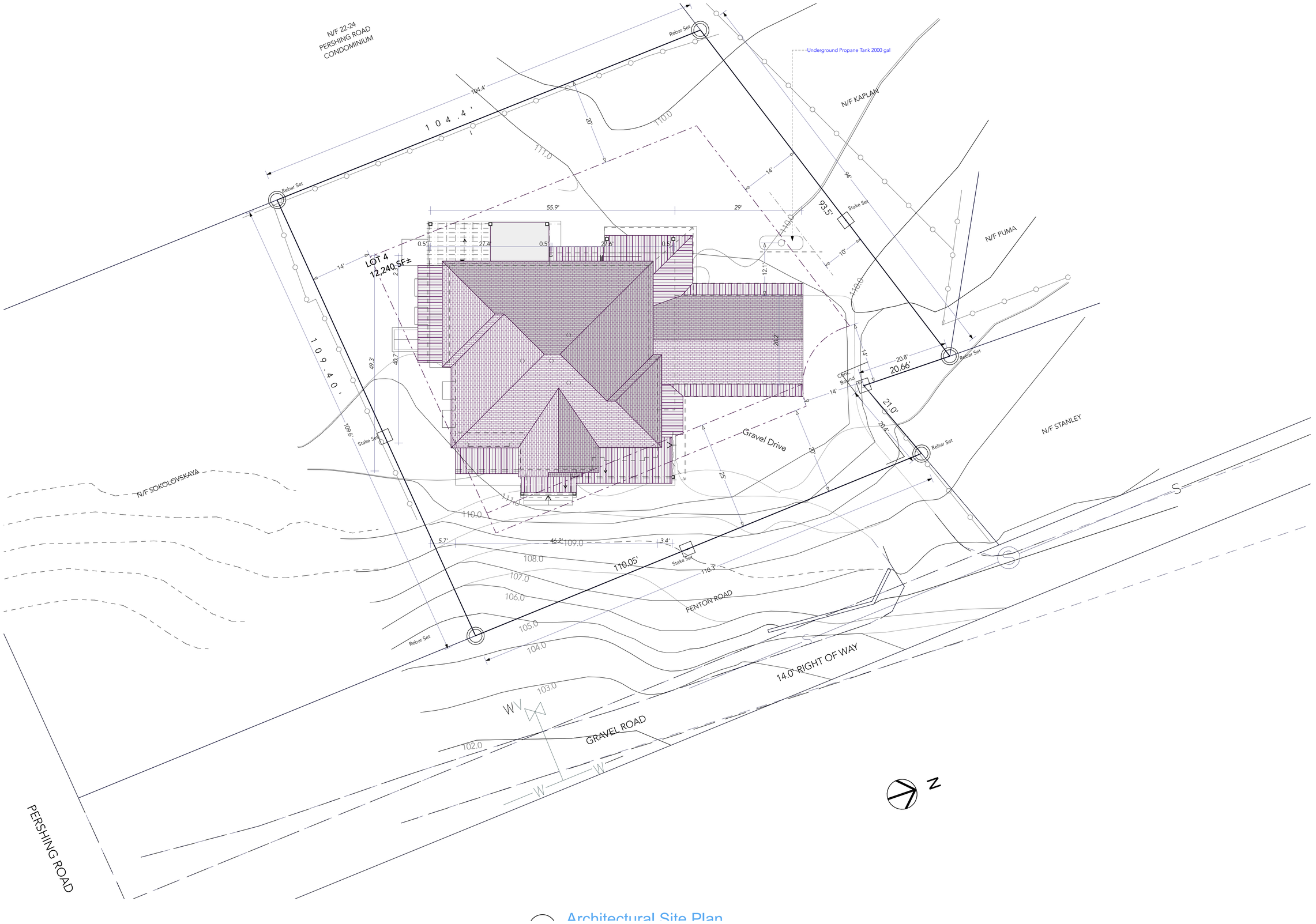
ISSUED:

3/26/2021 (Issue to SE)

3D Rendered View

G-003

Printed: 3/26/21



Architectural Site Plan

Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

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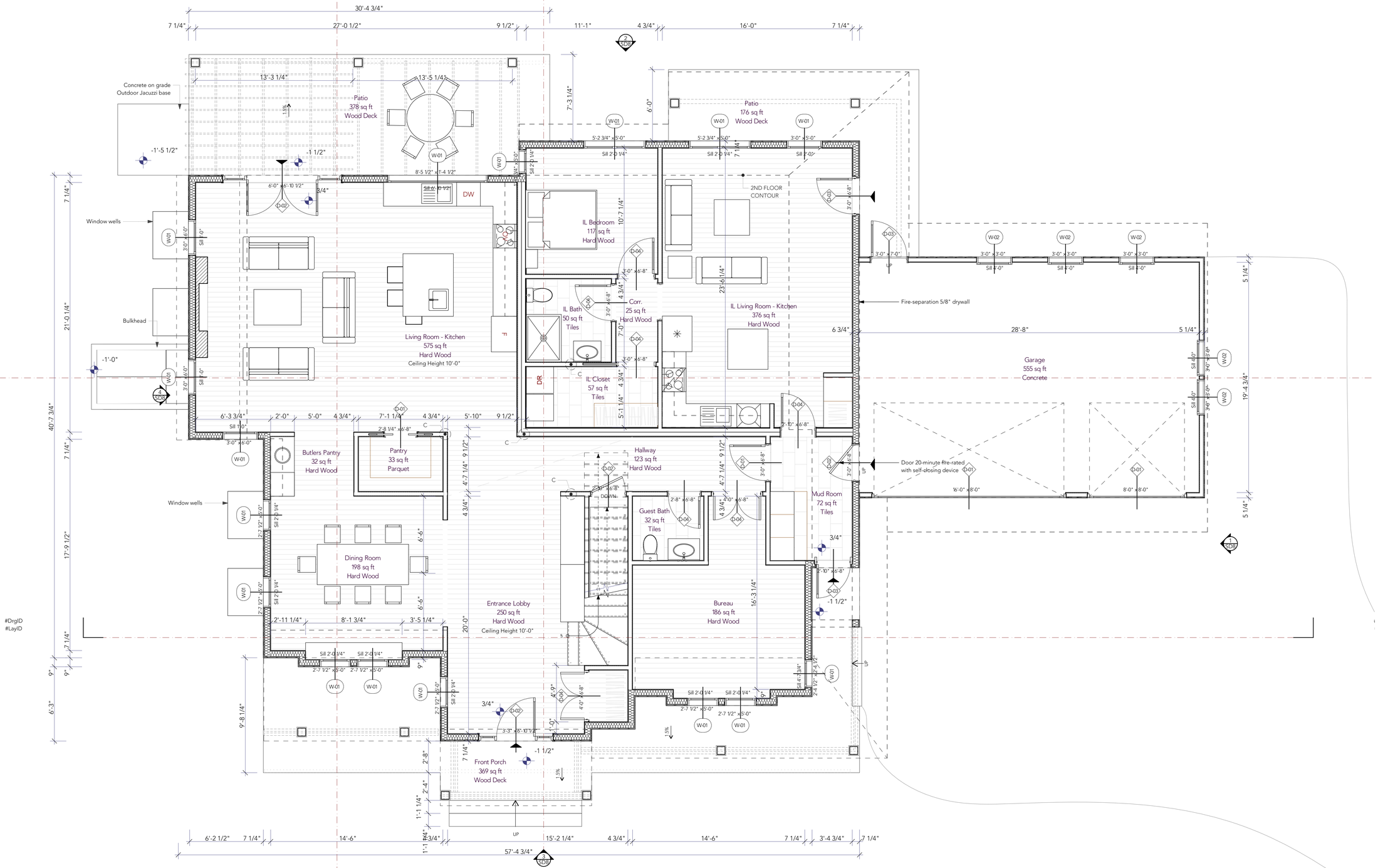
ISSUED:

3/26/2021 (Issue to SE)

Architectural Site Plan

AS-001

Printed: 3/26/21



1 First Floor Plan

SCALE: 1/4" = 1'-0"

0 2' 4' 8'

#DrgID
#LayID

Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

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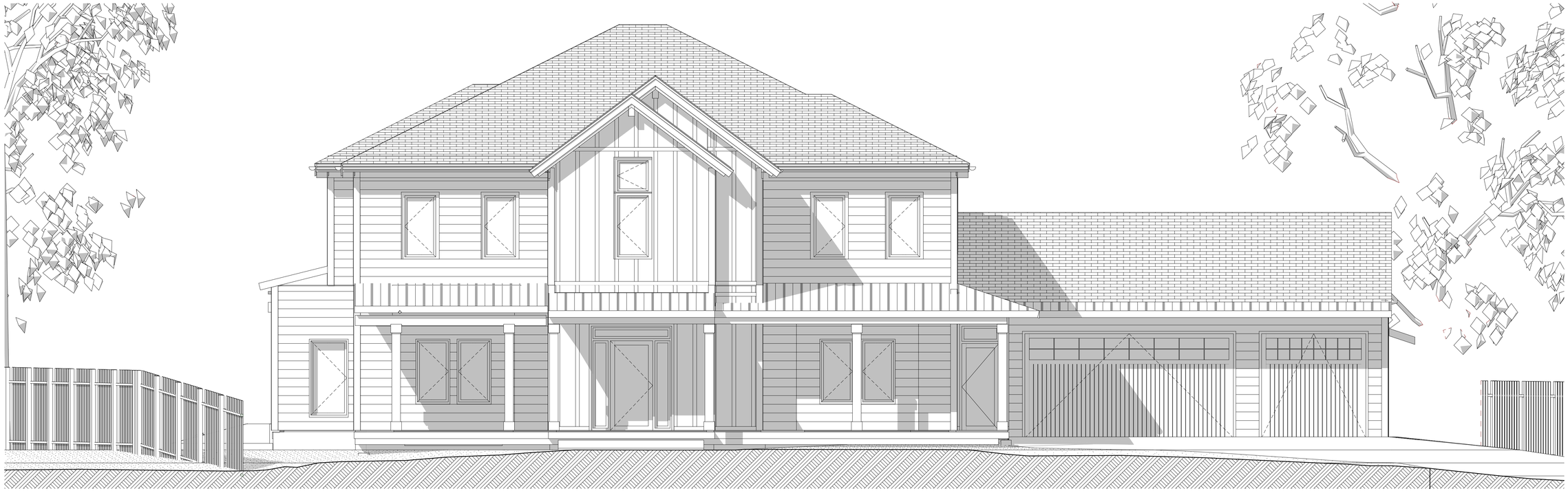
ISSUED:

3/26/2021 (Issue to SE)

First Floor Plan

A-102

Printed: 3/26/21



1 East Elevation

SCALE: 1/4" = 1'-0"



2 South Elevation

SCALE: 1/4" = 1'-0"

Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

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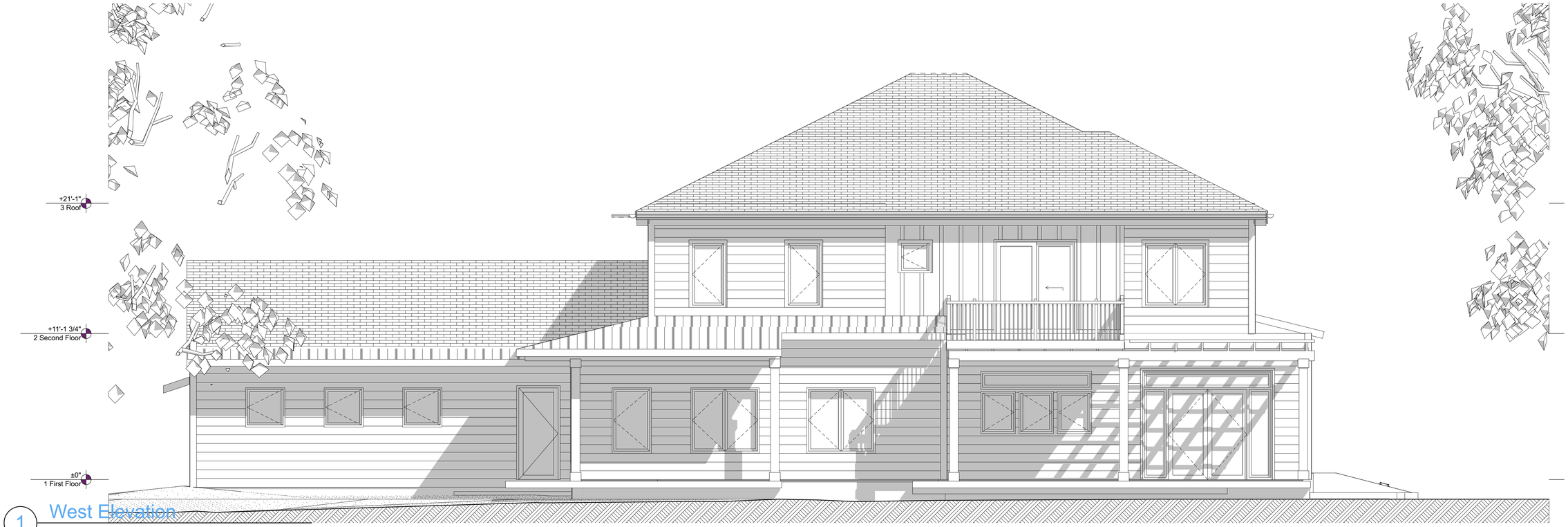
ISSUED:

3/26/2021 (Issue to SE)

Exterior Elevations

A-201

Printed: 3/26/21



1 West Elevation

SCALE: 1/4" = 1'-0"



2 North Elevation

SCALE: 1/4" = 1'-0"

Family House

33 Fenton Rd, Needham, MA 02494

Project Number: RN-2021-01

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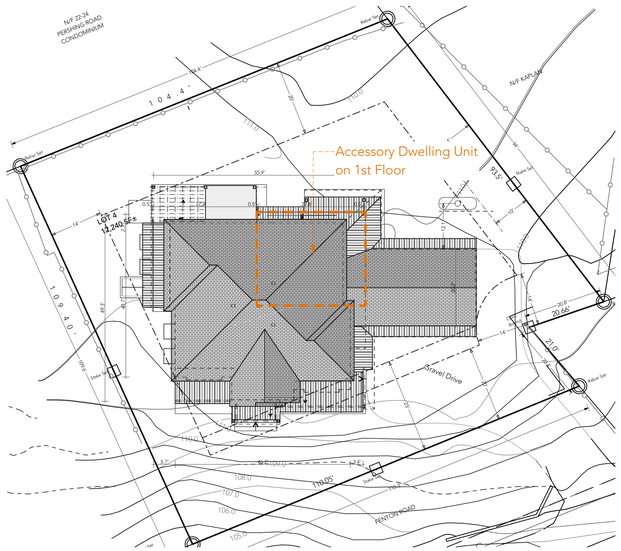
ISSUED:

3/26/2021 (Issue to SE)

Exterior Elevations

A-202

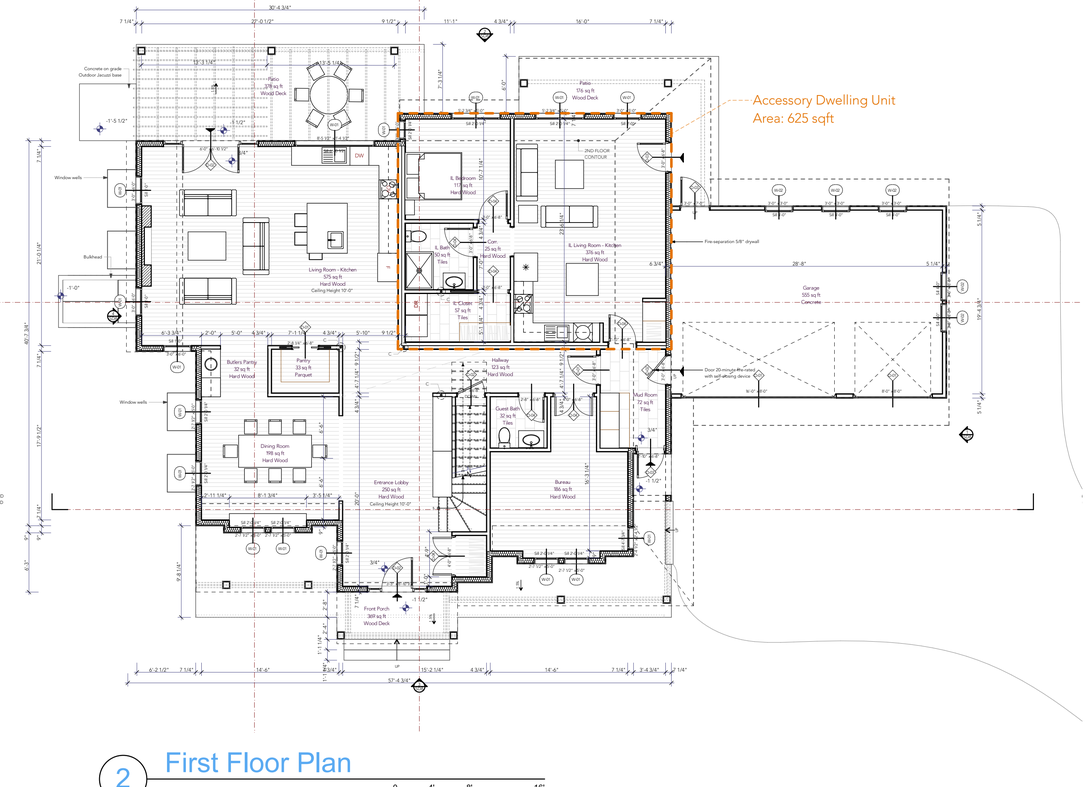
Printed: 3/26/21



1 **Architectural Site Plan**

SCALE: 1" = 20'

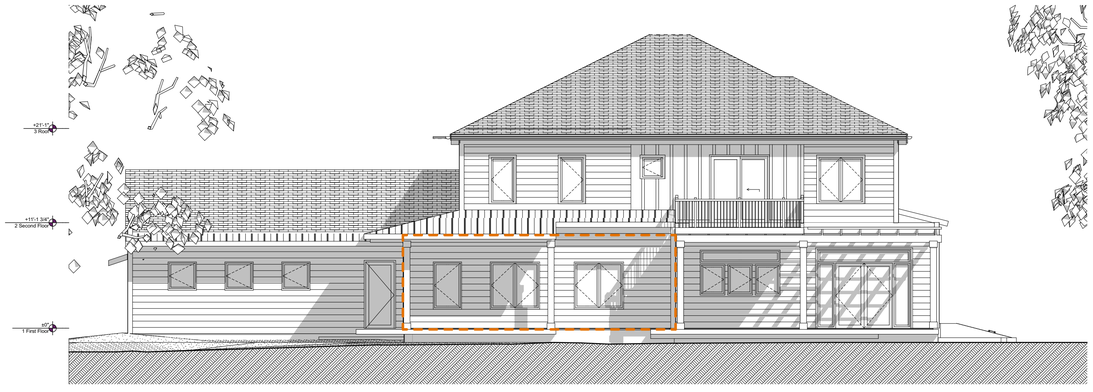
0 10' 20' 40'



2 **First Floor Plan**

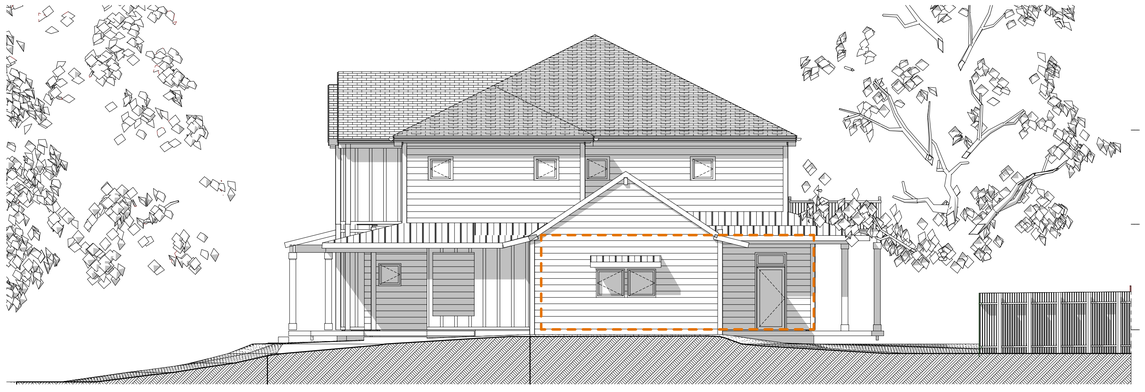
SCALE: 1/8" = 1'-0"

0 4' 8' 16'



3 **West Elevation**

SCALE: 1/8" = 1'-0"



4 **North Elevation**

SCALE: 1/8" = 1'-0"

Family House

33 Fenton Rd, Needham, MA 02494

Clients: Romeo Mirzac & Andrew McKinney

Project Number: RN-2021-01

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ISSUED:

ADU Plans

A1.1

Printed: 3/29/21

NEEDHAM PLANNING BOARD MINUTES

June 8, 2020

The Planning Board Virtual Meeting using Zoom was remotely called to order by Martin Jacobs, Chairman, on Monday, June 8, 2020, at 3:10 p.m. with Messrs. Alpert, Owens and Block and Ms. McKnight, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Jacobs stated Town Meeting is to convene in the parking lot at the Memorial Field ~~Field~~ House at 5:00 p.m. He then took a roll call attendance of people expected to be on the agenda. He noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video. He reviewed the rules of conduct for zoom meetings. He noted if any votes are taken at the meeting the vote will be conducted by roll call.

Discussion of Annual Town Meeting Zoning Articles~~.~~

Mr. Jacobs noted the Citizen's Petition Zoning By-law Amendment Article by Children's Hospital. Some questions were posed to the proponents and the Planning Board. Written answers to the 3 questions were posted on the Town website. He noted Ms. McKnight will be giving the presentation. It will be pre-recorded and posted on the website. Mr. Alpert commented one question asked in the emails ~~were~~was if Town Meeting members made a motion to amend to make the parking ~~position~~requirement more restrictive would the Planning Board support the amendment. Ms. McKnight commented that she expects the Board would not support that amendment. She proposed if someone made the motion, the Planning Board does not need to reconvene but could authorize her to respond that the Planning Board would not support the amendment. Mr. Jacobs stated the no-support response should be for less parking or more parking amendment. All agreed.

Mr. Block asked if the Board would be asked to comment on Article 10 regarding the appropriation for planning consultant assistance funds. Ms. McKnight stated Ms. Newman provided her an email with an explanation. She read the email for the other members. Mr. Block asked how much of the $60,000 would be used for the Highway Commercial 1 District. Ms. Newman would be giving an estimate due to fluctuations of the scope but she feels probably half of it would be used. It would depend how broad the scope is. Mr. Alpert asked about the Special Town Meeting Article 1 for the appropriation of $40,000 for planning. Ms. Newman noted that Article is being withdrawn.

Minutes

There were no minutes to approve.

Correspondence

Mr. Jacobs noted there was no correspondence.

Report of the Planning Director and Board members

Mr. Block asked if the Board members should try to sit together or if they need to stay with their precincts at Town Meeting. Ms. McKnight noted there would be separate gates for separate precincts for checking people in. If the members go early they may be able to be near each other. Ms. Newman suggested sitting near a microphone. Mr. Jacobs stated he would not be there but will be available for questions.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote of the five members present unanimously:
VOTED: to recess the meeting at 3:30 p.m. until after Town Meeting adjourns.

Respectfully submitted,

DRAFT

Donna J. Kalinowski, Notetaker

_____

Jeanne S. McKnight, Vice-Chairman and Clerk

DRAFT

June 16, 2020

The Planning Board Virtual Meeting using Zoom was remotely called to order by Martin Jacobs, Chairman, on Tuesday, June 16, 2020, at 7:15 p.m. with Messrs. Alpert, Owens and Block and Ms. McKnight, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Jacobs took a roll call attendance of people expected to be on the agenda. He noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. He reviewed the rules of conduct for zoom meetings. This meeting will allow public comment. He noted if any votes are taken at the meeting the vote will be conducted by roll call. He added the order of items has changed since the original posted agenda.

Upon a motion made by Ms. McKnight, and seconded by Mr. Owens, it was by a roll call vote of the five members present unanimously:
VOTED: to automatically continue the meeting to 7/7/20 at 7:00 p.m. with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight.

Request to Extend Action Deadline: 390 Grove Street Definitive Subdivision Amendment: Elisabeth Schmidt-Scheuber, 390 Grove Street, Needham, MA, Petitioner (Property located at 390 Grove Street, Needham, MA).

George Giunta Jr., representative for the applicant, stated this item had been put over due to COVID. It has been picked back up but an extension is needed for the action deadline through the end of August. There will be a public hearing on 7/21/20.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:
VOTED: to postpone the hearing to 7/21/20 and extend the action deadline through August 31, 2020.

Request to Extend Temporary Occupancy Permit: Amendment to Major Project Site Plan Review No. 2013-02: Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, Petitioner (Property located at 1407 Central Avenue, Needham, MA).

Ms. Newman noted this is the Jack Cogswell Building. The Town is waiting for the Land Court to issue a Consolidation Plan. Since it is not out of Land Court, an extension for the Occupancy Permit is needed to August 10, 2020. Mr. Alpert noted the courts are closed and asked if the deadline should be extended longer. Ms. Newman suggested it be extended through the Fall.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:
VOTED: to extend the temporary Occupancy Certificate through 10/30/20.

Discussion of proposed new use at 100 West Street. Redevelop and zoning change of the property to enable an 83 unit Assisted Living and Alzheimer's/Memory Care facility and 71 Independent Living Apartments.

Mr. Jacobs noted the Planning Board has had some new materials supplied in the last few days. Evans Huber, Counsel for LCB Senior Living, noted at the last meeting the substantive issue was if the uses were to be allowed by right or Special Permit. The Board members wanted the uses by Special Permit. After discussion the proposed Warrant Article has been changed to allow the uses by Special Permit. He has revised the Warrant Article and resubmitted it. He has also amended the section of the By-Law that relates to the Planning Board being the Special Permit granting authority rather than the Zoning Board of Appeals (ZBA). He is aware of concerns regarding traffic. He feels that could be dealt with at the permitting stage now that a Special Permit it needed.

Mr. Jacobs asked if the Board members want to support the zoning article. Mr. Owens had no comments or questions. Ms. McKnight is satisfied to go forward and would vote to sponsor this. Mr. Alpert commented he is pleased the proponents have worked with him and made the changes he requested. He is pleased with the current form of the By-Law proposal. Mr. Block and Mr. Jacobs are both satisfied. A motion was made that the Planning Board sponsor a By-Law amendment to be presented to Town Meeting in October 2020 for the creation of the Avery Square Overlay District with the form of the amendment being the form in front of the Planning Board today. Mr. Cramer noted there is a second request for a map change article that goes along with this. The Planning Board should also sponsor the map change article. This was agreed. Ms. McKnight expressed concern with being specific with an October 2020 date. The dates could possibly be postponed. She suggested saying a Fall Town Meeting.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote of the five members present unanimously:

VOTED: to sponsor a By-Law amendment to be presented to a Fall Town Meeting for the creation of the Avery Square Overlay District with the form of the amendment being the form in front of the Planning Board today and for the Planning Board to sponsor a second By-Law amendment that is proposed and in front of the Board for a map change that would delineate the Avery Square Overlay District.

Ms. Newman will put this on an agenda [for public hearing?]. It will go to the Selectmen to be referred back to the Planning Board.

Public Hearing:

7:15 p.m. – Major Project Site Plan Review No. 2020-01: Spiga, LLC, 18 Highland Circle, Needham, MA, Petitioner (Property located at 18 Highland Circle, Needham, Massachusetts).

George Giunta Jr., representative for the applicant, noted this is located off~~behind~~ Highland Avenue near~~before~~ the Newton line. There are 2 separate lots and separate ownerships. The restaurant is on one lot and the other lot is the parking area. The landlord owns the fee to the restaurant lot outright and has a 99 year lease on the other property with the parking which will expire in 2081. Technically it is 2 lots with separate ownership. Spiga proposes to make changes. The applicant will need a reduction to 7½ feet in the side yard setback because the line between the 2 lots i~~s~~ an actual lot line. The proposal is to add a fixed ~~-~~construction addition to the building and a fixed location tent. The tent could be open in good weather and closed with heaters in the bad weather.

Mr. Giunta Jr. noted the setback reduction is the only reason the application is in front of the Planning Board. The rest of the relief is with the Zoning Board of Appeals (ZBA). The restaurant was originally permitted in 2005 and has been in operation since. This permit was approved in 2005 but the construction was never done. A similar proposal was approved in 2015 and never acted on. This is a new application. He explained the grounds for the change. He noted the reduction down to 7½ feet allows for the installation of the tent. It benefits the restaurant and the Town to have open air seating. He has a meeting with the ZBA this Thursday.

Marissa Iocci, Owner/Manager of Spiga, stated this is a tough time. They need more space, and with the patio, hopefully, the restaurant will get more customers. Mr. Block asked if the structure and vestibule will be maintained when all return to the new normal. Ms. Iocci stated the vestibule is for handicap accessibility and for inclement weather for the seats near the door and will be permanent. The tent is for year round use. Mr. Giunta Jr. stated the vestibule piece is fixed permanent construction. The tent can be moved around but the framework is bolted down. Mr. Block asked if the tent would be a permanent piece after COVID19 and was informed it would be. It was proposed in 2015 as a permanent addition and will allow open air seating.

Mr. Owens clarified the parking lot is occupied~~owned~~ under a long-term lease. He noted the issue would not exist if it was the same owner and was informed that was correct. Ms. McKnight stated the tent would make it difficult to access certain parking spaces. It is already difficult to access some of the spaces. She assumes people will come in right off of Highland Circle and it seems it is already an issue. She asked how drivers get into parking spaces.

Mr. Giunta Jr. stated spaces 15 to 27 wrap around the front of the property. People pull straight in and back out to leave. Those spaces have been there since the restaurant opened in 2005 and maybe before. There have been no issues. The tent is going where the patio is now so there is no conflict with that.

Ms. McKnight noted the public safety comment regarding concrete barriers between the parking area and the tent. She asked if the arborvitae is a visual barrier and was informed it was. She asked if there are good strong barriers at the end of the row. There is nothing on the plan. Mr. Giunta Jr. stated there is nothing there now. It is a safety concern. There could be concrete barriers or planters put there. Ms. McKnight asked, in what circumstance would the tent be erected but the vestibule not constructed. Mr. Giunta Jr. stated only if the ZBA did not grant the requested variance for the minimal intrusion into the setback. Mr. Alpert asked if the Board is voting to reduce the setback on both parcels or just Parcel 7 with the building. Mr. Giunta Jr. stated Parcel 7 (Lot B- on the site plan) which is the lot with the building. Mr. Alpert is not sure the decision has enough specificity that it is only one line on ~~Lot~~Parcel 7 that is being reduced. The decision should be clear that relief is only being granted on ~~Lot~~Parcel 7. Mr. Jacobs agreed. He also noted there was no reference to jersey barriers. Ms. Newman affirmet~~noted~~ there was no reference to barriers in the decision. She thought the ZBA would condition that. The Planning Board permit is only the location of the structure relative to the property line.

Mr. Block stated Exhibit 9 ~~refererences~~references public safety officials. He asked if the Exhibit is referenced and, with the correspondence, does that satisfy the Board as is. Ms. Newman will ask for a plan modification as part of the Planning Board decision. The ZBA has operational control of the site. Mr. Jacobs asked if the Board would be satisfied if they did not address safety in the decision and left it to the ZBA only to find the ZBA did not address it in their decision. Mr. Block suggested saying "The ZBA has not addressed it and condition it upon erection of appropriate barriers requested by the public safety officers." Ms. McKnight suggested putting in the Board wants to see plan modifications showing the requested barriers. It is not burdensome. Ms. Newman agreed.

Franceso Iacovitti, Owner/Manager of Spiga, asked if it could be a fixed stop instead of jersey barriers. He noted jersey barriers are not appealing in front of the restaurant. Ms. Newman stated the police would not be agreeable to that. The Fire Chief wants a strong physical barrier. Mr. Giunta Jr. stated the police referenced concrete barriers or planters. Mr. Jacobs suggested saying the security barrier has to satisfy the police and fire chiefs. Mr. Owens noted it does not have to be jersey barriers. There are a lot of barriers to protect people such as planters or something else. Mr. Jacobs noted it could be bollards as long as the Chiefs are satisfied.

Ms. Newman noted the following correspondence for the record: a memo from the Board of Health dated 6/9/20; an email from Fire Chief Dennis Condon dated 6/10/20 and an email from the Police dated 6/16/20. Mr. Jacobs opened the hearing~~it~~ for public comment. Frank Holmes, whose family owns 73 Highland Avenue, stated he is confused if the Planning Board is voting on the setback issue and was informed they were. He noted the site plan looks like the project will be one parking space short with the seating planned. Mr. Giunta Jr. stated the ZBA will be reviewing that. There will be a waiver request for one space. Ms. Clee noted the ZBA meeting will be Thursday night. She will give Mr. Holmes the Zoom ID# for the ZBA meeting.

Maria Iriti, owner of 21 and 35 Highland Circle, is in support. She feels it is a wonderful plan and will be an improvement. Ms. McKnight commented on the waiver being sought for parking and asked if an existing parking space is being lost. Mr. Giunta Jr. stated there are no changes to existing areas. There will be one space short for the additional seats planned.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to close the hearing.

Ms. McKnight noted in the Findings and Conclusions Section, paragraph 1.2, it is confusing with Parcel 8, Parcel 7, Lot A and Lot B. It should say Parcel 8 (Lot A on plan) and Parcel 7 (Lot B on plan). In the description in paragraphs 1.7 and 1.8, it should be made clearer and a condition should be added for concrete barriers. Mr. Alpert wants to clarify that the request is to reduce the side setback for one side of the lot. It can be done in paragraph 1.8.

He suggested saying "for reduction of side yard setback for Parcel 7 for lot line between Parcels~~Lots~~ 7 and 8 by 25% from 10 feet to 7½ feet." In Section 3.0 it should mirror the language in 1.8.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote of the five members present unanimously:

VOTED: to grant the requested Special Permit under Section 4.9.3 of the Needham Zoning By-Law to allow the reduction of the side yard setback for the lot line for Parcel 7 referenced in the Special Permit request for the lot line between Parcels 7 and 8 by 25% from 10 feet to 7½ feet subject to and with benefit of the plan modifications, conditions and limitations.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: to adopt the decision for Spiga LLC, 18 Highland Circle, Needham, MA, Application No. 2020-01, as presented and with the amendment previously discussed at this meeting.

Mr. Alpert noted the Board did not vote to waive the reading of the public hearing notice for the Spiga LLC hearing.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: to reopen the Spiga LLC hearing.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: to waive the reading of the public hearing notice for Spiga LLC.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: to close the Spiga LLC hearing.

7:30 p.m. – Heather Lane Definitive Subdivision: William John Piersiak, William John Piersiak, Trustee of the 768B Chestnut Street Realty Trust, Evelyn Soule Maloomian, and Koby Kemple, Manager of the 766 Chestnut LLC, Petitioners (Property located at 764, 766, 768, 768A, and 768B Chestnut Street, Needham, Norfolk County, Massachusetts).

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: to waive the reading of the public hearing notice for the Definitive Subdivision Plan for Chestnut Street for the Heather Lane subdivision and the Heather Lane Extension.

Mr. Jacobs noted this is a Heather Lane property subdivision and Heather Lane Extension residential compound. There is a request to hear the 2 projects together but vote them separately. Robert Smart, attorney for the applicant, noted this is 3 applications – the Heather Lane subdivision, which is 6 lots off Chestnut Street and 2 applications for a 5 lot residential compound. He noted 23 abutters and 6 abutting municipalities were given notice. There have been many meetings over the last 6 years. He showed the existing conditions. The property is just under 27 acres and abuts Chestnut Street and the Charles River and is zoned Rural Residence Conservation. There needs to be 150 feet of frontage and one acre. There are 5 existing residences owned by Bill Piersiak and 766B Realty Trust, Koby Kemple and Evelyn Maloomian. Mr. Piersiak has an agreement to purchase the property owned by Ms. Maloomian.

Mr. Smart described the existing houses. There will be a 6 lot subdivision via a new road with a cul-de-sac. Lot 4 at the end is 13.26 acres and is the subject of the residential compound's 5 lots. There will be a total of~~are~~ 10 house lots. Heather Lane Extension will have a private drive with a hammerhead. All residential compound house lots will have frontage on Heather Lane Extension. The proposal is for 10 house lots on 27 acres. There will be a benefit of a wider and consistently paved right of way with upgraded electrical and sewer service. There will be safer access and egress for Chestnut Street. He noted 3 owners have joined in the application. Some buildings will remain and some will be demolished. All have the required 150 feet of frontage on Heather Lane, which will be a

40 foot wide private subdivision road. All lots meet all dimensional zoning requirements. The Town will have the right to enter the private way.

Mr. Smart reviewed the waiver requests. He noted the owners of the lots will have to join the Heather Lane Association and will be responsible for all upkeep and repairs of roads and drainage systems. He has submitted drafts of the Declaration of Trust, Declaration of Restrictive Covenant, which will run with the land and be enforceable by the Town, Subdivision Covenant and the Utility and Drainage Easements. He summarized what is in the documents. He noted parking will be prohibited on the road, there will be a grant of the drainage easement and a proposed utility easement. Lot 4, owned by the principales, is 13.26 acres. Lot 4 will be divided into 5 residential compound lots with access by a private drive (Heather Lane Extension) off the Heather Lane ~~Extension~~ cul-de-sac. He has filed all the appropriate paperwork.

Mr. Smart noted there are several existing buildings. Some will be demolished. All zoning requirements for Residential Compounds will be met. Each lot will have at least 2 acres. Some waivers will be required and he reviewed the waivers. Heather Lane Extension will remain a private way and the owners will have their own association. Those owners will contribute to the maintenance of Heather Lane Extension and Heather Lane itself. He has received letters of support from 3 abutters. He noted the Engineering Department has reviewed the drainage calculations, the Fire and Police are satisfied and have no comments and the Board of Health commented that a form would need to be filled out for any demolition and a bond of $3,500 per lot would apply. He will work with the Conservation Commission. Mr. Piersiak noted he is available for any questions.

The Board took a 5 minute recess.

David Kelly, of Kelly Engineering Group, Inc., reviewed the engineering aspects of the project. This is the Rural Residencetial Conservation ~~Compound~~ District. Four existing lots comprise the subdivision with a total of 26.9 acres. The right of way is 15 feet wide. From Chestnut Street through the Piersiak property the paved way follows the topography and meanders among the trees. The new subdivision road off Chestnut Street follows the existing layout of the right of way driveway that is there today but will be widened and improved. The opening of the driveway will be widened for better site distance. There will be a 6 lot subdivision and one residential compound. The 980 foot road length will require waivers. The proposed roadway is similar to most recent subdivision roadways. There will be cape cod style berms, a 40 foot total right of way width, a 60 foot cul-de-sac and a pavement width of 25 feet. The Fire Department has approved.

Mr. Kelly noted the proposed landscape plan will follow the drive as much as possible but maximize the retention of trees. There will be some removal of trees but it has been minimized. To mitigage, 17 street trees will be planted along the right of way. The same lighting fixtures as are on Riverbend Lane are being proposed. They are lantern style with sufficient lighting and no spillage. The project is trying to maintain the rural characteristic. He reviewed the waivers which include a right of way width reduction from 50 feet to 40 feet, a pavement width reduction from~~of~~ 24 feet to 20 feet, a street intersection grade of 2.6% matching the elevation of the current resident's driveway, a radius of 20 feet, cape cod berms and a waiver of sidewalks. He noted there are no sidewalks on Chestnut Street and they do not feel there is a need here.

Mr. Kelly noted the storm water system will fully comply with the new Town regulations and the DEP regulations. There will be catch basins with a storm water management pond. The applicant has worked with the DPW and the DPW supports the design. All utilities are from Chestnut Street. A sewer system is being proposed on site that will connect the new subdivision to the existing sewer system. The goal is to match the rural meandering feel that is there and minimize tree removal. For the Heather Lane Extension there will be 5 new parcels. There are a number of buildings but only 2 will remain. There will be 3 new homes built and the rest will be demolished. There is a conservation restriction proposed along the Charles River.

Mr. Kelly noted the residential compound lots range from 1 to 7 acres. The right of way follows the existing topography as much as possible. The right of way is 329 feet in length with 20 foot right-of-way width and a 20 foot paved width. Under Section 4.2.12(e)1, the project needs to provide a safe effective driveway way for safe access. The subdivision right-of-way width requirement is ~~will require~~ 50 feet and they have 20 feet. [The grade

is being eliminated on site. – not clear] The slope is what is existing today. It is now a driveway and they are trying to make it look like a driveway while maintaining access for emergency vehicles. The goal of the waivers and development is to minimize the impact. Storm drainage will be handled individually on each lot. He noted the DPW had one comment that the on-site homes need to comply with current regulations for storm water. The roofs need to recharge into the ground. They have been doing that for years in Needham and will comply with that.

Ms. McKnight noted on the Heather Lane Extension the pavement at 20 feet is fine but the right of way width is only 20 feet also. She feels 20 feet is sufficient for vehicles passing but there is no right of way outside of the paved area. How is snow to be disposed of to maintain that 20 feet? She saw a stone wall and snow would be right up to the edge of the right of way. She would prefer a 25 foot right of way with 20 feet paved. She feels it is difficult to review the plans on such a small screen. There must be drainage structures in the roadway and drainage in the ways themselves. She wants to make sure the drainage structures are adequate. Ms. McKnight noted the phrase "preserve rural character" has been mentioned several times. She wants to take seriously the Conservation Commission's suggestion for a conservation restriction. She feels it is an issue of public access along the river. They should enable people to walk along the river.

Mr. Kelly noted there is extensive drainage in the street. The detail plans are in the packet. There are a series of catch basins to the storm drains that tie into a traditional storm water drainage pond that includes recharge components and water quality components before it goes off site. Heather Lane has a traditional storm water drainage system that has been approved by the DPW. He noted there are several MWRA easements on the property with one active. There is an old easement the Town took over and they will connect to that one. Ms. McKnight noted there are no berms on the side of the paved area in the extension. Does that create difficulty with drainage? Mr. Kelly stated there is not a substantial amount of pervious surface. It is a typical driveway in Needham. He noted the applicant may want to consider widening of the right of way for a wind-row for snow.

Mr. Block stated he wanted to go through the documents more thoroughly. He commented the ownership group should consider, for both, to say the owners shall be jointly and separately liablebel. He noted on Heather Lane there is sloping of 2.6% rather than 1%. He asked what effect does that delta have on water on the property. He also asked what the transition issues would be with cape cod berms. The Heather Lane Extension has a slope of 9% rather than 8% which is the current condition on site. He asked what effect a change would have as a result in change of slope from 8% to 9% and how the creation of the Extension is not in violation of Section 4.2.12(c). Mr. Kelly noted the goal is to create a flat level entry and they are really talking about a flat slope. They would not be able to meet the abutters' current driveway if the slope were lowered. He discussed it with the DPW and they were not concerned. For the curbing, the By-Law allows for granite or bituminous which they do not use anymore. He is proposing curbing such as that at Riverbend. He has seen this throughout the town and it is more natural than granite curbing. The Extension's 9% slope is in a limited area to accommodate the existing home. He feels there is no impact.

Mr. Smart noted the language changes in the Homeowner documents. He will look at the language and get back to the Board. He stated compliance with the Residential Rural Compound By-Law, Subsection (c), does not apply. He feels it would apply if the subdivision was already built but Lot 4 is not already a residential compound. Mr. Owens stated the overall project is positive. This is a remote corner of town and this is creative thinking. He likes the residential compound which is not used much. He stated he is always interested why people ask for waivers. He is not persuaded by the comment that the Board has routinely waived in the past. That may have been different circumstances. He wants to know why the waivers are necessary. He noted there should be a column on existing conditions on the list. Heather Lane is clearly an improvement over what is there today. He would like to know the current conditions and he wants more explanation on why the waivers made sense.

Mr. Owens stated he agreed with Ms. McKnight on the right of way width. It makes sense but why do a right of way not in compliance. He is not persuaded by wanting it to look like a driveway but he may be convinced. If the Fire Chief is happy with it, he would be also but he would like the current conditions and additional commentary as to why waivers are necessary. Mr. Alpert stated he needs more time to review the project. Mr. Jacobs had the same comments as the other members. He needs to review the drafts.

Ms. Newman noted the following correspondence for the record: an email from the Fire Chief dated 6/16/20; an email from Town Engineer Anthony DelGaizo, dated 6/16/20 with comments; a memo from Asssitant Town Engineer Thomas Ryder, dated 6/15/20; a recommendation from the Board of Health dated 6/9/20; an email from the Police Chief dated 6/16/20 and 3 emails from abutters George Hasiotis, dated 6/16/20; Sarah and Evan Grossman, dated 6/16/20; and Sara and Kevin Jay, dated 6/16/20, in support. Mr. Jacobs asked if the DPW had any issue with the right of way width. Ms. Newman stated it was not called out in the comments. She noted the right of way width is always wider to accommodate what Ms. McKnight talked about. She does not know any that are not wider than the paved width. Mr. Smart noted the Burr Road subdivision was granted with 20 feet paved and a 20 foot right of way.

Mr. Jacobs acknowledged comments from the public. Simeon Bruner, Manager for 700 Chestnut Street LLC, stated he is not clear if he got the proper notice. His concern is they expect to add 2 more lots to Heather Lane and he wants to make sure this leaves them enough access. He wants to know which trees are being removed and he does not want spillage of light onto his property. Mr. Jacobs asked if he has spoken with the applicants. Mr. Bruner stated he received a call yesterday afternoon. No conclusions were reached on that call. Mr. Jacobs stated the continuance will give him time to consult with the applicant and possibly resolve the 3 issues. Kevin Jay, abutter to Heather Lane, stated he supports the plans. The rural character is important to this area and the road will be much nicer than it is now. He has not had an issue with drainage or snow removal.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to continue the hearing to 7/21/20 at 7:15 p.m.

Minutes

Ms. McKnight noted in the minutes of 4/7/20, 4th paragraph of the Emory Grover discussion, it should say "proposed within the setback and height limit, and parking will be behind." All agreed

Upon a motion made by Ms. McKnight, and seconded by Mr. Owens, it was by a roll call vote of four of the five members present (Mr. Block did not vote):
VOTED: to accept the minutes of 4/7/20 with the one change discussed.

Correspondence

There is no correspondence.

Report of Planning Director and Board members

Ms. Newman noted she and Mr. Jacobs are part of the Downtown Business Group and there have been discussions for outdoor seating to help businesses. They will be meeting with owners along Great Plain Avenue. She also noted that ~~T~~the first round of interviews for the Economic Development Director have happened and she is hoping to have a second round. There are some good candidates and she is hoping to have someone in the next month. Mr. Block stated he has had a note from a Council of Economic Advisors (CEA) member who expressed concern with sidewalk seating that may interfere with other businesses. He will speak with that person and let Ms. Newman and Mr. Jacobs know what the specific concerns are. There may be unintended consequences affecting retail.

Planning Board Reorganization

Upon a motion made by Mr. Block, and seconded by Mr. Owens, it was by a roll call vote of the five members present unanimously:
VOTED: to approve Ms. McKnight as Chairman and Mr. Alpert as Vice-Chairman.

Upon a motion made by Ms. McKnight, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:

VOTED: to adjourn the meeting at 10:35 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

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Jeanne S. McKnight, Vice-Chairman and Clerk

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NEEDHAM PLANNING BOARD MINUTES

January 21, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Thursday, January 21, 2021, at 8:30 a.m. with Messrs. Alpert, Owens and Block, as well as Planning Director, Ms. Newman.

Ms. McKnight took a roll call attendance of people expected to be on the agenda. She noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. She reviewed the rules of conduct for zoom meetings. She noted this meeting does not include public hearings and will not allow for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

Highway Commercial 1 Rezoning and Planning Study: Review of Urban Design Plan, Discussion of Next Steps and Project Schedule.

Ms. Newman stated she had a second meeting with Natasha Espada, of Studio ENEE, and staff from the Greenman-Pedersen, Inc. (GPI) group. The purpose was to look at the draft presentation regarding urban design plans and the suggested changes made last week. They put together a power point presentation for the community meeting and are going to walk through the presentation so all members can see it. Ms. Espada noted she changed some of the property lines due to receiving the Assessor's map. She updated the site square footages. She also changed the retail with a different color to separate it from landscaping, added information on parking and added a "P" for the parking garages. She needs to add cars to the 6 renderings from the ramp. She listed the parking requirements and updated the spreadsheets Ms. Newman sent. She did not change the FAR on any slides. The goals remain the same. She also took out some of the plans that were not as relevant.

Mr. Block suggested taking out one or 2 photos from the lower part of Chestnut Street. Ms. Espada will remove one that is similar. She noted the idea is to see the spine back and forth. There is a new slide with the existing By-Law, the previous By-Law and the proposed By-Law. Mr. Block stated they will restate the by right situation and make a couple of changes on this slide. Susan Crowe Knight, Architect at Studio ENEE, noted there should be a discussion regarding the transition of maximum heights by special permit from 70 feet to 42 feet. This will need to be set. Mr. Alpert thought they had decided to reduce the by-right height ~~to the special permit~~. Select Board Member Marianne Cooley agreed it was to be 4 stories and 2 stories and not 5 stories and 3 stories. All agreed to reduce the by-right height. Ms. McKnight clarified the maximum by-right height will be 30 feet near the streets and 54 feet in back.

Ms. Espada stated there were no dimensional changes made to the renderings but she could do that. She added a zoning district planning slide. Ms. McKnight asked if the number of acres could be added and keep the square footage. ~~She~~Ms. Espada noted the drawings for the warehouse were moved to the back, current parking numbers of 690 plus have been added and the existing zoning requirement information has been added. She noted the parking numbers ~~for TV Place~~ are 422 for TV Place and 688 for the Muzi site. This is an as of right zoning plan. A "P" has been added to the plan for parking garages, and they are staying 180 feet back. The setback is based on a parallel road. They could do a parallel line to the road. Mr. Block stated they could do a distance from the intersection at a distance of "X". Mr. Alpert has no problem with a parallel line.

Ms. Espada stated she has shaded over the Muzi Ford building so you cannot see it. Two slides will be revised to reduce the height levels. Ms. McKnight would like green space shown on the slide. Mr. Block asked if a couple of cars could be reduced on the slides. He feels traffic will be a huge focus of this. Mr. Owens agreed there does not need to be a heavily trafficked slide. Ms. Espada can easily remove cars and could remove the bike line also. She will add more trees to the highway exit slide and will remove the white line. She will lower the building by one floor and maybe cut it back to make it parallel to the block. Warehouse parking is in the background. The question is where is the setback line going to be set along Highland Avenue? She will take the 200-foot setback for higher buildings ~~feet~~ and show~~skew~~ it on the site. Ms. Newman suggested they start the line at the point of

intersection of Highland Avenue and Gould Street and run the setback line parallel to that line. ~~Ms. McKnight suggested 150 to 160 feet.~~

Mr. Alpert agreed with Mr. Owens that it is too late to tinker with the language too much. There is already a setback needed to build. He would like to leave the distance as it is now and run it parallel to Highland Avenue. It is simple and can be done quickly. Ms. Newman stated there needs to be a point on the lot that is selected as a starting point for the line to run parallel to Highland Avenue. Mr. Alpert stated he is ok with a line at 180 feet. It was agreed to go with what they have.

Rebecca Brown, of GPI, showed slides of when the traffic counts were taken. The blue counts were taken in 2015 and the green were updated in 2019. The blue counts have been adjusted to account for traffic changes. GPI has used the 2019 data as 2015 was less. For the Volume of Traffic Slide, a.m. and p.m. peaks were generated using existing uses on site and proposed trips. Ms. McKnight asked why there were no existing trips. Ms. Brown stated she did not count them but wanted to give an idea of how many trips there would be. There is a net increase.

Ms. Brown noted the next slide shows how they distributed the trips out and the next is the level of service with no build in the a.m. and p.m. and with build out in a.m. and p.m. She will explain the trip generation. She has shown where there are capacity constraints that need mitigation. The [mail?delete?] Level E or F is Hunting and Highland. There will be DOT improvements. Other level F service intersections are at the 2 proposed site drives and at Central and Gould. This intersection is a level service F and no build. The Town has money for improvements there for 3 years out. Ms. Cooley stated the town is already in year one of the 3-year cycle. Ms. Brown noted the next slide shows the improvements needed at Gould and Highland. She showed the worst-case scenario of what the impacts might look like ~~of what the impact might look like~~.

Ms. McKnight stated the squares were hard to read and there may need to be oral presentation. Ms. Brown will explain each item and describe it. She noted there will need to be signal easements, takings on the Muzi property and easements for sidewalks. The last slide shows the intersections proposed to be improved and how ~~they~~their levels of service will be, once improved with mitigations. There will be no Level F at Central and Gould and there will be a left turning lane. The last slides are questions in case something comes up. There is collision history at intersections and then a zoomed in version of the concept plans. There are slides that detail traffic volumes, existing conditions and new build and generated trips with build scenarios.

Mr. Owens left the meeting at 9:40 a.m. Ms. Brown gave a detail of trip generation by use and pass by traffic. She will do a slide that removes some of the retail and adds in 240 residential units. Ms. McKnight stated she would like a slide between the existing and Option B. Ms. Brown will add it into the question and answer section. Mr. Block commented the highly technical data could be seen as a bit of a distraction. He wants to keep the core part simplified. He is not sure he wants to add anything to the core. Ms. Brown could add a column that shows traffic with Option A, Option B and the difference.

Mr. Alpert stated the mitigation plans for the Gould and Central intersection are going to happen without the rezoning. He does not want to spend a lot of time on that. Ms. Newman is concerned because it shows takings that people have not been notified of yet. Ms. Brown stated this slide is only there in case questions come up. She can remove the information. People will know the level of service at that intersection will be fixed. Mr. Block asked Ms. Brown to write “no build scenario” at the top of slide and put “with mitigation.” Ms. McKnight assumes the sketches with the size of the site do not take into account the takings. Ms. Espada stated they do not, as takings may not be necessary depending upon what happens and what is proposed. She was asked to prepare a worst-case scenario.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote of the four members present unanimously:
VOTED: to adjourn the meeting at 10:00 a.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

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Paul Alpert, Vice-Chairman and Clerk

NEEDHAM PLANNING BOARD MINUTES

February 2, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, February 2, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of people expected to be on the agenda. She noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. She reviewed the rules of conduct for zoom meetings. She noted this meeting does include public hearings and will allow for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Block, it was by a roll call vote of the five members present unanimously:
VOTED: to automatically continue the meeting to 2/16/21 at 7:15 p.m. with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Highway Commercial 1 Rezoning and Planning Study: Project Update

Mr. Block noted the presentation is tomorrow and there will be an outline. He will introduce, give the history, note changes made as a result of feedback, outline the changes and identify and compare the uses and ~~deminimus~~ dimensional changes. Natasha Espada, of Studio ENEE, will proceed with 2 scenarios of by right and by special permit. Then Rebecca Brown, of Greenman-Pedersen, Inc. (GPI), will talk traffic and needed improvements. Select Board member Marianne Cooley will discuss the fiscal impact. Then there will be comments and questions. There may be closing remarks. He anticipates one hour of content and 30 minutes for questions and comments.

Ms. Newman stated there needs to be discussion on how to manage questions. Does Mr. Block want the planning staff to manage the questions or will Mr. Block do so? Mr. Block would like the staff to allow people to speak after he recognizes them. Ms. McKnight will open the meeting. She feels there should be one hour for comments and questions. Mr. Alpert stated he would not be at the meeting. Ms. Newman noted the meeting will be covered by live cable. She will email the full presentation to all members after the meeting. She will update the website with the final version after the meeting.

Public Hearing:

7:30 pm. – 390 Grove Street Definitive Subdivision: Elisabeth Schmidt-Scheuber, 390 Grove Street, Needham, MA, Petitioner (Property located at 390 Grove Street, Needham MA.) ***Please note this is a re-noticed hearing that began on February 4, 2020 and is continued from the July 21, 2020, August 11, 2020, September 8, 2020, November 4, 2020, December 15, 2020 and January 19, 2021 Planning Board meetings.***

Attorney George Giunta Jr., representative for the applicant, noted he has submitted revised plans to address several comments or issues from abutters. The reverse curve has been eliminated in favor of a new configuration. Street grades at the entry have been revised, the grading system has been revised to make it consistent, and the profile of the street has been revised. The By-Right Plan shows the ability to do 2 conforming lots without waivers. They are trying for a residential ~~–~~ driveway feel as this is going to one house in the back. He submitted a revised list of

waivers and feels all technical requirements have been met. The main issue left is if Lot 1 is a corner lot. He feels it is not a corner lot.

Mr. Giunta Jr. stated Parcel B~~Lot 1~~ will be owned 50/50 by Lot 1 and Lot 2. There is no law that prohibits the creation of lots. The abutters' attorney has cited 4 cases. Three are from other states and none apply to this situation. The Board has dealt with this before at least twice. One was Heather Lane, which is the same situation as here. They created a 10 foot by 90 foot strip along Chestnut Street to make a buildable lot. Also, on Woodworth Lane a strip 10 feet by 200 feet was created. The Planning Board has allowed this in the past. It makes ~~sent~~sense and is fully lawful in this case. His position is the creation of Parcel B is permitted, allowed, lawful and within the zoning and planning laws. The subdivision is an attractive proposal and fits better than a fully-compliant subdivision. He is asking the Board for approval.

Ms. McKnight noted the Meridian Associates letter. Mr. Giunta Jr. stated there were several comments, and changes were made on the plan. Mr. Kelly can speak to the drainage. David Kelly, Project Engineer, added additional details to the infiltration system and one tweak of the stormwater calculations due to the roadway realignment. Ms. McKnight noted the following correspondence for the record: an email dated 1/30/20 from Fire Chief Dennis Condon stating he is satisfied with the plan; an email dated 1/27/21 from Assistant Town Engineer Thomas Ryder with comments on storm water and other issues and the need for detail for the bounds; and an email dated 1/27/20 from Tara Gurge, of the Board of Health, requesting at least one sidewalk. Mr. Alpert stated he would like to hear from the abutters.

Attorney Gary Lilienthal, of Bernkopf Goodman, ~~and~~ representative for the abutters on Grove Street, disagreed with Mr. Giunta Jr. on several aspects. He feels the Board needs to discuss what constitutes a corner lot. The question is does Lot 1 have frontage on Grove Street. He noted he cited cases for relevant effect that were close. He also cited 3 Massachusetts cases relevant to the issue at hand. He feels they all apply to this situation. Parcel B cannot be distinguished from Lot 1 at all. He believes the Board has authority and an obligation to make a decision in this case. The abutters are concerned with the precedential value this sets trying to fit 2 lots into one. The Board will be setting a precedent. The issue should be resolved here and the Board should deny it because Lot 1 is a corner lot. It would send a strong message to developers. He noted the Health Department wants a sidewalk but he does not feel that is in the best interests of all. Parcel B is not a seamless interruption. It is a corner lot and insufficient in width as a corner lot. He requests the Board deny the application.

Mr. Jacobs stated both attorneys had good points. He would like to have Town Counsel's input on this situation. Mr. Owens stated he thinks this is bad planning. Though Mr. Giunta Jr. stated this is one new lot with a house in the back, and said he feels it is like a driveway, ~~-~~ ~~I~~it is not a driveway~~.~~; ~~I~~it is a road. He would not vote to approve waivers in this application. If there is a by right, the applicant should go ahead and build it. It is in fact a road. He is not persuaded by the argument that certain waivers were voted in certain situations. He also would like to hear what Town Counsel has to say.

Mr. Alpert is not adverse to hearing from Town Counsel and getting an opinion. He has read the cases cited by Mr. Lilienthal and is not convinced of the argument by reading the cases. The Board has already created a precedent. It was not discussed during the public hearing for Heather Lane. He is aware that Heather Lane is the exact same issue as here. He is concerned with setting precedent. Once precedent is set it should be for all. He will see what Town Counsel has to say. He is inclined to say the creation of Lot B is a large hole in the By-Law. He would like to hear again the arguments for the waivers. He is concerned with the trees close to the lot line or that straddle the lot line.

Mr. Block stated he has mixed feelings about this. Heather Lane was brought up, but this is a2~~-~~-lot~~s~~ subdivision, and Heather Lane ~~is~~was multiple lots~~units~~. The Heather Lane Homeowner's Association was to tend the landscape buffer for the pleasure of the homeowners. He does not feel this is the same. He feels there should be some continuity in the policy on how to handle this – a house behind a house. Mr. Alpert stated, if asking for Town Counsel's opinion, he would like him to address the 2-lot subdivision and the 50/50 common ownership issues. This could put the decision on Heather Lane in jeopardy. Mr. Block stated the benefit of this is predominantly for

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Lot 1 and not Lot 2. Every case in itself is different. He has a question if construction vehicles are excavating. (Mr. Block lost his internet connection briefly.)

Ms. McKnight agreed to getting Town Counsel's opinion. The Board should be concerned with adequate access to the lot, sidewalks, is the drainage adequate and whether to grant waivers. She is not sure it is their decision as to whether particular lots in the subdivision are buildable. She would like the questions addressed by Town Counsel as to whether it is the Board's obligation to make that determination. She had a question about the Meridian letter. On page 5, at the top regarding the infiltration system, it says the applicant should submit a mounding analysis. Meridian's response is they do not feel ground water mounding calculations are required. She asked if the Town required this and is additional information needed. Ms. Newman stated the Assistant Town Engineer was not recommending it be done but she will follow up.

Mr. Block stated if excavators are working on the road and dig down and destroy roots of trees on someone's property that is a challenge. He would like the Board to have some continuity where there is a house stuck behind another house. Robert Badavas, of 402 Grove Street, stated he heard the Fire Chief had no issue with the plan. He asked if he was looking at driveway width or roadway width. Paul Beaulieu noted that, with the widest out-riggers, the Fire Department uses 18 feet of pavement, and asked is that sufficient for fire equipment. James Curley, of 380 Grove Street and a direct abutter, noted Parcel B is being created to make an unbuildable lot buildable. Lot 1 is a corner lot under the By-Law and is unbuildable. Ms. Newman noted the hearing will be continued. She will need, in writing from the applicant, a request to give another extension of the action deadline from the end of March to the end of April.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to continue the hearing to 3/2/21 at 7:30 p.m.

The Board took a 5 minute break. Mr. Block was out of the room for the approval of minutes.

Minutes

Upon a motion made by Mr. Jacobs, and seconded by Mr. Owens, it was by a roll call vote of the four members present unanimously:
VOTED: to accept the minutes of 12/1/20.

Mr. Block returned to the meeting.

Discussion of Permit Conditions: Major Project Site Plan Special Permit No. 2020-03: Hunnewell Needham LLC, 393 South Main Street, Cohasset, MA 02025, Petitioner (Property located at 400 Hunnewell Street, Needham, MA). Regarding request to build new residential building with 8 units (see legal notice for more info).

Ms. McKnight noted the following correspondence for the record that was left out at the last meeting: a letter from 8 abutting property owners with photos taken 12/31/20 with a focus on the shading issue and demolition.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to reopen the hearing for the limited purpose of accepting the 12/31/20 letter from the abutters for the record.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to close the hearing.

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Mr. Jacobs had no questions or comments. Mr. Alpert stated it seems the neighbors have been in touch with the developer and are satisfied. He is satisfied. Mr. Owens feels the developer has made a serious attempt to mitigate the abutters concerns, and. He is in full compliance with the zoning requirements. He has no objections or concerns. Ms. McKnight stated she fails to see the need for the 5 parking spaces along the rear left of the property line at the back of the building. She thought the land could be better used for a sitting area. She understands the need for a place for snow but a sitting area does not necessarily mean trees and bushes. She suggests the area be pervious. She lives in a condo unit and there is a large demand for outdoor seating areas. She likes the idea of outdoor space for people to socialize. She would like a response from Mr. Giunta Jr. and ideas from Board members.

Mr. Giunta Jr. stated anything is possible. The applicant has a different view. Those spaces are at a lower grade 4 feet down from the landscaped area. It is not a very warm and inviting spot. He feels it would go largely unused and feels the parking spaces would be used. He feels if someone has a social gathering the needed guest parking it would not be there. This would be a semi enclosed space with retaining walls on 2 sides. Mr. Alpert stated he disagrees with Ms. McKnight. It is a good idea but if the owners want a seating area they can create one. Ms. McKnight asked if there could be a condition in the decision that these spaces are not required. She would also like it clear these are guest spaces.

A discussion ensued. Mr. Jacobs asked if there was any issue with those spaces being permeable pavers. Mr. Giunta Jr. stated Engineering and developers try to avoid permeable pavers especially in parking spaces where oil or other car liquids could drip down. He does not feel the net difference is sufficient to warrant them. Mr. Beaulieu noted he has used permeable pavers but it is not a favorite material to use ofper the Engineering Department. He noted these spaces are near the dumpster. Volatile organics tend to create a long term contamination issue. He would not use permeable pavers near a dumpster.

Ms. Newman noted there had been some conversation regarding the dumpster outside and if the trash could be handled inside. Mr. Giuinta Jr. stated, if the dumpsters go inside, the parking would have to be reconfigured and they would lose 2 parking spaces. These are non-commercial dumpsters. It will not be that bad to have them outside with a fence around them. They will be set 4 feet below the abutters. Dennis Cronin noted they will be paving the entire parking lot including the neighborsing lot. Mr. Owens stated he is opposed to any condition for the developer to separate parking areas. Mr. Cronin will work with the neighbor and put up signage for their spots. A discussion ensued regarding driveway easements. Mr. Giunta Jr. suggested arrows be painted for the entrance and exit. Mr. Owens commented too much time has been spent on this project. Mr. Alpert agreed. He feels they are micromanaging now. Let the 2 property owners deal with the easement if there are issues. He would not want this as a condition. Ms. Newman will prepare a decision. The Board can grant relief and approve the decision at the next meeting.

Review of Inclusionary Zoning Opportunities Across Needham's Commercial Districts.

Ms. McKnight stated she wantsed to make a presentation on Inclusionary Zoning. She is looking at all zoning districts. She was surprised this 8-unit condo project at 400 Hunnewell does not require any affordable units. She has found that several districts do not require affordable units. She will draft a file of where it should be included. She showed a list of all district requirements. She noted the Apartment A-1 District and Apartment A-2 District, which is Nehoiden Glen. Any that have already been built would not be required to have affordable units. In the 1970s, the town rezoned to allow apartments. She feels the requirement should be put in the A-1 and A-2 districts in case the existing buildings isare ever redeveloped. She discussed the Avery Square District and the Hillside Avenue Business District. She feels there should be a consistent affordability requirement in all districts. She requestssuggests that, if a development is in the overlay and has at least 6 units, one affordable unit be required. There is no requirement in the underlying district for affordable units. She asked if this is something the members want her to work on and prepare appropriate language for.

Mr. Jacobs stated he would like her to go forward with this. There are 6 districts – Apartment 1 and 2, Center Business, Chestnut Street Business, Hillside Avenue Business and Avery Square District. The Neighborhood Business 128 District has an affordable unit requirement. He would like if there are 6 to 10 units, there be one

affordable unit and above that round up one. Ms. Newman stated it would be helpful to loop Karen ~~Sunnaborg~~Sunnarborg in. A discussion ensued. Mr. Alpert commented it was a great idea and he likes it in general. He feels they are getting into the weeds and it would be rushing to get it on the May Town Meeting. He is not sure it can be ready for May. He is confused as to how to treat existing apartment complexes. If not exempt, how do we require it? He asked what happens when the building gets old and is rehabbed or torn down. Ms. McKnight will be prepared to answer that question. She feels it would be exempt.

Mr. Owens thinks it is a great idea and the Board should go ahead with it. He thinks it may be a little more complicated and more controversial than Ms. McKnight thinks. Mr. Alpert agreed with Mr. Owens. Paul Beaulieu stated it sounds like a good idea, that~~.~~ Mr. Alpert is correct in not racing for the May Town Meeting, that~~. T~~the Board should look at incentivizing in certain areas. and~~. H~~he commented the Board should not look through the keyhole and make it too specific. Ms. McKnight noted a letter from Peter Olive, of 133 Thornton Road, dated 1/27/21, who works with the Equal Justice in Needham ~~A~~advocacy ~~G~~group. They would like an affordable unit requirement in the 6 zones outlined. Mr. Olive~~, of 133 Thornton Road,~~ appreciates all the hard work on the inclusionary zoning plan. He noted a lot of people are working on this and they hope to get it on the Warrant for the May Town Meeting.

Board of Appeals – February 18, 2021.

This is off the agenda.

Report from Planning Director and Board members.

Ms. Newman informed the Board a vaccination facility is going into the first floor of the Trip Advisor Building. The Board of Health has created a public health emergency declaration to allow this. The Fire, Police and Building Inspector have all looked at this and signed off on it. Mr. Alpert stated he has a problem with this. He has an issue with the Board of Health declaring a health emergency and overriding the Planning Board rules and regulations. He does not feel they have a right to nullify the By-Law by declaring a health emergency. It is ok if they come to the Planning Board to request an exemption.

Upon a motion made by Mr. Alpert, and seconded by Mr. Owens, it was by a roll call vote of the five members present unanimously:

VOTED: that this Board approves the use of the Trip Advisor Building by Newton Wellesley Hospital and Mass General and Brigham for the purpose of administering covid vaccinations and, if such use is in violation of our By-Laws or of a Special Permit, we are directing the Building Inspector to not enforce any violation because of such use.

Ms. Newman stated she needs~~ed~~ some direction on Heather Lane. There are 2 lots where the structures were to remain. The developer now wants the flexibility to take them down. She wants to modify the finding section of the decision and the off-street drainage requirement. She asked if a deminimus change was proper. Mr. Jacobs is ok with that. Ms. McKnight did not recall those buildings being important for their decision. She feels it can be done as a deminimus change. Ms. Newman noted the bond will be increased and Engineering has no issue. Mr. Alpert stated he wants to make sure the abutters are aware since they had raised an objection. He would like something in the file that the abutters have received notice or have no objection to it. Mr. Jacobs agreed. Ms. Newman will follow up with Attorney Robert Smart tomorrow.

Mr. Block stated he has been approached by a Central Avenue resident regarding a large~~-~~scale day care going in next to Temple Aliyah. Ms. Newman stated it will be right below the 10,000 square foot threshold and create a design as of right. This triggers minor site plan review. The parking will not need any waivers. She does not have any details. Mr. Block stated drop off will be 7:30 a.m. to 9:00 a.m. and pick up will be 3:30 pm. to 6:00 p.m. There will be an additional 100 cars on Central Avenue. He would support a Zoning By-Law change; if a use with that much traffic impact is in a residential zone then the Planning Board should have~~has~~ some oversight. He would like to see if the Board can set some policy and codify it. Mr. Alpert stated the Single Residence A District has few

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uses that are allowed by right and those are by statute. Ms. Newman feels the Board should think about a standard across residential. Mr. Block feels there is a danger adding 100 cars in the a.m. and p.m. He is not sure what the Board can do. Mr. Alpert stated Temple Aliyah is right next door and post covid there are after school religious schools which will increase traffic. He noted the owner of the property is an entity that is owned by Select Board member Matt Borelli. Mr. Owens stated he needs more information.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:
VOTED: to adjourn the meeting at 10:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

_____
Paul Alpert, Vice-Chairman and Clerk

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From:	Jeanne McKnight
To:	Alexandra Clee
Cc:	"Paul S. Alpert"; Lee Newman
Subject:	FW: Congratulations and follow up
Date:	Wednesday, May 5, 2021 9:48:36 PM

Forwarding in case we want to include this e-mail in our packets for our next meeting, congratulating the Planning Board and offering continued involvement on the issue of planning for sustainable development..

Jeanne

From: Stephen Frail <sfrail2001@yahoo.com>
Sent: Monday, May 3, 2021 8:57 PM
To: Jeanne McKnight <jeannemcknight@comcast.net>
Subject: Congratulations and follow up

Jeanne:

Congratulations again on the passage of the HC-1 re-zoning article at Annual Town Meeting. Please pass my congratulations on to the rest of the Planning Board as well.

As discussed briefly tonight, I'd love to see the Planning Board continue to work on the issue of pushing harder for sustainable development as part of the general zoning by laws. Please let me know how I can help.

I mentioned that there is a group of cities and towns in Massachusetts that are working on strategies to promote greener development in their communities within the boundaries of current state law, while also pressing the state to provide cities and towns with more tools to achieve decarbonization of residential and commercial buildings. This organization is referred to as the Massachusetts Building Electrification Accelerator. Current members include Amherst, Arlington, Ashland, Belmont, Brookline, Cambridge, Concord, Ipswich, Lexington, Melrose, Salem and Worcester. Here's a brief overview on some of the work the accelerator is pushing. https://rmi.org/massachusetts-governor-must-act-to-secure-clean-affordable-buildings/ including how Net-Zero construction assists affordable housing.

The goal of the accelerator is to pressure the state legislature to provide cities and towns with more tools to achieve net-zero carbon, as currently, there are very few policy options. Here's a quote from one member:

> "We have municipalities that have no way to meet their climate goals. The state's not meeting their climate goals, and towns and cities have no legal mechanism by which to meet our climate goals," said Lisa Cunningham, another area architect who has worked with Scanlon on the Brookline campaign.

And here is a presentation by RMI that dives into some of the tools they recommend cities and towns use to promote electrification/decarbonization in construction:
https://www.concordma.gov/DocumentCenter/View/27433/Rocky-Mountain-Institute-Building-Electrification-Accelerator-Presentation-October-2020

It would be great to see Needham join this group in advocating for stronger zoning tools for municipalities.

More info on the Accelerator here: https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/mass-building-gas-ban-movement-expands-after-2020-setback-62026427

You also mentioned that your residential community is embarking upon new heat pump technology to improve the efficiency, lower costs, and reduce carbon in housing. I'd love to learn more about that, and if possible, to present it as a case study we could post to the Green Needham blog and social media, and possibly local media as well. The more we can show that these efforts can promote both sustainability AND affordability, the sooner we can get the town on board with new standards, such as the Net Zero building codes we expect to come out within two years.

Thank you again, Jeanne, for your tireless efforts on behalf of our town.

Regards,

Stephen Frail