

NEEDHAM PLANNING BOARD

Friday February 11, 2022

8:00 a.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/j/82658993198>

1. Decision: Major Project Site Plan: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, Petitioner. (Property located at 1688 Central Avenue, Needham, MA). Regarding proposal to construct a new child-care facility of 9,966 square feet and 30 parking spaces, that would house an existing Needham child-care business, Needham Children's Center (NCC).
2. Minutes.
3. Report from Planning Director and Board members.
4. Correspondence.

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

DECISION
February 1, 2022

MAJOR PROJECT SITE PLAN REVIEW DECISION
Needham Enterprises, LLC
1688 Central Avenue, Needham, MA
Application No. 2021-02

(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 application of Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, (to be referred to hereinafter as the “Petitioner”) for property located at 1688 Central Avenue, Needham, Massachusetts (hereinafter referred to as the “property”). The property is shown on Needham Assessor’s Plan No. 199 as Parcel 213 containing a total of 3.352 acres and is located in the Single Residence A District.

This decision is in response to an application submitted to the Board on May 20, 2021, by the Petitioner for: (1) Major Project Site Plan Review under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law).

The requested Major Project Site Plan Review relates to, and allows the Planning Board to impose restrictions upon, the Petitioner building a new child-care facility that will house an existing Needham child-care business, Needham Children’s Center, Inc., a Massachusetts Corporation (hereinafter “NCC”). The property is presently improved by a two-story residential building (single-family dwelling comprising 1,663 square feet), two smaller out-buildings (garage comprising 400 square feet and second garage comprising 600 square feet) and a barn comprising 4,800 square feet. The proposed project is to demolish the single-family dwelling and the two garages at the property. A new one-story building of 10,034 square feet will be constructed, to house the child-care facility. Pursuant to the proposed project, the existing 4,800 square foot barn at the property would be retained and used for accessory storage by the child-care facility. A new parking area that includes 30 off-street surface parking spaces will also be constructed.

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 Chairman, Paul S. Alpert, on Monday, June 14, 2021, at 7:20 p.m. via remote meeting using Zoom ID 826-5899-3198. No testimony was taken at the June 14, 2021, public hearing and the public hearing was continued to Tuesday, July 20, 2021, meeting held via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Tuesday, August 17, 2021, via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Wednesday September 8, 2021, via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Tuesday, October 5, 2021, via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Tuesday, October 19, 2021, via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Tuesday, November 2, 2021, via remote meeting using Zoom ID 826-5899-3198. The public hearing was continued to Tuesday, November 16, 2021, via remote

meeting using Zoom ID 826-5899-3198. The public hearing was continued to Wednesday December 8, 2021, via remote meeting using Zoom ID 826-5899-3198. Mr. Paul Alpert chaired the public hearings from June 14, 2021 through October 19, 2021. Mr. Adam Block chaired the public hearings from November 1, 2021 to the hearings close on December 8, 2021. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, and Martin Jacobs were present throughout the proceedings. No testimony was taken at the June 14, 2021, public hearing, August 17, 2021, public hearing and October 19, 2021, public hearing. Board member Natasha Espada recused herself from the deliberations. The record of the proceedings and submissions upon which this approval is based may be referred to in the office of the Board.

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

Applicant submittals. Application, Memos, Plans, Traffic Studies, Drainage, Etc.

- Exhibit 1 - Properly executed Application for Site Plan Review for: (1) A Major Project Site Plan under Section 7.4 of the Needham By-Law, dated May 20, 2021.
- Exhibit 2 - Letter from Matt Borrelli, Manager, Needham Enterprises, LLC, dated March 16, 2021.
- Exhibit 3 - Letter from Attorney Evans Huber, dated March 11, 2021.
- Exhibit 4 - Letter from Attorney Evans Huber, dated March 12, 2021.
- Exhibit 5 - Letter from Attorney Evans Huber, dated March 16, 2021.
- Exhibit 6 - Architectural plans entitled "Needham Enterprises, Daycare Center, 1688 central Avenue," prepared by Mark Gluesing Architect, 48 Mackintosh Avenue, Needham, MA, consisting of 4 sheets: Sheet 1, Sheet A1-0, entitled "1st Floor Plan, dated March 8, 2021; Sheet 2, Sheet A1-1, entitled "Roof Plan," dated March 8, 2021; Sheet 3, Sheet A2-1 showing "Longitudinal Section," "Nursery/Staff Room Section," "Toddler 1/ Craft Section at Dormer," and "Playspace/Lobby Section," dated March 8, 2021; and Sheet 4, Sheet A3-0, showing "North Elevation," "West Elevation," "East Elevation," and "South Elevation," dated March 8, 2021.
- Exhibit 7 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 10 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, 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 Plan of Land," 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 November 19, 2020; Sheet 9, entitled "Construction Period Plan," dated June 22, 2020; Sheet 10, entitled "Appendix, Photometric and Site Lighting," dated June 22, 2021, **all plans stamped January 26, 2021.**

- Exhibit 8 - Traffic Impact Assessment, prepared by Gillon Associates, Traffic and Parking Specialists, dated March 2021.
- Exhibit 9 - Stormwater Report prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, dated June 22, 2020, stamped January 26, 2021.
- Exhibit 10 - Traffic Impact Assessment, prepared by Gillon Associates, Traffic and Parking Specialists, revised March 2021.
- Exhibit 11 - Memo prepared by John T. Gillon, Gillon Associates, Traffic and Parking Specialists, dated April 5, 2021.
- Exhibit 12 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020, revised April 15, 2021; Sheet 3, entitled "Site Plan," dated June 22, 2020, revised April 15, 2021; Sheet 4, entitled "Grading and Utilities Plan of Land," dated June 22, 2020, revised April 15, 2021; Sheet 5, entitled "Landscaping Plan," dated June 22, 2020, revised April 15, 2021; Sheet 6, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021; Sheet 7, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021; Sheet 8, entitled "Sewer Extension Plan and Profile," dated November 19, 2020, revised April 15, 2021; Sheet 9, entitled "Construction Period Plan," dated June 22, 2020, revised April 15, 2021, **all plans stamped April 15, 2021.**
- Exhibit 13 - Architectural plans entitled "Needham Enterprises, Daycare Center, 1688 central Avenue," prepared by Mark Gluesing Architect, 48 Mackintosh Avenue, Needham, MA, consisting of 2 sheets: Sheet 1, Sheet A3-0, showing "North Elevation," "West Elevation," "East Elevation," and "South Elevation," dated March 8, 2021, revised March 30, 2021; Sheet 2, Sheet A1-0, entitled "1st Floor Plan, dated March 8, 2021, revised March 30, 2021.
- Exhibit 14 - Letter from Attorney Evans Huber, dated April 16, 2021.
- Exhibit 15 - Letter from Attorney Evans Huber, dated April 21, 2021.
- Exhibit 16 - Memorandum from Attorney Evans Huber, dated May 5, 2021.
- Exhibit 17 - Letter from Attorney Evans Huber, dated May 14, 2021.
- Exhibit 18 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 3, entitled "Site Plan," dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 4, entitled "Grading and Utilities Plan of Land," dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 5, entitled "Landscaping Plan," dated June 22, 2020, revised April 15,

- 2021 and June 2, 2021; Sheet 6, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 7, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 8, entitled “Sewer Extension Plan and Profile,” dated November 19, 2020, revised April 15, 2021 and June 2, 2021; Sheet 9, entitled “Construction Period Plan,” dated June 22, 2020, revised April 15, 2021 and June 2, 2021, **all plans stamped June 2, 2021.**
- Exhibit 19 - Architectural plans entitled “Needham Enterprises, Daycare Center, 1688 central Avenue,” prepared by Mark Gluesing Architect, 48 Mackintosh Avenue, Needham, MA, consisting of 2 sheets: Sheet 1, Sheet A1-0, entitled “1st Floor Plan, dated March 8, 2021, revised March 30, 2021 and May 30, 2021; Sheet 2, Sheet A3-0, showing “North Elevation,” “West Elevation,” “East Elevation,” and “South Elevation,” dated March 8, 2021, revised March 30, 2021 and May 30, 2021.
- Exhibit 20 - Traffic Impact Assessment, prepared by Gillon Associates, Traffic and Parking Specialists, revised June 2021.
- Exhibit 21 - Letter from Attorney Evans Huber, dated June 14, 2021.
- Exhibit 22 - Presentation shown at the July 20, 2021 public hearing.
- Exhibit 23 - Materials presented by NCC at the July 20, 2021 public hearing comprising two sheets entitled “Proposed Pick Up and Drop Off Operations Needham Children’s Center, Inc.”, undated and “Projected Arrivals and Departures Based on 95 Children”, undated.
- Exhibit 24 - Memorandum from Attorney Evans Huber, dated August 4, 2021.
- Exhibit 25 - Plans entitled “Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA,” consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 2, entitled “Existing Conditions Plan of Land in Needham, MA,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 3, entitled “Site Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 4, entitled “Grading and Utilities Plan of Land,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 5, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021 and June 2, 2021; Sheet 6, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 7, entitled “Sewer Extension Plan and Profile,” dated November 19, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 8, entitled “Construction Period Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021; Sheet 9, entitled “Landscaping Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021 and July 28, 2021, **all plans stamped July 28, 2021.**
- Exhibit 26 - Traffic Impact Assessment, prepared by Gillon Associates, Traffic and Parking Specialists, dated August 11, 2021.

- Exhibit 27 - Memo prepared by John T. Gillon, Gillon Associates, Traffic and Parking Specialists, dated August 21, 2021, transmitting Response to Greenman-Pedersen, Inc. peer review.
- Exhibit 28 - Technical Memorandum, from John Gillon, prepared by Gillon Associates, Traffic and Parking Specialists, dated September 2, 2021.
- Exhibit 29 - Letter from Attorney Evans Huber, dated September 30, 2021.
- Exhibit 30 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 3, entitled "Site Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 4, entitled "Grading and Utilities Plan of Land," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 5, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 6, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 7, entitled "Sewer Extension Plan and Profile," dated November 19, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 8, entitled "Construction Period Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021; Sheet 9, entitled "Landscaping Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021 and September 28, 2021, **all plans stamped September 29, 2021.**
- Exhibit 31 - Plan entitled "Appendix, Photometric and Site Lighting Plan, 1688 Central Ave in Needham," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, and September 28, 2021.
- Exhibit 32 - Memorandum from Attorney Evans Huber, dated October 13, 2021.
- Exhibit 33 - Email from Evans Huber, dated October 14, 2021 with two attachments: Vehicle Count for September 2019 and Vehicle Count for February 2020.
- Exhibit 34 - Memorandum from Attorney Evans Huber, dated October 28, 2021.
- Exhibit 35 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, , September 28, 2021 and October 28, 2021; Sheet 3, entitled "Site Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 4, entitled "Grading and Utilities Plan of Land," dated June 22, 2020, revised April 15, 2021, June 2,

- 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 5, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 6, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 7, entitled "Sewer Extension Plan and Profile," dated November 19, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 8, entitled "Construction Period Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021; Sheet 9, entitled "Landscaping Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021 and October 28, 2021, **all plans stamped October 28, 2021.**
- Exhibit 36 - Plan entitled "Appendix, Photometric and Site Lighting Plan, 1688 Central Ave in Needham," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, and October 28, 2021.
- Exhibit 37 - Technical Memorandum, from John Gillon, prepared by Gillon Associates, Traffic and Parking Specialists, dated October 27, 2021.
- Exhibit 38 - Email from Evans Huber, dated November 8, 2021, regarding "1688 Central Ave request for additional peer review fees."
- Exhibit 39 - Memorandum from Attorney Evans Huber, dated November 10, 2021.
- Exhibit 40 - Plans entitled "Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA," consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 2, entitled "Existing Conditions Plan of Land in Needham, MA," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 3, entitled "Site Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 4, entitled "Grading and Utilities Plan of Land," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 5, entitled "Landscaping Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 6, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 7, entitled "Construction Details," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 8, entitled "Sewer Extension Plan and Profile," dated November 19, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 9, entitled "Construction Period Plan," dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021; Sheet 10, entitled "Appendix, Photometric and Site Lighting Plan, 1688 Central Ave in Needham," dated June 22, 2020, revised

- April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021 and November 8, 2021, **all plans stamped November 8, 2021.**
- Exhibit 41 - Plan entitled “1688 Central Turning Radius,” consisting of 3 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032: sheet 1, showing “20’ Delivery Van,” dated October 6, 2021; Sheet 2, showing “30’ Trash Truck,” dated October 6, 2021; sheet 3, showing “30’ Trash Truck,” dated October 6, 2021.
- Exhibit 42 - Email from Evans Huber, dated November 11, 2021, regarding “Traffic Peer Review: 1688 Central Avenue.”
- Exhibit 43 - Letter from Attorney Evans Huber, dated December 2, 2021, with attached minutes from Canton Zoning Board of Appeals from March 25, 2021.
- Exhibit 44 - Memorandum from Attorney Evans Huber, dated December 2, 2021.
- Exhibit 45 - Plans entitled “Site Development Plans, Daycare, 1688 Central Avenue, Needham, MA,” consisting of 9 sheets, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, MA, 02032, Sheet 1, Cover Sheet, dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 2, entitled “Existing Conditions Plan of Land in Needham, MA,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 3, entitled “Site Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 4, entitled “Grading and Utilities Plan of Land,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 5, entitled “Landscaping Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 6, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 7, entitled “Construction Details,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 8, entitled “Sewer Extension Plan and Profile,” dated November 19, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 9, entitled “Construction Period Plan,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021; Sheet 10, entitled “Appendix, Photometric and Site Lighting Plan, 1688 Central Ave in Needham,” dated June 22, 2020, revised April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021, **all plans stamped November 22, 2021.**
- Exhibit 46 - Letter from Attorney Evans Huber, dated December 16, 2021, with two attachments: (1) Letter from Attorney Evans Huber dated September 30, 2021;

and (2) estimated cost to relocate daycare provided by Glossa Engineering, dated December 15, 2021.

Peer Review on Traffic

- Exhibit 47 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated July 15, 2021, regarding traffic impact peer review.
- Exhibit 48 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated August 26, 2021, regarding traffic impact peer review.
- Exhibit 49 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated October 18, 2021, regarding traffic impact peer review.
- Exhibit 50 - Email thread between John Glossa and John Diaz, most recent email dated October 28, 2021.
- Exhibit 51 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated November 1, 2021, regarding traffic impact peer review, with accompanying marked up site plans from October 28, 2021.
- Exhibit 52 - Email from John Diaz, dated November 16, 2021.
- Exhibit 53 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated November 16, 2021, regarding traffic impact peer review.
- Exhibit 54 - Letter from John W. Diaz, Greenman-Pedersen, Inc., dated December 17, 2021, regarding traffic impact peer review.

Staff/Board Comments

- Exhibit 55 - Memorandum from the Design Review Board, dated March 22, 2021.
- Exhibit 56 - Memorandum from the Design Review Board, dated May 14, 2021.
- Exhibit 57 - Memorandum from the Design Review Board, dated August 13, 2021.
- Exhibit 58 - Interdepartmental Communication (“IDC”) to the Board from Tara Gurge, Health Department, dated March 24, 2021, April 27, 2021, August 9, 2021, August 16, 2021 (with attachment – “Environmental Risk Management Review,” prepared by PVC Services, LLC dated March 17, 2021), November 18, 2021 (with attachment of Board of Health 11/16/21 agenda), November 18, 2021 and December 16, 2021 (with attached Board of Health 12/14/21 agenda).
- Exhibit 59 - IDC to the Board from David Roche, Building Commissioner, dated March 22, 2021, and December 7, 2021.
- Exhibit 60 - IDC to the Board from Chief Dennis Condon, Fire Department, dated March 29, 2021, April 27, 2021, and August 9, 2021

- Exhibit 61 - IDC to the Board from Chief John J. Schlittler, Police Department, dated May 6, 2021.
- Exhibit 62 - IDC to the Board from Thomas Ryder, Assistant Town Engineer, dated March 31, 2021, May 12, 2021, August 12, 2021, September 2, 2021, November 16, 2021, December 6, 2021, and January 3, 2022.

Abutter Comments

- Exhibit 63 - Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham, submitted by email from Holly Clarke, dated March 22, 2021, with excel spreadsheet of signatories.
- Exhibit 64 - Email from Robert J. Onofrey, 49 Pine Street, Needham, MA, dated March 26, 2021.
- Exhibit 65 - Email from Norman MacLeod, Pine Street, dated March 31, 2021.
- Exhibit 66 - Letter from Holly Clarke, 1652 Central Avenue, Needham, MA, dated April 3, 2021, transmitting "Comments of Neighbors of 1688 Central Avenue for Consideration During the Planning Board's Site Review Process for that Location," with 3 attachments.
- Exhibit 67 - Email from Meredith Fried, dated Sunday April 4, 2021.
- Exhibit 68 - Letter from Michaela A. Fanning, 853 Great Plain Avenue, Needham, MA, dated April 5, 2021.
- Exhibit 69 - Email from Maggie Abruzese, dated April 5, 2021.
- Exhibit 70 - Letter from Sharon Cohen Gold and Evan Gold, dated April 5, 2021.
- Exhibit 71 - Email from Matthew Heidman, dated May 10, 2021.
- Exhibit 72 - Email from Matthew Heidman, dated May 11, 2021 with attachment Letter directed to members of the Design Review Board, from Members of the Neighborhood of 1688 Central Avenue, undated.
- Exhibit 73 - Email from Rob DiMase, sated May 12, 2021.
- Exhibit 74 - Email from Eileen Sullivan, dated May 12, 2021.
- Exhibit 75 - Two emails from Eric Sockol, dated May 11 and May 12.
- Exhibit 76 - Email from Rob DiMase, sated May 13, 2021.
- Exhibit 77 - Email from Sally McKechnie, dated May 13, 2021.
- Exhibit 78 - Letter from Holly Clarke, dated May 13, 2021, transmitting "Response of Abutters and Neighbors of 1688 Central Avenue Project to the Proponent's Letter of April 16, 2021," with Attachment 1.

- Exhibit 79 - Email from Joseph and Margaret Abruzese dated May 17, 2021, transmitting the following:
- Letter from Joseph and Margaret Abruzese, titled "Objection to Any Purported Agreement to Waive Major Project Review and/or Special Permit requirements with Regard to Proposed Construction at 1688 Central Avenue," undated.
- Exhibit 80 - Letter directed to Kate Fitzpatrick, Town Manager, from Joseph and Margaret Abruzese, dated April 5, 2021.
- Exhibit 81 - Email from Lee Newman, Director of Planning and Community Development, dated May 17, 2021, replying to email from Sharon Cohen Gold, dated May 15, 2021.
- Exhibit 82 - Email from Meredith Fried, dated May 18, 2021.
- Exhibit 83 - Email from Lori Shaer, Bridle Trail Road, dated May 18, 2021.
- Exhibit 84 - Email from Sandra Jordan, 219 Stratford Road, dated May 18, 2021.
- Exhibit 85 - Email from Khristy J. Thompson, 50 Windsor Road, dated May 18, 2021.
- Exhibit 86 - Email from Henry Ragin, dated May 18, 2021.
- Exhibit 87 - Email from David G. Lazarus, 115 Oxbow Road, dated May 18, 2021.
- Exhibit 88 - Email from John McCusker, 248 Charles River Street, dated May 18, 2021.
- Exhibit 89 - Email from Laurie and Steve Spitz, dated May 18, 2021.
- Exhibit 90 - Email from Randy Hammer, dated May 18, 2021.
- Exhibit 91 - Letter from Holly Clarke, dated May 24, 2021, transmitting comments concerning the Planning Board meeting of May 18, 2021.
- Exhibit 92 - Email from Robert Onofrey, 49 Pine Street, dated May 25, 2021, with attachment (and follow up email May 26, 2021).
- Exhibit 93 - Email from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated June 8, 2021, transmitting document entitled "Needham Enterprise, LLC Application for Major Site Review Must be Rejected Because the Supporting Architectural Drawings are Filed in Violation of the State Ethics Code," with Exhibit A.
- Exhibit 94 - Email from Barbara Turk, 312 Country Way, dated April 3, 2021, forwarded from Holly Clarke on June 14, 2021.
- Exhibit 95 - Email from Patricia Falcao, 19 Pine Street, dated April 4, 2021, forwarded from Holly Clarke on June 14, 2021.

- Exhibit 96 - Email from Leon Shaigorodsky, Bridle Trail Road, dated April 4, 2021, forwarded from Holly Clarke on June 14, 2021.
- Exhibit 97 - Letter from Peter F. Durning, Mackie, Shae, Durning, Counselors at Law, dated June 11, 2021.
- Exhibit 98 - Revised list of signatories to earlier submitted petition, received on June 11, 2021.
- Exhibit 99 - Email from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated June 11, 2021.
- Exhibit 100 - Email from Karen and Alan Langsner, Windsor Road, dated June 13, 2021.
- Exhibit 101 - Email from Stanley Keller, 325 Country Way, dated June 13, 2021. Email from Sean and Marina Morris, 48 Scott Road, dated June 14, 2021.
- Exhibit 102 - Letter from Holly Clarke, dated June 14, 2021, transmitting "Comments of Neighbors of 1688 Central Avenue for Consideration During the Planning Board's Site Review Process for that Location Concerning the Traffic Impact Assessment Reports."
- Exhibit 103 - Email from Pete Lyons, 1689 Central Avenue, dated June 14, 2021.
- Exhibit 104 - Email from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated June 14, 2021.
- Exhibit 105 - Email from Ian Michelow, Charles River Street, dated June 13, 2021.
- Exhibit 106 - Email from Nikki and Greg Cavanagh, dated June 14, 2021.
- Exhibit 107 - Email from Patricia Falcao, 19 Pine Street, dated June 14, 2021.
- Exhibit 108 - Email from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated July 6, 2021.
- Exhibit 109 - Email from David Lazarus, Oxbow Road, dated July 12, 2021.
- Exhibit 110 - Email from Maggie Abruzese, dated July 12, 2021.
- Exhibit 111 - Letter directed to Marianne Cooley, Select Board, and Attorney Christopher Heep, from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated July 12, 2021.
- Exhibit 112 - Email from Barbara and Peter Hauschka, 105 Walker Lane, dated July 13, 2021.
- Exhibit 113 - Email from Rob DiMase, dated July 14, 2021.
- Exhibit 114 - Email from Lee Newman, Director of Planning and Community Development, dated July 14, 2021, replying to email from Maggie Abruzese, dated July 14, 2021.
- Exhibit 115 - Email from Leon Shaigorodsky, dated July 17, 2021.

- Exhibit 116 - Letter directed to Members of the Planning Board, from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated July 28, 2021, regarding “Suspending Hearings Pending a Resolution of the Ethics Questions.”
- Exhibit 117 - Letter directed to Members of the Planning Board, from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated July 28, 2021, regarding “Objection to the Hearing of July 20, 2021.”
- Exhibit 118 - Letter from Holly Clarke, dated August 12, 2021, transmitting “The Planning Board Must Deny the Application as the Needham Zoning Bylaws Prohibit More than One Non-Residential Use or Building on a Lot in Single Residence A.”
- Exhibit 119 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated August 12, 2021, transmitting “The Authority of the Planning Board to Address Ethical Issues in the 1688 Central Matter.”
- Exhibit 120 - Email directed to the Select Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated August 13, 2021, transmitting “The Power and Duty of the Select Board to Address Ethical Issues in the 1688 Central Matter.”
- Exhibit 121 - Letter from Holly Clarke, dated August 13, 2021, transmitting “The Planning Board’s Authority to Regulate the Proposed Development of 1688 Central Avenue Includes the Authority to Reject the Plan.”
- Exhibit 122 - Letter from Patricia Falcao, dated August 30, 2021.
- Exhibit 123 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated August 25, 2021, with attachment regarding Special Municipal Employee status.
- Exhibit 124 - Email from Patricia Falcao, dated August 30, 2021.
- Exhibit 125 - Email from Daniel Gilmartin, 111 Walker Lane, dated August 30, 2021.
- Exhibit 126 - Email from Dave S., dated September 4, 2021.
- Exhibit 127 - Letter from Holly Clarke, dated September 7, 2021, transmitting “Neighbors’ Comments on the Traffic Impact Analysis,” with 2 attachments.
- Exhibit 128 - Email from Elizabeth Bourguignon, 287 Warren Street, dated September 5, 2021.
- Exhibit 129 - Letter from Amy and Leonard Bard, 116 Tudor Road, dated September 5, 2021.
- Exhibit 130 - Email from Mary Brassard, 267 Hillcrest Road, dated September 28, 2021.
- Exhibit 131 - Email from Christopher K. Currier, 11 Fairlawn Street, dated September 28, 2021.
- Exhibit 132 - Email from Stephen Caruso, 120 Lexington Avenue, dated September 28, 2021.

- Exhibit 133 - Email from Emily Pugach, 42 Gayland Road, dated September 29, 2021.
- Exhibit 134 - Email from Robin L. Sherwood, dated September 29, 2021.
- Exhibit 135 - Email from Sarah Solomon, 21 Otis Street, dated September 29, 2021.
- Exhibit 136 - Email from Lee Ownbey, 27 Powderhouse Circle, dated September 29, 2021.
- Exhibit 137 - Email from Emily Tow, dated September 29, 2021.
- Exhibit 138 - Email from Leah Caruso, dated September 29, 2021.
- Exhibit 139 - Email from Jennifer Woodman, dated September 29, 2021.
- Exhibit 140 - Email from Nancy and Chet Yablonski, dated September 29, 2021.
- Exhibit 141 - Email from Pamela and Andrew Freedman, 17 Wilshire Park, dated September 29, 2021.
- Exhibit 142 - Email from Dr. Jennifer Lucarelli, 58 Avalon Rd, dated September 29, 2021.
- Exhibit 143 - Email from Maija Tiplady, dated September 30, 2021.
- Exhibit 144 - Email from Ashley Schell, dated September 30, 2021.
- Exhibit 145 - Email from Kristin Kearney, 11 Paul Revere Rd, dated September 30, 2021.
- Exhibit 146 - Email from Dave Renninger, dated September 30, 2021.
- Exhibit 147 - Letter from Brad and Rebecca Lacouture, dated September 30, 2021.
- Exhibit 148 - Email from Kerry Cervas, 259 Hillcrest Road, dated September 30, 2021.
- Exhibit 149 - Letter from Holly Clarke, dated October 1, 2021, transmitting "The Past Use of the Property for Automobile Repairs and Other Non-Residential Purposes Merit Environmental Precautions to Insure the Safe Development and Use of the Property."
- Exhibit 150 - Email from Carolyn Walsh, 202 Greendale Avenue, dated September 30, 2021.
- Exhibit 151 - Email from Robert DiMase, 1681 Central Avenue, dated October 6, 2021.
- Exhibit 152 - Email from Elyse Park, dated October 6, 2021.
- Exhibit 153 - Email from R.M. Connelly, dated October 6, 2021.
- Exhibit 154 - Email from Eric Sockol, 324 Country Way, undated, received October 6, 2021.
- Exhibit 155 - Email from R.M. Connelly, dated October 9, 2021.

- Exhibit 156 - Email from Robert James Onofrey, 49 Pine Street, dated October 12, 2021 with attachment.
- Exhibit 157 - Letter from Holly Clarke, dated October 16, 2021, transmitting "Neighbor's Comments on the Application of Needham Zoning By-Law 3.2.1."
- Exhibit 158 - Email from R.M. Connelly, dated October 18, 2021.
- Exhibit 159 - Email from David Lazarus, Oxbow Road, dated October 19, 2021.
- Exhibit 160 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated October 27, 2021, transmitting "Objection to Use of Architectural Plans and Testimony 1688 Central Avenue."
- Exhibit 161 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated November 1, 2021, transmitting "The Applicant Cannot Keep both the Barn and the New Building."
- Exhibit 162 - Letter to the Planning Board from Denise Linden, undated, received November 4, 2021.
- Exhibit 163 - Email to the Planning Board from Khristy J. Thompson, Ph.D., dated November 10, 2021, with the following attachments discussing the impact of lead and other metals on the neurodevelopment of young children.
- Exhibit 164 - Letter from Holly Clarke, dated November 13, 2021, transmitting "The Proponent's October 27, 2021 Report Again Changes the Data Used to Assess the Impact of the Project on Central Avenue."
- Exhibit 165 - Letter from Holly Clarke, dated November 14, 2021, transmitting "Photographs and Video of Traffic on Central Avenue."
- Exhibit 166 - Letter from Holly Clarke, dated November 14, 2021, transmitting "Commercial Child Care Facilities Do Not Customarily Have Accessory Buildings."
- Exhibit 167 - Email from Joseph and Margaret Abruzese dated November 15, 2021, accompanying the following attachment:

Town of Canton, Massachusetts, Zoning Board of Appeals Decision, dated August 13, 2020, with Exhibits A, B, C and D.
- Exhibit 168 - Letter from Sharon Cohen Gold and Evan Gold, dated November 16, 2021.
- Exhibit 169 - Letter to the Planning Board from Elizabeth Bourguignon, 287 Warren St., dated, November 16, 2021.
- Exhibit 170 - Letter to the Planning Board from Carolyn Day Reulbach, 12 Longfellow Road, dated, December 2, 2021.
- Exhibit 171 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated December 6, 2021.

- Exhibit 172 - Email directed to the Planning Board from Maggie and Joe Abruzese, 30 Bridle Trail Road, dated December 6, 2021, transmitting "Parking Requirements of Needham Zoning Bylaw."
- Exhibit 173 - Letter from Pat Falcao, 19 Pine Street, received December 7, 2021.
- Exhibit 174 - Email from Rick Hardy, 1347 South Street, dated December 8, 2021.
- Exhibit 175 - Email from Laurie and Steve Spitz, dated December 7, 2021, transmitting video of traffic on Central Avenue.
- Exhibit 176 - Letter from Joe Abruzese, dated December 12, 2021, regarding his presentation from December 8, 2021 public hearing.
- Exhibit 177 - Email from Maggie Abruzese, dated December 12, 2021, transmitting the following as discussed at the December 8, 2021 public hearing:
- a. "Lighting at 1688 Central Avenue" with Exhibits
 - b. Talking Points from December 8, 2021 hearing.
- Exhibit 178 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated December 20, 2021.
- Exhibit 179 - Letter from Holly Clarke, dated December 18, 2021, transmitting comments from neighbors.

Miscellaneous

- Exhibit 180 - Email from Attorney Christopher H. Heep, dated June 9, 2021.
- Exhibit 181 - Two Emails from Attorney Christopher Heep, dated July 16, 2021.
- Exhibit 182 - Letter from Attorney Christopher H. Heep, dated September 2, 2021.
- Exhibit 183 - Letter from Attorney Christopher H. Heep, dated September 8, 2021.
- Exhibit 184 - Letter from Stephen J. Buchbinder, Schlesinger and Buchbinder, LLP, dated October 1, 2021.
- Exhibit 185 - Letter from Eve Slattery, General Counsel, Commonwealth of Massachusetts, State Ethics Commission, dated September 30, 2021.
- Exhibit 186 - Email from Evans Huber, dated October 7, 2021.
- Exhibit 187 - Email from Lee Newman directed to Evans Huber, dated October 8, 2021.
- Exhibit 188 - Letter from Eve Slattery, General Counsel, Commonwealth of Massachusetts, State Ethics Commission, dated October 4, 2021.
- Exhibit 189 - Email from Lee Newman directed to and replying to R.M. Connelly, dated October 19, 2021.

Exhibit 190 - Letter from Brian R. Falk, Mirick O’Connell, Attorneys at Law, dated October 27, 2021.

Exhibit 191 - Letter from Attorney Christopher H. Heep, dated November 2, 2021.

Exhibit 192 - Letter directed to Evans Huber from Lee Newman, Director, Planning and Community Development, dated November 10, 2021.

Legal Memorandum submitted after the close of the public hearing:

Exhibit 193 - Table prepared by Attorney Christopher H. Heep of Dover Amendment Cases regarding Child-care Facilities, undated.

Exhibit 194 - Email from Attorney Evans Huber, dated January 4, 2022.

Exhibit 195 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated January 4, 2022.

Exhibit 196 - Sketch plan showing the barn demolished and proposed building relocated to a front yard setback of 135 with parking reconfigured to its rear. Drawing presented at the January 6, 2022 Planning Board meeting.

Exhibits 1, 2, 8, 9, 10, 11, 19, 20, 23, 26, 27, 28, 37, 41, and 45 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 in the Single Residence A District at 1688 Central Avenue, Needham, Massachusetts, and is shown on Needham Assessor’s Plan No. 199 as Parcel 213 containing 3.352 acres.
- 1.2 The subject property is presently improved by a single-family dwelling comprising 1,663 square feet, two smaller out-buildings, garage comprising 400 square feet and second garage comprising 600 square feet, and a barn comprising 4,800 square feet. The proposed project has evolved through a long series of changes to have the following key elements: demolish the single-family dwelling and the two garages at the property, construct a new one-story building of 10,034 square feet to house a child-care facility and retain the existing two-story 4,800 square foot barn to be used for accessory storage by the child-care facility, with a new parking area that includes the construction of 30 off-street surface parking spaces.
- 1.3 The proposed project provides access to the child-care facility at 1688 Central Avenue by using a 200-plus foot-long, 30-foot-wide access drive to Central Avenue, consisting of three lanes, an 8-foot-wide queueing lane that can accommodate ten waiting vehicles and which provides access to a drop-off and pick-up area, an 11-foot-wide entrance lane providing unimpeded access to the rear parking areas, and an 11-foot-wide exit lane.

- 1.4 The proposed project provides that the child-care facility will house an existing Needham child-care business, namely the NCC. No written lease, memorandum of understanding, or any other type of written agreement between the Petitioner and NCC has been provided to the Board.
- 1.5 The NCC preschool/daycare program will operate Monday through Friday, between the hours of 7:30 a.m. and 6:00 p.m., with a maximum of 115 children on the property at any one time.
- 1.6 The maximum number of NCC staff on site at any one time will be 18 broken down as follows. The projected total staff on peak days (Tuesdays-Thursday) will be 18 (16 staff and 2 administrators). The projected total staff on Monday will be 17 (15 staff and 2 administrators). The projected total staff on Friday will be 15 (13 staff and 2 administrators). At all times the child-care business will maintain compliance with any staffing standards or requirements determined by the relevant Commonwealth agency regulating such uses.
- 1.7 The By-Law does not contain a specific parking requirement for a child-care use. In cases where the By-Law does not provide a specific requirement, the required number of parking spaces shall be derived from the “closest similar use as shall be determined by the Building Commissioner,” Section 5.1.2(20). In the event that the Building Commissioner is unable to determine that a proposed use relates to any use within Section 5.1.2, the Board shall recommend a reasonable number of spaces to be provided based on the expected parking needs of occupants, users, guests, or employees of the proposed business, with said recommendation based on the Institute of Transportation Engineers (ITE) Parking Generation Manual, 2nd Edition, or an alternative technical source determined by the Planning Board to be equally or more applicable. The Petitioner assessed the number of parking spaces needed to support the use of the site based upon the anticipated number of children and staff members at the site by utilizing the formula which 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. (See ITE Journal of July 1994 entitled “Parking and Trip Generation Characteristics for Day-Care Facilities”, by John W. Van Winkle and Colin Kinton). Applying this formula leads to a calculated parking requirement of 29 spaces. The Petitioner is proposing 30 on-site parking spaces which more than satisfies the requirements of the By-Law.
- 1.8 The Petitioner has submitted a traffic analysis which evaluates the anticipated traffic impacts resulting from the proposed development of a child-care facility at 1688 Central Avenue (See Exhibits 8, 10, 11, 20, 26, 27, 28, and 37). The initial traffic report was issued March 2021 (Exhibit 8) and has been subsequently updated and revised on April 5, 21 (Exhibit 11), June 2021 (Exhibit 20), August 11, 2021 (Exhibit 26), August 21, 2021 (Exhibit 27), September 2, 2021 (Exhibit 28) and October 27, 2021 (Exhibit 37). (The submitted traffic analysis was peer reviewed by the Town’s traffic consultant, John W. Diaz of Greenman-Pedersen, Inc., GPI as detailed in Exhibits 47 through 54. Sections 1.8, 1.9, 1.10, 1.11, 1.13, 1.14, and 1.15 of this Decision summarize the traffic report as submitted by the Petitioner to the Board.

Specifically, the traffic report provided by the Petitioner assesses traffic operational characteristics at the unsignalized Central Avenue intersection at the site driveway and at the signalized Central Avenue/Charles River Street intersection. Due to the Covid-19 pandemic, traffic levels from 2020 and 2021 have generally decreased and while slowly

increasing are still below pre-2020, pre-pandemic levels. Massachusetts Department of Transportation (MassDOT) has developed guidelines for determining traffic volumes in the absence of current traffic data, the standard practice of which has been to use pre-2020 traffic data where possible and factor to current conditions based on historic growth rates. The Petitioner has followed this approach. With regard to the site driveway intersection, the Petitioner has utilized 2016 data provided by the Town along Central Avenue in the vicinity of the site and has factored growth volumes of 1% per year to 2021 for the existing condition and to 2028 for the Baseline or No-Build condition. With regard to the Central Avenue/Charles River Street intersection, the afternoon turning movement counts of 2016 were also expanded proportionately for the same analysis period. The morning counts here were not available at the Central Avenue/Charles River Street intersection but the evening peak hour period was more critical due to the predominate southbound movement and queuing implications during this period. Finally, rather than relying on operational data from the child-care operator to determine site traffic, the more conservative ITE land use calculations based on the square footage of the building were applied to the project to estimate site traffic.

- 1.9 The proposed project is expected to generate approximately 110 new morning peak hour trips with 58 in bound and 52 outbound. The project is also expected to generate approximately 112 new evening peak hour trips with 53 inbound and 59 outbound. The directional distribution of trips reflects the existing Central Avenue directional split of the Gan Aliyah Pre-School next door to the site at Temple Aliyah. The entering project traffic is distributed for 80% of the traffic to enter from the north (left turn in) and 20% of traffic to enter from the south (right turn in).
- 1.10 The level of service analysis conducted at the Central Avenue intersection at the site driveway shows a calculated “A” level of service for all north bound movements in the morning and evening peak periods and a calculated “B” level of service for all south bound movements in the morning and evening peak periods, both of which are acceptable for this type of facility. The site driveway itself will have an acceptable “E” level of service with average delay during the morning peak period and a “C” level during the evening peak period. The Central Avenue/Charles River Street intersection will continue to operate at an overall “F” level of service with an overall increase in delay of five seconds.
- 1.11 The Petitioner further reviewed the Central Avenue/Charles River Street intersection for the morning peak hour (7:15 a.m. to 8:15 a.m.) and for the evening peak hour (5:00 p.m. to 6:00 p.m.) to see if adjustments to signal timing at this location would lead to an improved level of service. For this analysis, supplemental counts were collected by the Petitioner on Wednesday, October 13, 2021, with those counts increased by 30.4% as evidenced by MassDOT Station ID #6161 to identify 2021 roadway network volumes at the intersection assuming Covid-19 had not occurred. These adjusted volumes were further inflated by one percent per year over seven years to account for normal growth between 2021 and 2028.
- 1.12 The following overall levels of service for the existing, base and build conditions for the studied signal optimization timing adjustments at the Central Avenue/Charles River Street intersection are detailed below. These conclusions assume the roadway network volumes have been adjusted upwards as described in 1.11 above. For the existing Covid-19-affected 2021 signal timing optimization condition, the Central Avenue/Charles River Street intersection operates at overall levels of service of “E” during the morning peak

hour (7:15 a.m. to 8:15 a.m.) and “D” during the evening peak hour (5:00 p.m. to 6:00 p.m.). For the base 2028 signal optimization condition (2028 with no development at 1688 Central Avenue), the Central Avenue/Charles River Street intersection operates at overall levels of service of “F” during the morning peak hour (7:15 a.m. to 8:15 a.m.) and “E” during the evening peak hour (5:00 p.m. to 6:00 p.m.). These values show the overall levels of service will worsen somewhat compared to current conditions assuming there is no development at 1688 Central Avenue. For the build condition where signal timing optimization is not implemented, the Central Avenue/Charles River Street intersection operates at overall levels of service of “F” during the morning peak hour (7:15 a.m. to 8:15 a.m.) and “F” during the evening peak hour (5:00 p.m. to 6:00 p.m.). These values show that development of 1688 Central will have essentially no impact on Central Avenue levels of service during peak hours and will have only a modest impact on Central Avenue southbound during those hours. The only significant impact is projected to be from Central Avenue southbound during the evening peak hour. Lastly, for the build condition where signal timing is optimized, the Central Avenue/Charles River Street intersection operates at overall levels of service “E” during the morning peak hour (7:15 a.m. to 8:15 a.m.) and “C” during the evening peak hour (5:00 p.m. to 6:00 p.m.). These values show that under the signal timing optimization condition studied, the overall levels of service (and delays) on Central Avenue during peak hours will become significantly better, while the delays and levels of service on Charles River Street would become worse. That said, the analysis demonstrates that meaningful mitigation on Central Avenue is attainable during the peak period with less significant timing changes implemented in the alternative and without causing a substantial impact on Charles River Street.

- 1.13 The Petitioner further reviewed queuing at the Central Avenue/Charles River Street intersection for the studied signal timing optimization conditions described in Section 1.12 above. This analysis shows that the 95th percentile queue on Central Avenue southbound during the evening will increase from 830 feet today (with non-Covid traffic volumes) to 907 feet in 2028 without the proposed development at 1688 Central Avenue and to 950 feet with the proposed development. Thus, comparing the 2028 “build” to “no build” conditions anticipates an increase in the length of the queue during the evening peak hour of about 43 feet (approximately 2-3 vehicles) if this project is developed as proposed. The roadway length between the site driveway and Charles River Street is 885 feet. The length of the queue in 2028 is projected to extend past the site driveway under either the “build” condition (950 feet) or “no build” condition (907 feet) further supporting a change in the timing of the signals. Implementation of the optimized signal timing adjustments at the Central Avenue/Charles River Street intersection as described in Section 1.12 above shortens the southbound queue from 830 feet today to only 670 feet, which is more than 200 feet south of the site driveway. Furthermore, a less substantial change to the signal timing can provide significant mitigation of the queueing from the intersection back to the site driveway.
- 1.14 The NCC and the Petitioner’s traffic consultant have provided information detailing the number of children and cars anticipated to arrive at and leave the site, as well as proposed operating measures. The maximum total of 115 children arriving in the morning is broken down as follows: 55 infants, toddlers and preschoolers arriving in the morning peak drop-off period of 7:30 a.m. to 8:50 a.m.; 30 children who will not arrive until shortly before 9:00 a.m. or later; and 30 after-school children who will arrive in the afternoon. The maximum total of 115 children leaving in the afternoon is broken down as follows: 20 children from the nursery school at noon or 2:30 p.m.; 10 preschool children at 3:00 p.m.;

and 85 children from 3:30 p.m. to 6:00 p.m. spaced evenly across a two-and-a-half-hour window. NCC staff will be on-site before the critical arrival and departure hours to assist children between vehicles and the building. Children being dropped off and picked up will be escorted into the building, and from the building into the parents' cars, by NCC staff, to assure their safety.

- 1.15 Drop-off and pick-up times for all children will be staggered, to reduce queueing on the site and to assure that queued vehicles do not negatively impact Central Avenue operations. To assure that queued vehicles could be accommodated on the site without negative impact to Central Avenue, an analysis based on the Poisson distribution model of random arrivals was conducted. Two scenarios were considered.

The first scenario considered was based on actual data from the anticipated operator as to the number of children (max 55) that will be arriving during the peak morning drop-off period, which is from 7:30 a.m. to 8:50 a.m. Another group of children (max 30) will arrive after this peak drop-off period because their programs do not start until 9:00 a.m. or later. The remaining children using the facility are after-school children (max 30) who will not arrive until the afternoon. In addition, years of data from the operator confirms that of the 55 children being dropped off during the peak 80-minute drop-off period, approximately 30 will be siblings, meaning these 30 children will arrive in 15 vehicles. The other 25 children will arrive in one vehicle per child. Lastly, the morning staff will either have arrived prior to the beginning of drop-off, or, if they arrive during the peak period, they will proceed directly to the rear parking area, will not be in the drop lane, and thus do not need to be considered in the queuing analysis.

The analysis included the following assumptions: (a) random arrivals during the peak drop-off period; (b) a drop-off period of 80 minutes; (c) 40 parent vehicles arriving during the 80-minute period; and (d) 60-second drop-off window. The evaluation concluded based on 40 peak hour arrivals that there would be no more than 7 vehicles in the drop-off lane. With the proposed driveway plan showing a dedicated queue/drop off lane, there is storage for approximately 10 vehicles before queues would impact Central Avenue. Furthermore, the queue lane has been separated from the travel lane, allowing vehicles to bypass the queue in the event it approaches Central Avenue.

In addition to the above scenario, a second more conservative analysis was run using the Poisson distribution methodology for a maximum of 58 vehicle arrivals during the peak period. This analysis found that the maximum queue would be approximately 13 vehicles under this unlikely condition and that even at 58 vehicles, 99% of the time the queue would be less than 10 vehicles.

- 1.16 The Traffic Impact Assessment submitted by the Petitioner has identified existing traffic operating parameters on Central Avenue and at the Central Avenue/Charles River Street intersection, estimated the anticipated traffic volume increase as a result of the proposed project, analyzed the project's traffic-related impacts, evaluated access and egress requirements, and recommended site access and intersection improvement measures to improve traffic operations and safety conditions in the area. —The Town's traffic consultant, John W. Diaz of Greenman-Pedersen, Inc., GPI has reviewed the individual traffic reports submitted and has advised the Board that the traffic reports submitted by the Petitioner and as subsequently revised during the traffic peer review process demonstrate a project that will minimize traffic delays in the area and will provide adequate access and egress operational conditions at the site driveway.

~~1.161.17~~ 1.171.17 To minimize traffic delays in the area, the following study recommendations have been recommended by the Town's traffic consultant, John W. Diaz of Greenman-Pedersen, Inc., GPI and have been incorporated into the Plan and will be implemented by the Petitioner: (a) A police detail shall be provided at the site driveway during the peak morning and afternoon hours of arrivals and dismissals. The detail will remain in place for a minimum of 60 days, commencing on or after the opening of the child-care facility. The detail may be discontinued thereafter upon request of the Petitioner and a finding by the Board (following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient) that the site is operating without significantly impacting operations along Central Avenue. (b) Prior to building permit issuance, the Petitioner shall provide detailed traffic signal timing plans for optimized operations at the Central Avenue/Charles River Street intersection for the morning and evening peak hours. The Petitioner shall further coordinate with the Town Engineer on how to implement the revised signal times. The Petitioner shall be responsible for implementing any approved signal timing adjustments approved by the Town Engineer prior to building occupancy. (c) The Petitioner shall complete a follow-up traffic study after the site is open and operational to at least 80% of student capacity. The Petitioner shall further fund a peer review of this post occupancy traffic study. The Board finds that the foregoing elements of the Plan minimize traffic delays in the area and provide adequate access and egress operational conditions at the site driveway.

~~1.171.18~~ 1.171.18 The Petitioner's proposal includes a new one-story building of 10,034 square feet that will house a child-care facility and an existing two-story 4,800 square foot barn that will be retained and used for accessory storage by the child-care facility. This proposal is not in compliance with the requirements of Section 1.2 and Section 3.2.1 of the By-Law as detailed below.

a. The By-Law prohibits having more than one non-residential building or use on a lot in the Single Residence A zoning district. The By-Law at Section 3.1 provides as follows: "No building or structure shall be erected, altered or used and no premises shall be used for any purpose or in any manner other than as regulated by Section 3.1.2 as permitted and set forth in Section 3.2". Section 3.2.1 of the By-Law sets forth a schedule of uses for the Single Residence A zoning district. In that schedule, it marks as "No" in the Single Residence A District the following use: "more than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law". Under the By-Law in the Single Residence A zoning district there cannot be more than one non-residential building on a lot. The Petitioner's Plan does not conform with this aspect of the By-Law because it impermissibly contains more than one non-residential building on a lot in the Single Residence A zoning district. With the construction of a 10,034 square foot child-care building on this lot, the barn would be a second non-residential building on the lot.

b. The project's proposal for the barn further does not meet the By-Law's definition of an accessory building and the building cannot be permitted as such. The By-Law at Section 3.1 provides as follows: "No building or structure shall be erected, altered or used and no premises shall be used for any purpose or in any manner other than as regulated by Section 3.1.2 as permitted and set forth in Section 3.2". Section 3.2.1 of the By-Law sets forth a schedule of uses for the Single Residence A zoning district. In that schedule, it marks as "yes" in the Single Residence A District the following use: "other customary

and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas”. The barn does not meet the definition of an accessory building under the By-Law. The By-Law at Section 1.3 defines “accessory building” as: “a building devoted exclusively to a use subordinate and customarily incidental to the principal use”. In this case, the primary use of the proposed main building is that of a 10,034 square foot stand-alone child-care facility. The two-story barn has a footprint of approximately 2,600 square feet and overall square footage of approximately 4,800 square feet. To qualify the barn as an accessory building, the Petitioner must establish that it is “customary” (more than unique or rare) for a child-care facility to have an accessory building the size of the barn for storage. In the subject case, the barn contains almost half the square footage of the child-care facility itself. The Petitioner has not provided evidence of any other child-care center in Needham or elsewhere that has a similar, separate, large building for storage; nor has the Petitioner made any other factual showing that would warrant a finding that barns of this size are subordinate to and customarily incidental to child-care facilities. In fact, a review of twenty child-care facilities in Needham and nearby towns makes clear that it is not customary for these facilities to have accessory buildings. The twenty programs considered include the five Needham programs comparably sized to that of the NCC, even if not situated in stand-alone commercial space, and fifteen child-care programs located in nearby towns. Each of these facilities was located through online mapping services to determine building arrangements. All these programs operate in a single building. None have accessory buildings much less one two stories high with a total of 4,800 square feet. Finally, the Massachusetts building requirements for child-care facilities do not call for such accessory buildings (See: 606 CMR 7.07).

~~1.181.19~~ As indicated in the Zoning Table shown on the Plan, the lot conforms to zoning requirements as to area and frontage of the Single Residence A District. As indicated in the Zoning Table shown on the Plan, the proposed building will comply with all applicable dimensional and density requirements of the Single Residence A District for an institutional use, namely, front, side and rear setback, maximum building height, maximum number of stories, maximum lot coverage, and maximum floor area ratio.

~~1.191.20~~ In addition to the above-noted minimum dimensional and density requirements of the Single Residence A District for an institutional use as detailed in Section 1.18, the project must also meet the site plan review criteria of the By-Law set forth in Section 7.4.6. The project before the Board shows deficiencies in two review categories namely Section 7.46(a) and Section 7.4.6(e) of the By-Law which provides that in conducting site plan review the Planning Board shall consider the following matters as follows:

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

7.46(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.”

1.210 The Petitioner seeks approval to place a large institutional building of 10,034 square feet 64 feet from Central Avenue and to raise the property’s grade by six feet. The Board finds placement of a large institutional building closer to the street than other buildings in the neighborhood is out of character with the surrounding neighborhood and conflicts with the Town’s interest in preserving the 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.
~~appearance of its residentially-zoned neighborhoods.~~

The proposed building 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. In this residential area, no residential building is set back less than 65 feet from Central Avenue, and the clear pattern is for structures to be set back much further. A comparison of 11 abutting residential properties along Central Avenue shows a 65-foot front yard setback for one residential property with the remainder ten properties presenting with front yard setbacks in the range of 103 feet to 117 feet ~~—(See Exhibit 176).~~ For the one institutional use in the neighborhood, namely, Temple Aliyah, which abuts the subject property, a front yard setback of 213 feet is provided. Further, the Design Review Board's comments on the project call for the building to be re-sited farther back from Central Avenue consistent with the neighborhood context, either by reconfiguring it or by removing the barn.

The current front yard setbacks along Central Avenue create more visual space along the street edge and contribute to the established residential appearance of the neighborhood. Siting the project in accordance with the established neighborhood pattern would be in harmony with the existing configuration and would protect the character of the neighborhood per Section 7.46(e) of the By-Law. A larger setback would help to create a buffer from the proposed use, increasing both visual screen and 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 and would create a longer driveway to help avoid any vehicle queuing from spilling over to Central Avenue.

The municipal interests served by increasing the project's front yard setback are extremely important. The lot has plenty of space to accommodate these legitimate concerns by adjusting the front yard setback for the proposed building deeper onto the lot. Massachusetts General Laws Chapter 40A, Section 3 permits regulation of a child-care facility relating to both setback and bulk, among other criteria.

~~1.21, 1.22~~ Under Massachusetts General Laws, Chapter 40A, Section 3 (Dover Amendment) the use of the property for a child-care facility is protected. Massachusetts General Laws, Chapter 40A, Section 3 provides that: "No zoning ordinance or bylaw in any ...town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary ...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, setback, open space, parking and building coverage requirements.

Where the Petitioner proposing a child-care facility seeks exceptions from otherwise applicable zoning requirements, that Petitioner bears the burden of proving that the local requirements are unreasonable as applied to its proposed project. This burden may be met by demonstrating that compliance would substantially diminish or detract from the usefulness of the proposed structure, or significantly impede the use without appreciably advancing the municipality's legitimate concerns. The Petitioner has not met this burden. Specifically, as relates the barn on the property, the Petitioner initially indicated that the barn would not be used in connection with the child-care facility; indeed, the Petitioner

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planned to exclude the barn from the lease entirely. Now, however, the Board is told that the child-care facility requires the barn - a structure that is more than twice the size of the average residence in Needham - to be available for storage. Further, the Petitioner's more recent submission of December 16, 2021 (Exhibit 46) claims that unless the barn is allowed to remain on the site, the Board will have "de facto denied" a permit. The Petitioner has stated on the record that it is their desire to keep the barn that is now causing them to say that it will only be used for child-care storage. While NCC now professes a need for storage, the Petitioner has not shown any reason for the child-care facility to have storage in this particular configuration. There is no reason that the Petitioner could not incorporate adequate storage into a single building with the child-care facility. There is no need for storage to be separate and apart from the child-care facility. The Board finds that applying the By-Law (specifically Section 3.2.1) prohibiting two non-residential structures on this residential property does not unreasonably impede the operation of the child-care facility, particularly when the child-care facility, as initially proposed would not have used the barn at all. The Dover Amendment is not intended to allow the Petitioner to: (i) propose a 10,034 square foot new building; (ii) irrespective of the By-Law provisions that preclude the new structure and barn on the same parcel; and (iii) then claim that the cost of removing the barn and redesigning the Plan is an unreasonable impediment, when that cost derives from the Petitioner's own initial planning choices.

~~1.22~~1.23 The Board of Health reviewed the subject application and has noted its intent to impose the following conditions on the project:

- a. Prior to demolition, submittal by Petitioner of an online Demolition permit form along with required supplemental demolition reports, including septic system abandonment form and final pump report.
- b. Engagement by the Petitioner of a licensed pest control service company to conduct routine site visits to the site, first initially to bait the interior/exterior of each structure to be raised prior to demolition, and to continue to make routine site visits (to re-bait/set traps) throughout the duration of the construction project. Pest reports to be submitted to the Health Division on an on-going basis for review.
- c. If the project triggers the addition of any food to be served or prepped on site at the facility, a food establishment permit is required to include a review of proposed kitchen layout plans, with equipment and hand sinks noted, along with any proposed seating layout plans where applicable.
- d. Petitioner to 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 shall be placed on a sufficient service schedule 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.
- e. As noted in the proposal, the Petitioner is required to connect to the municipal sewer line, once it is brought up to the property, prior to building occupancy. A copy of the completed signed/dated Sewer Connection application, which shows that the sewer connection fee was paid, shall be forwarded to the Public Health Division.
- f. 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.

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g. The lighting on site shall not cause a public health nuisance, with lighting trespassing on to other abutting properties. If complaints are received, lighting shall be adjusted so it will not cause a public health nuisance.

h. The Petitioner shall 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.

i. The Petitioner shall 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.

1.243 The Board of Health will engage an independent third party, licensed site professional to conduct an independent environmental evaluation of the property. The licensed site professional will oversee the project and shall confirm that the soil testing work, along with the proposed capping work to be conducted, meets all local, state and federal requirements. The licensed site professional will conduct a complete site assessment, provide their recommendations on whether soil testing is required and what types of testing needs to be conducted due to the history of this site. This licensed site professional will also: (a) determine whether and what type of barrier or capping measures may be necessary on this site; (b) offer guidance on what mitigations are necessary in the event the soil is found to be contaminated; (c) offer guidance on what mitigations to the new building will be required to ensure the building air quality is adequate and safe; and (d) offer their guidance on what will be required going forward to ensure the site is deemed safe for the children at this new child-care facility.

1.254 The Design Review Board reviewed the project and issued review memoranda dated March 22, 2021, May 14, 2021, and August 13, 2021.

1.265 The proposed project, as modified by this Decision, 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. The Board, in Sections 2.0 and 2.1 of this Decision, has requested modification of the Plan to address the zoning deficiencies detailed in Sections 1.17, 1.19, 1.20 and 1.21 above. As noted in the stormwater management report prepared by Glossa Engineering, the drainage plan will capture all the runoff from the building rooftops and most of the runoff from the paved areas and will direct the runoff into an underground infiltration basin. The design and analysis of the system is based on Massachusetts Department of Environmental Protection (Mass 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 permitted other than from headlights of departing vehicles during dusk/dawn hours in the Winter months.

1.261.27 The proposed project will ensure the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets. As shown on the Plan, the project has been designed to ensure that there will be safe vehicular and pedestrian circulation on 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. Access to the child-care facility will use a 200-plus foot-long,

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30-foot-wide access drive to Central Avenue, consisting of three lanes: an 8-foot-wide queueing lane that can accommodate ten waiting vehicles and which provides access to a drop-off and pick-up area; an 11-foot-wide entrance lane providing unimpeded access to the rear parking areas, and an 11-foot-wide exit lane. 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 drop-off and pickup, and when exiting the site. Drop-off and pick-up times for all children will be staggered, to reduce queueing on the site and to assure that queued vehicles do not negatively impact Central Avenue operations. To this end, the operator will regularly review its drop-off and pick-up schedule and will enforce such schedule among its customers.

1.271.28 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 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 area includes 30 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 29 spaces.

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1.281.29 Adequate methods for disposal of refuse and waste will be provided. The project is not a major generator of refuse or other wastes. The project's waste system is connected to the municipal sewerage system. 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 regularly removed from the site by a licensed hauler.

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1.291.30 The relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area follow the requirements of the By-Law. The Board in Sections 2.0 and 2.1 of this Decision has requested modification of the Plan to address the zoning deficiencies detailed in Sections 1.17, 1.19, 1.20 and 1.21 above. 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 with the Plan modifications detailed in Sections 2.0 and 2.1, and the project complies with all other requirements of the Town By-Law. The gross floor area of the building is 10,034 square feet on one floor and is smaller than what would be allowed by the applicable maximum lot coverage (15%) and the applicable FAR (.30) for the Single Residence A District. In addition, this building is considerably smaller than the abutting Temple Aliyah. Further, the parking will be in the rear of the building.

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1.301.31 The proposed project will not have any adverse impact 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 proposed use will not result in an increased demand or adverse impact on the Town's resources. The Petitioner will connect to the Town's sewer system by running, at the Petitioner's expense, a sewer main from its current closest point on Country Way, up Central Avenue to the site.

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Neighboring properties will have the option of connecting, at their expense, to this sewer line. The project will connect to the Town's water supply system which has adequate capacity to service the development. The Petitioner has engaged a traffic engineer to study this site and will implement the traffic mitigations measures detailed in Section 1.16.

~~1.31~~1.32 The Board finds the Plan, as modified by this Decision, the Traffic and Parking Report, and the other documents submitted in connection with the application, supports Major Project Site Plan approval under By-Law Section 7.4.

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~~1.32~~1.33 Under Section 7.4 of the By-Law, a Major Project Site Plan Decision may be granted within the Single Residence A District provided the Board finds that the proposed use of the property by the Petitioner meets the standards and criteria set forth in the provisions of the By-Law. Based on the above findings and conclusions the Board finds the proposed Plan, as modified, conditioned and limited herein, for the site plan review, to be in harmony with the purposes and intent of the By-Law and Town Master plans, to comply with all applicable By-Law requirements, to have minimized adverse impact, and to have promoted a development which is harmonious with the surrounding area.

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THEREFORE, the Board voted 4-0 to GRANT the requested Major Project Site Plan Review Decision under Section 7.4 of the Needham By-Law subject to and with the benefit of 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 Commissioner 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 Commissioner. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any building permit or permit for any construction on the site. The Petitioner shall submit seven copies of the final Plans as approved for construction by the Building Commissioner to the Board prior to the issuance of a Building Permit.

2.0 The Plan shall be modified to include the requirements and recommendations of the Department of Public Works as set forth below. The modified plans shall be submitted to the Department of Public Works for review and comment, and to the Board for approval and endorsement. All requirements and recommendations of the Department of Public Works, set forth below, shall be met by the Petitioner.

- a. The plan shall be revised to show an ADA-compliant sidewalk along the entire frontage of the property.
- b. All snow shall be removed or plowed such that the total number and size of parking spaces are not reduced below the 30-space minimum parking space requirement. A snow storage plan shall be submitted which shows compliance with this condition and which prevents melted snow piles infiltrating abutting properties.

- 2.1 The Plans shall be modified to include the requirements and recommendations of the Board as set forth below. The modified plans shall be submitted to the Board for approval and endorsement. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.
- a. The Plan shall be revised to show a wooden fence at the south side of the building rather than the proposed white vinyl fence.
 - b. The exterior lighting plan shall be revised at the north side of the driveway to show four pole lights rather than the proposed three pole lights with the height of the poles reduced from 24 feet to 20 feet.
 - c. The exterior lighting plan shall be further revised, and an updated photometric plan submitted, to demonstrate that the exterior lighting complies with building code and zoning requirements and does not show light trespass onto abutting properties.
 - d. The Plan shall be revised to demolish or remove from the property the barn and to relocate the proposed building and associated fencing another 71 feet back from Central Avenue to a minimum front yard setback of 135 feet in accordance with the sketch plan shown as Exhibit 196. The drop-off area, five parking spaces, loading area and turnaround immediately beside the rear of the building are to retain their current design and placement beside the rear of the relocated building. The remainder 25 parking spaces may be reconfigured behind the relocated building. Parking on the property shall respect a ~~3550~~ 3550-foot minimum setback distance along the southern property line. Parking on the property shall not be located less than 280 feet from the property's front yard lot line on Central Avenue. All parking shall be located behind the building. The Petitioner shall have the discretion to increase the parking spaces available on the property from 30 spaces up to a maximum of 41 spaces by increasing the 25-space parking area to 36 spaces as shown on Exhibit 196. The drainage plan and storm water report shall be updated to reflect the above-noted modifications.

CONDITIONS

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 3.4~~34~~ hereof.

- 3.1 The Board approves the Plan, as modified by this Decision, submitted by the Petitioner and authorizes the use of the property for one child-care facility at the premises with a maximum number of children of 115.
- 3.2 The operation of the proposed child-care facility at 1688 Central Avenue, Needham, Massachusetts, shall be as described in Sections 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and ~~1.176~~ of this decision and as further described under the support materials provided under Exhibits 1, 2, 8, 9, 10, 11, 19, 20, 23, 26, 27, 28, 37, 41, and 45 of this decision. Any changes of such above-described use shall be permitted only by amendment of this approval by the Board.
- 3.3 The hours of operation of the child-care facility shall be limited to 7:00 am to 6:00 pm Monday through Friday. No child-care operations shall be allowed on Saturday or Sunday.

- 3.4 The maximum number of children present at the child-care facility at any given time shall not exceed 115. The maximum number of child-care employees or staff inclusive of teachers, instructors and administrators present at any given time shall not exceed 18.
- 3.5 The Petitioner shall obtain and maintain compliance with all licenses required for its operation of the child-care facility.
- 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. The building shall be used exclusively as a child-care facility. The floor plans may be modified without further review by the Board, provided that the building footprint and the square footage of the building is not increased, the maximum number of children participating in classes at any given time is no greater than 115 and the maximum number of child-care staff present at any given time is no greater than 18. All other changes, revisions or modifications to the Plan, as modified by this decision, shall require approval by the Board.
- ~~3.8 All buildings and land constituting the property shall remain under a single ownership and the property shall not be further subdivided.~~
- 3.89 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. No on-site events shall cause an overflow of parking off-site onto neighboring streets.
- ~~3.910~~ A total of a minimum of 30 parking spaces and a maximum of 41 parking spaces shall be provided on the site at all times in accordance with the Plan, as modified by this Decision. 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.
- ~~3.104~~ 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.
- 3.11 The Petitioner shall manage parking and traffic flow as presented with the application, and shown on the Plan, so that there is no back up of cars on Central Avenue waiting to enter the parking lots or drop-off area used by the Petitioner. If back up is a problem, the Petitioner shall take measures to eliminate any backup, such as to assign employees or staff to monitor traffic flow, student drop off or pick up or adjustment of the periods of drop off/pick up including maintaining a police detail, among other options.

- 3.12 If the Petitioner is notified by the Planning Board, based on reliable observations reported to the Planning Board, of frequent or chronic backup of vehicles onto Central Avenue from the child-care facility, it shall promptly propose, in writing to the Planning Board, a plan to remedy the situation and following Board approval shall execute the approved plan without delay.
- 3.13 As detailed in Section 1.176 of this Decision, the Petitioner shall implement the following traffic mitigation measures: (a) The Petitioner shall be responsible for securing and paying for a police detail for traffic control at the site driveway during the morning hours of 7:30 a.m. to 9:30 a.m. and the afternoon hours of 3:30 p.m. to 6:00 p.m. The detail shall remain in place for a minimum of 60 days. The detail may be discontinued thereafter upon request of the Petitioner and a finding by the Board (following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient) that the site is operating without significantly impacting operations along Central Avenue. (b) Prior to building permit issuance, the Petitioner shall provide detailed traffic signal timing plans to the Department of Public Works (DPW) for optimized operations at the Central Avenue/Charles River Street intersection for the morning and evening peak hours. The Petitioner shall further coordinate with the Town Engineer on how to implement the revised signal timings. The Petitioner shall be responsible for implementing and paying for any approved signal timing adjustments approved by the Town Engineer prior to building occupancy. (c) The Petitioner shall complete a follow-up traffic study after the site is open and operational to at least 80% of student capacity. The Petitioner shall further pay the reasonable fees of any consultants/peer reviews required for review or implementation of the above noted items.
- 3.14 The Petitioner shall not exceed the Maximum Trip Count as follows: The total Maximum Trip Count for the child-care facility is 110 trips during the weekday morning peak hour and 112 trips during the weekday evening peak hour. The Petitioner shall prepare, submit and implement a Transportation Demand Management Work Plan (the "TDM Work Plan"), that includes strategies and measures necessary to comply with the Maximum Trip Count. The TDM Work Plan shall be submitted to the Board for review and approval prior to the issuance of the building permit.
- 3.15 The Petitioner shall be responsible for verifying compliance with the Maximum Trip Count, if so requested by the Board. Such trip counts shall be conducted by a qualified professional in accordance with standard engineering methodology. The Petitioner shall be responsible for the cost of all trip counts, surveys, and required analysis. If the Maximum Trip Count is exceeded, the Petitioner shall submit a revised TDM Work Plan to the Planning Board for review and approval that shall include a narrative of how the changes to the TDM Work Plan will reduce the number of vehicular trips during peak hours and a detailed proposal of how current operations will be adjusted to secure compliance with the Maximum Trip Count standard. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as are necessary for the Board to review and analyze any submitted TDM Work Plans or TDM Monitoring Reports.
- 3.16 In the event that traffic or parking problems caused by the use of the property develop that are inconsistent with what was represented to the Board at the hearing and that adversely affect the neighbors on Central Avenue, the Board may modify this Decision by imposing additional conditions in accordance with the provisions of Section 4.2.
- 3.17 The Petitioner shall be responsible for implementing and complying with the

requirements of the Board of Health as detailed in Section 1.2~~32~~³² and Section 1.2~~43~~⁴³ of this Decision.

- 3.18 The initial operator of the child-care facility at 1688 Central Avenue shall be the NCC. The Petitioner shall provide a copy of the lease agreement between the Petitioner and the NCC which confirms this operational arrangement. The operation of the child-care facility at 1688 Central Avenue by the NCC, 858 Great Plain Avenue, Needham, MA, may not be transferred, set over, or assigned by the Petitioner, to any other person or entity without such person or entity certifying they have read and understood this decision and agreeing to maintain compliance with all aspects of this decision, and 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 the NCC) without Board approval or action, provided the Board is provided with a copy of the name and address of such entity.
- 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, with impact fee paid 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. In accordance with the recommendations of the Needham Department of Public Works Central Avenue shall be repaved gutter to gutter in the area impacted by the sewer installation after its installation has been completed.
- 3.22 The Petitioner shall secure from the Needham Department of Public Works a Water Main and Water Service Connection Permit pursuant to 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 pursuant to 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 EPA's Memorandum of Understanding signed by the Needham Select Board.
- 3.26 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.
- 3.27 The Storm Water Management Policy form shall be submitted to the Town of Needham signed and stamped and shall include construction mitigation and an operation and maintenance plan as described in the policy.
- 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. The Petitioner shall obtain the necessary snow removal services to keep the parking lot, handicapped space, driveway, and circular drive passable by vehicles and safe. All snow shall be removed or plowed such that the total number and size of parking spaces are not reduced and any on-site snow piles shall not infiltrate an abutting property as such snow piles melt.
- 3.30 All deliveries and trash dumpster pick up shall occur only between the hours of 9:30 a.m. and 4:00 p.m., Monday through Saturday, not at all on Sundays and holidays. The dumpster shall be screened with a wooden fence, which shall be maintained in good condition. 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 or trespass to the neighbors. The Petitioner shall adjust its driveway and parking lot lights during the night and early morning. Between the hours of 8:00 p.m. and 9:00 p.m., the Petitioner shall shut off the driveway and 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 An ADA- compliant sidewalk shall be installed along the entire frontage of the property with the final design approved by the Town Engineer.
- 3.33 In constructing and operating the proposed building on the locus pursuant to this Decision, 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. 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 Commissioner. No construction parking shall be on public streets.
- 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 that 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 Commissioner 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 Central Avenue.

- 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 Central Avenue clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be required.

3.378 No building permit shall be issued in pursuance of this Decision 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 Commissioner.
- b. A construction management and staging plan shall have been submitted to the Police Chief and Building Commissioner for their review and approval.
- c. The Petitioner shall have submitted detailed traffic signal timing plans to the DPW for the Central Avenue/Charles River Street intersection as outlined in Section 3.134 of this decision.
- d. The Petitioner shall have submitted the Transportation Demand Management Work Plan to the Board as outlined in Section 3.156 of this decision.
- e. The Petitioner shall have submitted a letter to the DPW identifying the measures selected and dates by which the NPDES requirements outlined in Section 3.289 of this decision will be completed.
- f. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this 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.

3.389 No building or structure, or portion thereof, subject to this 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 Commissioner 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 Commissioner a Certificate of Compliance signed by a registered architect upon completion of construction.
- d. There shall be filed with the Board and Building Commissioner 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 with the Board a statement by the Engineering Division of DPW that the Petitioner has implemented the Town approved signal timing adjustments at the Central Avenue/Charles River Street intersection as detailed in Section 3.1~~34~~³⁴.
- f. There shall be filed with the Building Commissioner a statement by the Board approving the final off-site traffic improvements.
- g. The Petitioner shall have submitted a copy of the lease agreement between the Petitioner and the NCC which confirms the initial operator of the child-care facility at 1688 Central Avenue to be the NCC as outlined in Section 3.1~~89~~⁸⁹ of this decision.
- h. There shall be filed with the Board a statement by the Engineering Division of DPW that the Petitioner has met the NPDES requirement as detailed in Section 3.2~~89~~⁸⁹ of this decision.
- i. The ADA- compliant sidewalk shall have been installed along the entire frontage of the property as detailed in Section 3.3~~23~~²³ of this decision.
- j. Notwithstanding the provisions of Sections a, b, and d hereof, the Building Commissioner 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.

3.3~~949~~⁹⁴⁹ 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 Select Board, Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health, and the Massachusetts Department of Early Education and Care.

3.4~~01~~⁰¹ Any blasting conducted at the property shall require approval by the Needham Fire Department in accordance with Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00.

- 3.41 No building or structure authorized for construction by this Decision shall be occupied or used, and no activity except the construction activity authorized by this Decision 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 Commissioner.
- 3.42 The Petitioner, by accepting this 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.
- 3.43 Violation of any of the conditions of this Decision shall be grounds for revocation of this Decision, or of any building permit or certificate of occupancy granted hereunder. In the case of violation of the continuing obligations 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 Owner 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 Owner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in revocation of this Decision. As an alternative, the Town may enforce compliance with the conditions of this decision by an action for injunctive relief before any court of competent jurisdiction. The Owner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this Decision is limited as follows:
- 4.1 This Decision applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance with the terms of this Decision 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 Decision 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 for 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 Review Decision shall lapse on February 1, 2024, 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 February 1, 2024². 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 unless it finds that the use of the property in question or the construction of the site has not begun 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 Review Decision 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 Decision does so at the risk that a court will reverse the Decision and that any construction performed under the Decision may be ordered undone.

The provisions of this Decision 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 1st day of February, 2022

NEEDHAM PLANNING BOARD

Paul S. Alpert, Chairman

Adam Block

Martin Jacobs

Jeanne S. McKnight

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____ 2022

On this _____ day of _____, 2022, 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 Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, 02492, for Property located at 1688 Central Avenue, Needham, Massachusetts, 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 Commissioner	Fire Department	Design Review Board
Conservation Commission	Police Department	Evans Huber
Parties in Interest		

FRIEZE CRAMER ROSEN & HUBER LLP
C O U N S E L L O R S A T L A W

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

EVANS HUBER
781-943-4043
EH@I28LAW.COM

February 4, 2022

Via Electronic Mail
Christopher Heep, Esq.
Miyares & Harrington
40 Grove Street #190
Wellesley, MA 02482

**FOR SETTLEMENT
PURPOSES ONLY**

Re: 1688 Central Avenue, Needham

Dear Mr. Heep:

On behalf of Needham Enterprises, I am writing to you in your capacity as counsel to the Town of Needham, and, more particularly, as counsel to the Needham Planning Board. At the hearing on February 1, Mr. Jacobs, one of the Board members, raised the question of whether it would be possible to reach a compromise on the disputed issues in this matter. As he pointed out, if this matter does end up on appeal to the Superior Court, one possible path this case may take is that the Court seeks to resolve the case by encouraging/directing the parties to “work it out,” and reach a negotiated settlement of the disputed issues.

In spirit of Mr. Jacobs’ comments, the Applicant is proposing the following compromise. If agreed to, the Applicant would agree not to pursue an appeal.

In making this proposal, the Applicant wishes to make it clear that (1) if the draft decision is finalized and signed substantially as it currently is written, Applicant will appeal; (2) this proposal reflects the Applicant’s willingness to forego appealing significant appealable conditions if a compromise is reached, including the demolition of the barn, a negotiated additional setback for the building, and a cap on the number of children at the facility; and (3) the Applicant is not making this proposal because it has any significant doubt that these conditions will be voided if challenged in court. Instead, Needham Enterprises is making this proposal in an effort to avoid the cost, delay, and Town disruption that litigation over this matter will cause.

Please note that while this proposal is not being presented on a literal “take it or leave it” basis, the Applicant believes it is making significant concessions in this proposal and accordingly is not inclined to negotiate this proposal materially further.

Christopher Heep, Esq.

February 8, 2022

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Applicant proposes to compromise its disputes with the Board by agreeing not to appeal if the following conditions are removed or modified as described below.

2.1(d) The Plan shall be revised to demolish or remove from the property the barn and to relocate the proposed building and associated fencing another 71 feet back from Central Avenue to a minimum front yard setback of 135 feet in accordance with the sketch plan shown as Exhibit 196.

As noted, Applicant would agree not to appeal the portion of this condition that requires demolition of the barn. However, even with the barn removed, the required setback of 135 feet is too much, for two reasons. First, the sketch provided by the Board showing a setback of 135 feet would eliminate or severely curtail the applicant's ability to have a fenced outdoor play area behind and adjacent to the building as shown on the Applicant's current plan, that is significantly set back from the southern property boundary. Creating a level outdoor play area on the sketch provided by the Board would require a substantial amount of additional fill on the southern side of the property, would require removal of more mature trees, could change the drainage characteristics of the property in that area, and would require moving the fence much closer to the southern boundary. Second, every additional foot of setback generates additional cost for the applicant, particularly if the setback were 135 feet, as at that point the presence of ledge at the rear of the building will significantly increase construction costs.

As a compromise, the Applicant would agree to increase the setback to 80 feet, which would include retaining the current pick-up and drop-off area design. Such a setback would also require a modification of the portion of 2.1(d) which states that "Parking on the property shall not be located less than 280 feet from the property's front yard lot line on Central Avenue," as the parking in the pick-up and drop-off area adjacent to the main entrance would be somewhat less than 280 feet from Central Ave.

3.8 all buildings and land must remain under single ownership, and the property cannot be further subdivided.

This condition would have to be removed. Based on the February 1, hearing, it is our understanding that the Board has agreed to this.

3.19 The operation of the child care facility may not be transferred or assigned to another operator (after Needham Children's Center) without prior written approval of the Board, in its sole and exclusive discretion, after such notice and hearing as the Board may require.

It is our position that this condition is clearly beyond the Board's authority in a Dover Amendment case, and will be voided if appealed. Nor is it necessary to protect the Town's interests as reflected in the Decision. As with Needham Children's Center (NCC), any new operator would be licensed and regulated by the State, and the Board does not have the expertise or a reasonable basis to substitute its judgment for that of the State in such matters.

Christopher Heep, Esq.

February 8, 2022

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The Applicant would agree to a condition that the operator/tenant will not be changed without notification to the Board and a requirement that any new operator will certify, in writing signed by the appropriate person, that the new operator has read and understood the Decision, and agrees to operate the facility in accordance with its terms.

Conditions 1.16, 3.15, 3.16, and 3.17:

We believe it is clear that, as a general proposition, the Board cannot condition this decision on further approvals by this Board. However, as currently drafted these conditions do in fact require further approval of this Board, and give the Board the ability to take such unspecified actions in the future as it deems fit “in its sole discretion,” including imposing additional unspecified conditions which may or may not be reasonable, presumably up to and including effectively suspending or curtailing the applicant’s or tenant’s ability to operate at the site. If this matter is appealed it will be the Applicant’s position that, in addition to the specific issues identified below, these conditions are facially invalid, and will result in a *de facto* grant of the application as submitted by the Applicant, by failure of the Board to take final action on this application within 90 days of December 8, 2021, the date on which the public hearing was closed.

As a compromise, the Applicant will agree to the following modifications to these conditions:

1.16 (a) A Police detail will remain in place for a minimum of 60 days, commencing on or after the opening of the child-care facility. The detail may be discontinued thereafter upon request of the Petitioner and a finding by the Board (following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient)

The termination date of this requirement would need to be revised approximately as follows: “This requirement shall end at any time after 30 days from the commencement of operations that the Needham Police Department determines that it is no longer necessary to materially improve traffic on Central Avenue during peak hours.” Note that this termination mechanism is consistent with the proposal from the Town’s peer reviewer, Mr. Diaz.

1.16 (c) The Petitioner shall complete a follow-up traffic study after the site is open and operational to at least 80% of student capacity. The Petitioner shall further fund a peer review of this post occupancy traffic study.

This condition is unreasonably vague as written. What is the traffic study to include? What is it supposed to show? What would be a satisfactory conclusion of the traffic study? The purpose, scope and goal of the study must be defined. Further, the Applicant will not agree to pay for a peer review of any such study.

Christopher Heep, Esq.

February 8, 2022

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3.15 and 3.16; conditions relating to Maximum Trip Count.

These conditions would need to be re-drafted to specify what would constitute a material variation from the anticipated trip count, and what the consequences would be if that were to materialize. Further, the applicant will not agree to pay for peer review of the work done by its own traffic engineer in complying with these conditions.

3.17 In the event that traffic or parking problems caused by the use of the property develop that are inconsistent with what was represented to the Board at the hearing and that adversely affect the neighbors on Central Avenue, the Board may modify this Decision by imposing additional conditions in accordance with the provisions of Section 4.2.

This condition is so vague as to give the Board the ability to impose whatever conditions it wishes in the future. What are “traffic or parking problems”? Given the lack of specificity, this condition is virtually certain to be voided by the Court if appealed. At a minimum, greater definition must be provided as to what “traffic or parking problems” would trigger the Board’s authority under this provision, and what “additional conditions” the Board could impose.

In addition, the decision would need to be modified to include the following:

- (1) the Applicant will have the option of installing an on-site septic system. Based on Mr. Alpert’s comments at the February 1 hearing, we assume this will not be a problem.
- (2) The Applicant will have the option to install, in the future, a separate storage structure of no more than 2,000 s.f. and no more than 15 feet in height (which is the allowable height for accessory structures).
- (3) Modifications of the conditions relating to hours of operation, the number of staff, and the hours of trash removal, as requested by Pat Day of NCC, would be incorporated in the decision. Based on the Board’s comments on these matters at the February 1 hearing, we again presume this will not be problematic for the Board.

To be clear, if we can reach agreement as outlined above, Needham Enterprises would agree not to appeal the decision, which would give the Board certainty that the provisions relating to demolishing the barn, the maximum number of students; an agreed-upon setback well in excess of what the Bylaw requires; and the ADA-compliant sidewalk, would not be voided by the Court. Needham Enterprises sincerely hopes that the Board takes this proposal in the spirit in which it is intended, namely, a good faith effort to reach a compromise on genuinely disputed issues.

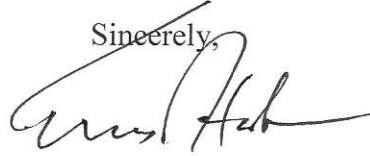
Christopher Heep, Esq.

February 8, 2022

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As the deadline for the Board to take final action on this matter is March 8, there is still sufficient time to incorporate these changes into the decision, if the Board is so inclined. If the Board is interested in pursuing the compromise set forth in this letter, I would be happy to discuss it with you, and/or with the Board at the meeting on February 11.

Sincerely,

A handwritten signature in black ink, appearing to read "Evans Huber", written over the word "Sincerely,".

Evans Huber, Esq.

January 31, 2022

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

Re: 1688 Central Avenue, Needham

Ms. Newman:

I am writing to provide the applicant's comments on the draft decision you sent me at the end of the day last Thursday. At this point, and given that time is short, I am not including relatively minor comments on such things as incorrect numbers or statements of fact, typographical errors, and the like. Instead, I am confining the applicant's comments to some of the conditions in the draft decision. I ask that you forward this letter to the members of the Board.

It is no secret that the applicant has vigorously opposed a number of the conditions that are currently included in the draft decision, so it should be no surprise to the Board that if the decision stays as currently drafted, the applicant will appeal. In a final effort to get to a decision that all sides can live with, we are listing below two categories of conditions; the first are a group that the applicant cannot agree to, and will appeal if they are included in the final decision. The second group includes conditions that the applicant believes the Board does not have the authority to impose, either because they are beyond the scope of the "reasonable regulations" allowed by the Dover Amendment, or, if within that scope, are unreasonable as drafted.

With respect to this second group, the applicant will nevertheless agree not to appeal their inclusion in the decision, in some cases with modifications described below, if the conditions in the first group are eliminated. If the Board chooses to include conditions in the first group in the final decision, then the applicant intends to appeal all such conditions in the first and second group.

In addition, it is the applicant's position that, as we believe you have been advised by Town counsel, the Board cannot condition this decision on further approvals by this Board. There are a number of conditions in this draft decision that require further approval of this Board, or which give the Board the ability to take such unspecified actions as it deems fit "in its sole discretion," including presumably, effectively suspending or curtailing the applicant's or tenant's ability to operate at the site. These include conditions found in sections 1.16, 3.15, 3.16, and 3.17 of the draft decision. We believe that any such conditions are facially invalid, and will result in a *de facto* grant of the special permit by failure of the Board to take final action on this application within 90 days of December 8, 2021, the date on which the public hearing was closed.

Lastly, please note that most if not all of the conditions discussed below appear in more than one section of the draft decision. The section references below are not intended to be a complete list of each place that a given condition appears in the draft decision.

Group I, conditions that the applicant intends to appeal if included:

2.1(d) the plan shall be revised to demolish the barn and relocate the proposed building to a 135-foot setback, per plans to be submitted to the Board for approval and endorsement.

The Board makes two arguments for including the requirement that the barn be demolished. The first is that Bylaw prohibits more than one non-residential structure on a lot. However, the Appeals Court decision in *Petrucci v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. 818 (1998) compels the conclusion that the Needham zoning bylaw that would otherwise preclude more than one non-residential structure on a lot in this district is superseded by M.G.L. c. 40A, § 3: “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 [c.40A sec. 3] declares impermissible with respect to child care facilities.” *Id.*, 45 Mass. App. Ct. at 822.

The Board also asserts that the barn doesn’t qualify as an accessory structure because it is not “customary” to have a building of this size as an accessory structure for a child care facility. This argument is wrong for two reasons. First, if we are correct about the effect of *Petrucci, supra*, then the question of whether the barn qualifies as an “accessory structure” is moot. If the applicant is allowed (because of the Dover Amendment) to have more than one non-residential structure on a lot as long as such structures are being used for the “primary, accessory, or incidental purpose of operating a child care facility,” M.G.L. c. 40A, section 3, then the barn doesn’t have to qualify as an “accessory structure” as defined in the Bylaw.

Second, the definition in section 1.3 of the Bylaw states that the “use” (in this case, storage) must be customarily incidental to the principal use. That means that if the building is devoted exclusively to a use (storage) that is customarily incidental to the principal use (child care facility), which is the case here, then it qualifies as an accessory building. The term “customarily” does not refer in any way to the size of the accessory building; only to whether the use (storage) is customarily incidental to the primary use. There is no plausible argument that storage of materials, supplies, toys, equipment, outdoor furniture and the like is not “customarily incidental” to the operation of a child care facility.

If the applicant is correct that the Board cannot require the demolition of the barn, then imposing a 135-foot setback requirement is not feasible; and even if it was feasible, it is an unreasonable imposition of additional cost on the applicant to achieve a modest additional municipal benefit. If the municipal interest to be served is to reduce the visual impact of the building, a requirement of additional vegetative screening would be a far more reasonable approach.

3.8 all buildings and land must remain under single ownership, and the property cannot be further subdivided.

Not only has this condition never been discussed during the public hearing process, but it is patently unreasonable. It imposes a potentially huge financial penalty on the applicant, and any municipal interests that this condition seeks to promote are fully protected by the subdivision control law and Town regulations governing that process.

3.19 The operation of the child care facility may not be transferred or assigned to another operator (after Needham Children’s Center) without prior written approval of the Board, in its sole and exclusive discretion, after such notice and hearing as the Board may require.

This condition is clearly beyond the scope of the Board's authority; it seems self-evident that if another operator were before the Board with the identical proposal, and the Board were to impose identical conditions, that the Board would not have the authority to deny the Special Permit to a different operator simply because the Board did not like that operator. Further, it is unreasonable. While the applicant fully expects the Needham Children's Center to be a long-term tenant, there is no guarantee of what will happen to any business or tenant in the future. If Needham Children's Center can no longer be the tenant, for whatever reason, the Board cannot choose to render the site unusable by refusing to approve a new operator, who would be bound by the same conditions in the Special Permit.

Group II, conditions that the applicant believes the board does not have the authority to impose, and/or are unreasonable, but will nevertheless agree not to appeal if (a) the conditions listed in Group I are removed from the decision, and (b) in some instances, as specified below, the conditions are modified:

1.16 (a) A Police detail will remain in place for a minimum of 60 days, commencing on or after the opening of the child-care facility. The detail may be discontinued thereafter upon request of the Petitioner and a finding by the Board (following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient)

Subject to the elimination of the items in Group I, the applicant would agree not to appeal this condition if the termination of the police detail is determined by the Needham Police Department, as recommended by the Town's peer reviewer. The proposed hours of the detail are also excessive.

1.16 (c) (c) The Petitioner shall complete a follow-up traffic study after the site is open and operational to at least 80% of student capacity. The Petitioner shall further fund a peer review of this post occupancy traffic study.

This condition is unreasonably vague as written. What is the traffic study to include? What is it supposed to show? What would be a satisfactory conclusion of the traffic study? Subject to the elimination of the items in Group I, the applicant would agree not to appeal this condition if the purpose, scope and goal of the study is defined.

3.15 and 3.16; conditions relating to Maximum Trip Count.

These conditions are entirely new; beyond the Board's authority under the Dover Amendment, and unreasonable. They are an invitation to continuing the contentious hearing process that has been going on for over 9 months; impose additional unnecessary cost on the applicant, and unreasonably suggest that the applicant's (or tenant's) ability to operate the facility can be jeopardized if a single event of exceeding a "maximum trip count" happens to occur. Nevertheless, subject to the elimination of the items in Group I, the applicant would agree not to appeal this condition if the applicant is not once again required to pay for peer review of the work done by its own traffic engineer in complying with this condition.

3.17 In the event that traffic or parking problems caused by the use of the property develop that are inconsistent with what was represented to the Board at the hearing and that adversely affect the neighbors on Central Avenue, the Board may modify this Decision by imposing additional conditions in accordance with the provisions of Section 4.2.

This condition is so vague as to give the Board the ability to impose whatever conditions it wishes in the future. What are “traffic or parking problems”? We have heard neighbors say that the addition of one additional vehicle on Central Ave will cause a problem, so we know that some people who live in that area will assert that this condition is triggered on the first day of operations. Nevertheless, subject to the elimination of the items in Group I, the applicant would agree not to appeal this condition if it is given greater definition as to what “traffic or parking problems” would trigger this condition, and what “additional conditions” the Board could impose.

3.4 The maximum number of children present at the child-care facility at any given time shall not exceed 115. The maximum number of child-care employees or staff inclusive of teachers, instructors and administrators present at any given time shall not exceed 18.

The applicant has previously stated that it will agree to a cap of 115 children (and the figure of 18 staff derives from that number and NCC’s anticipated age mix of children). This was done in the spirit of alleviating neighbor concerns about an excessive number of children and not because the Board has the authority to impose such a limit. See *Primrose Sch. Franchising Co. v. Town of Natick*, No. 12 MISC 459243 AHS, 2015 WL 3477072, at *9 (Mass. Land Ct. May 29, 2015)(“ In view of the foregoing, G.L. c. 40A, § 3, ¶ 3 did not give the ZBA authority to limit the amount of students that the Facility may house as a means of reducing vehicular traffic to and from Locus . As such, I find that Condition 4 is unreasonable to the extent that it purports to condition approval of the Project upon a cap in the maximum number of enrollees in the Facility.”). Nevertheless, if the items in Group I are eliminated, the applicant would agree not to appeal this condition.

3.33 An ADA- compliant sidewalk shall be installed along the entire frontage of the property with the final design approved by the Town Engineer.

The applicant has previously stated that it will agree to this condition, even though the applicant considers it unreasonable in light of the condition of the “sidewalk” all along this portion of Central avenue in both directions from the site. Nevertheless, if the items in Group I are eliminated, the applicant would agree not to appeal this condition.

Based on the way these hearings have gone, Needham Enterprises is not optimistic that the Board will agree to remove the conditions in Group I. For this reason, we have not gone into a lot of detail about proposed modifications to some of the conditions in Group II. If we are wrong about that, we would be happy to engage in further discussion with the Board about the language of the conditions in Group II, all of which Needham Enterprises will agree to in some form if the conditions in Group I are eliminated from the decision.

Thank you for your consideration of the points raised in this letter. As time is short and I am not in the office, I am submitting this to you with my italicized name representing my actual signature.

Sincerely,

/s/ Evans Huber

Evans Huber, Esq.

From: [Evans Huber](#)
To: [Lee Newman](#)
Cc: [Alexandra Clee](#)
Subject: RE: Applicant's Comments on 1688 Central Ave draft decision
Date: Tuesday, February 1, 2022 11:06:22 AM

Lee: Thanks for your confirmation of receipt.

As a follow up on the email and attached letter I sent you yesterday evening there is another issue that the applicant would like to bring to the Board's attention regarding the draft decision.

The Draft decision includes certain provisions regarding connection to, and use of, the Town's sewer system for the site. Indeed, the Applicant had proposed this aspect of the project. However, even if we are able to avoid an appeal of the decision, it will no doubt include a number of conditions that impose significant additional cost on the applicant, and which were not part of the applicant's planning and budgeting process. For this reason the applicant requests that the Board modify the decision relating to the sewer connection so that the applicant has the option of using an on-site septic system instead. If utilized, the design and construction of such a system would, of course, have to be approved by the appropriate Town departments. The relevant portions of the decision as currently drafted are:

- 1.30 (partial) The Petitioner will connect to the Town's sewer system by running, at the Petitioner'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.
- 3.12 The Petitioner shall secure from the Needham Department of Public Works a Sewer Connection Permit, with impact fee paid if applicable.
- 3.13 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.

Please bring this request to the Board's attention. Thank you, Evans

Evans Huber
Frieze Cramer Rosen & Huber, LLP
60 Walnut Street
Wellesley, MA 02481
781-943-4000 (main)
781-943-4043 (direct)
781-799-9272 (cell)
eh@128law.com
www.128law.com

From: Lee Newman <LNewman@needhamma.gov>

Sent: Monday, January 31, 2022 6:08 PM
To: Evans Huber <eh@128law.com>
Cc: Alexandra Clee <aclee@needhamma.gov>
Subject: RE: Applicant's Comments on 1688 Central Ave draft decision

Received. I have sent it on to the Board.

Lee

From: Evans Huber <eh@128law.com>
Sent: Monday, January 31, 2022 5:19 PM
To: Lee Newman <LNewman@needhamma.gov>
Cc: Alexandra Clee <aclee@needhamma.gov>
Subject: Applicant's Comments on 1688 Central Ave draft decision

Lee; please see attached letter. Give the limited time we have had to review the draft decision, and logistical constraints imposed by the pandemic, I am not able to submit the attached letter on firm letterhead, nor with my original signature. Nevertheless, the attached letter should be treated as coming from my office, and containing my signature.

Thank you, Evans

Evans Huber
Frieze Cramer Rosen & Huber, LLP
60 Walnut Street
Wellesley, MA 02481
781-943-4000 (main)
781-943-4043 (direct)
781-799-9272 (cell)
eh@128law.com
www.128law.com

From: [Lee Newman](#)
To: [Alexandra Clee](#)
Subject: Fwd: From Pat Day
Date: Tuesday, February 1, 2022 9:56:44 PM

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Pat Day <patriciaday1@me.com>
Sent: Tuesday, February 1, 2022, 4:45 PM
To: Lee Newman
Subject: From Pat Day

Hi Lee,

I know that you are busy, so I thought a short memo might be helpful.

I'm hoping that Town Counsel will be available to advise the Planning Board members if needed.

Concerning the Review Decision

I know this is just a lot of work and brain power to draft after all this time so I can limit my comments

3.3

It may not be significant however

“No child-care operations....”

Administrators work on weekends especially during licensing and accreditation for brief periods. EEC regulations concerning ratios and schedule make most trainings ; CPR and First Aid, Security, Intruder Training, and short term special events happen for a few hours infrequently from 5:30 to 7 in the evening or on Saturday afternoons. This is probably just a few times a year; so parents and grandparents in a certain program can attend. It's not whole NCC families and certainly not frequently. Super cleanings, regular cleaning happen on the weekends as does maintenance such as painting and playground cleaning; painting,adding mulch, fence repair. It all has to happen while children are not present.

Could it read “no regularly scheduled child care shall be allowed on Saturday or Sunday

3.4

As there is one extra space due to the Needham Parking By-Law formula, could the Planning Board allow that one space to have flexible use such as an OT or Speech Therapist that might need to come in on off-peak hours to work with a child? Could the language in 3.4 reflect that

3.31

For more than 30 years we have the same company pick up the trash between 7-7:30 once or twice a

week. This is a safety issue we established long ago. As a child who grew up in Needham, I still remember the tragedy at Stephen Palmer when I was very young.

Could it read “7-4:30”?

That’s it

Best,
Pat



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Johanna W. Schneider
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M. Patrick Moore, Jr.
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pmoore@hembar.com

February 4, 2022

Trustees

Counselors at Law

Michael J. Puzo
Edward Notis-McConarty
Stephen W. Kidder
Arthur B. Page
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Kurt F. Somerville
Teresa A. Belmonte
Brian C. Broderick
Nancy E. Dempze
Joseph L. Bierwirth, Jr.
Dennis R. Delaney
Mark B. Elefante
Johanna W. Schneider
John J. Siciliano
Sarah M. Waelchli
M. Bradford Bedingfield
Charles R. Platt
M. Patrick Moore, Jr.
Ryan P. McManus
Kevin M. Ellis

Michael E. Porter
Eleanor A. Evans
Jennifer Grace Miller

Donna A. Mizrahi
Paul M. Cathcart, Jr.
Vanessa A. Arslanian
Steven L. Mangold
Meaghan E. Borys
Keirsa K. Johnson
Leni B. Nulsen
Emma Wright
Clinton R. Prospere
Shannon M. Nelson

Lawrence T. Perera
Frederic J. Marx
R. Robert Woodburn
Thomas L. Guidi
Diane C. Tillotson
Charles Fayerweather

Lee Newman

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

Re: 1688 Central Avenue, Needham

Dear Ms. Newman:

As you may be aware, we represent Gregg Darish, owner of the property located at 34 Country Way, which abuts the property at 1688 Central Avenue (the "Site"). We write with both substantive and procedural concerns regarding the Planning Board's February 1, 2022 hearing to review the draft decision on Needham Enterprises, LLC's application to erect a child care facility on the Site and request that you share this letter with the Board.

Mr. Darish and his neighbors participated for many months in the Board's review process and provided significant evidence of the numerous ways in which the proposed project, if not properly conditioned, would be detrimental to surrounding properties. Nonetheless, the Board's initial draft decision required only minimal project changes and mitigation commitments to protect the neighborhood, including requiring a 135-foot setback of the building and limiting the project to only one building on the lot. Based on the Board's discussion this week, it appears that, in response to posturing from the proponent's attorney, the Board is now considering backing away from even the limited protections set forth in the initial draft. Most notably, despite the Board's detailed, well-reasoned draft findings on the necessity of the 135-foot setback of the building and the clear requirement under Section 3.2.1 of the Bylaw that the barn be eliminated from the proposal, the Board now seems to be reconsidering these conditions. Other conditions are also important, including, but not limited to, the protection against further

Lee Newman
February 4, 2022
Page 2

development of the Site through subdivision and buffer areas around the Site's boundaries.

It also appears that this stage of the Board's process is rife with procedural irregularities. Despite having closed the hearing on December 8, 2021, the Board has continued to take substantive testimony on behalf of the proponent. Under the guise of "comments" on the draft decision, counsel for the Petitioner and the putative operator of the day care facility have proposed material changes to the project, including a sudden request to install an unspecified septic system and to expand hours and days of operation. In more than 20 years of appearing before permitting authorities in the Commonwealth of Massachusetts, we have never witnessed a board allowing a project to change in such significant ways after the hearing has closed and a draft decision is being deliberated. This concern is particularly acute here, where these last minute changes would decrease the draft decision's protections for the project's abutters (most notably with respect to noise and light impacts, as well as potential environmental and runoff impacts from the installation of an unvetted septic system).

To the extent that the Board chooses to eliminate from the draft decision conditions that properly and necessarily address considerations of public health, safety and welfare and bring the proposed project in line with the Bylaw, Mr. Darish is prepared to vindicate his rights through litigation. As set forth in our prior correspondence to the Board and Town Counsel, the Board has ample authority under Chapter 40A, Section 3 to impose reasonable regulations on the new construction of a day care facility and we are confident that if it fails to properly exercise such authority through its decision, a reviewing court will require it to do so on remand after a trial.

While we are aware that the Petitioner has also raised the specter of legal action against the Board, we would encourage the Board to stand firm against such posturing and, instead, consider why the proponent has decided to engage in it. Litigation is never a developer's preferred approach, given the considerable delay that arises from judicial involvement. There is even more reason for the developer to avoid litigation in this case, where court proceedings will expose the project proponent to discovery and judicial inquiry related to the propriety of his actions in connection with this application. We sense that these threats stem from the proponent's awareness that the Planning Board's power to condition this project is at its height under G.L. c. 40A, s. 3, paragraph 3, where new construction of the facility is involved. If the Board relents on its power to impose conditions

Lee Newman
February 4, 2022
Page 3

now, it will face far greater constraints on conditioning future use of the property once the day care facility has been constructed there. This is the plain implication of *Primrose School Franchising Co. v. Town of Natick*, 2013 WL 3057432 (Mass. Land Ct. Jun. 17, 2013), from which the Petitioner hopes to distract the Board by his hollow posturing.

We are also compelled to note that Petitioner's threat regarding a "de facto" (i.e., constructive) grant blatantly misstates the law under Chapter 40A. While it is the case that the Board is required to take final action on the application within 90 days of the close of the hearing (December 8, 2021), that does not mean that the Board must only include in its decision conditions with which the Petitioner agrees.

In closing, we would urge the Board not to countenance these late stage project changes and, further, to exercise its legal authority to condition the project in a manner that protects both municipal interests and the interests of Mr. Darish and his neighbors.

Sincerely,



Johanna W. Schneider



M. Patrick Moore, Jr.

February 7, 2022

Needham Planning Board
1471 Highland Ave
Needham, MA 02492

RE: Objection
 1688 Central Avenue, Needham

Dear Planning Board,

I am writing to object to the Planning Board acceptance and consideration of Evan Huber's correspondence of January 31, 2022 and February 1, 2022 and Pat Day's correspondence of February 1, 2022.

The public hearing in this matter closed on December 8, 2021. Prior to that time, the Petitioner had six months to submit evidence in support of its application. Under Massachusetts law, the Board is confined to using the evidence submitted to it in the public hearing to form the basis of its decision. Lovaco Inc. v. Zoning Board of Appeals of Attleboro, 23 Mass. App. Ct. 239, 241 (1986).

The purpose of the public hearing procedures is to give the opportunity to fully vet all aspects of the application. The town departments get the opportunity to review the project in full and provide comment. The residents and concerned parties get notice of exactly what is being proposed, the opportunity to review all aspects of the project and the opportunity to provide comment.

The Board and the Planning Department cannot go outside the universe of information gathered on the record and subjected to the public hearing process to form the basis of their decision. Additionally, the applicant cannot change testimony, agreements and plans submitted in the course of the public hearing after the hearing is closed. The time for such things has long passed.

The Board deliberated. It decided issues of substance at its January 4, 2022 meeting. The Board created and published a draft decision. If the Board considers new information received outside of the public hearing to alter its draft decision, that will be legal error.

Attorney Huber's letter of January 31, 2022 is improper. It is not simply legal argument but rather new testimony. The testimony in the record is that the applicant agrees to limit enrollment at the center to 115 children. The applicant made that agreement and affirmed it on the record for the purpose of shutting down inquiry about the fact that the proposed building is large enough to hold many more children. He made that agreement to prevent the Board from taking other measures, such as shrinking the building, that would guarantee enrollment would not climb and increase impact on the neighborhood. The applicant cannot now withdraw the agreement at a time when the public hearing is closed. To accept it would deprive the public of the right to present testimony about the effects of higher enrollment and the need for the Board to shrink the building or put in other mitigation conditions that plan for full building capacity.

The Board should not capitulate to the applicant's demands. That he has attempted to withdraw his agreements in order to try to strong arm the Board into removing conditions he does not like shows you

that the Board must rely not only on the agreements that the applicant has made but also on all available legal means for regulating this project.

The Board should not accept or consider the applicant's entirely improper request in Mr. Huber's email of February 1, 2022 to allow the site plans to include a theoretical septic system that has never been discussed, defined or contemplated by any version of plans submitted to this Board. It is entirely too late for the applicant to change the plans without subjecting new plans to the full measure of review by all town departments and the public hearing process. The hearing closed on December 8, 2021. The Board must rule based on the plans submitted by the applicant by that date and cannot consider new alterations suggested by the applicant at this time without opening the hearing.

Similarly, the Board should not accept or consider Mrs. Day's email of February 1, 2022. This email is an attempt to enter new evidence not previously in the record about how her current business operates with the hopes that the Board will use that information to change its decision regarding the staffing, hours of operation and dumpster provisions of the decision. The hearing has closed. The Board cannot accept new evidence or use it to change what is in the draft decision. Mrs. Day's email should be rejected by the Board.

Thank you for your attention to this matter and for the many hours of service that you have given it.

Sincerely,

Maggie Abruzese
30 Bridle Trail Rd

From: [Robert Dimase](#)
To: aclee@needhamma.gov <aclee@needhamma.gov>
Subject: 1688 Central Avenue
Date: Monday, February 7, 2022 8:24:47 PM

Ms. Clee,

It has come to my attention that the proposed tenant of the proposed development at 1688 Central Avenue is seeking to once again "move the goal posts" and modify the proposed use of the proposed project to allow for non-regularly scheduled child care on evenings, Saturdays and Sundays along with 7 AM trash pickups and the like.

As an abutter I strongly object to the project in general and urge the board to reject these proposed modifications. Please share my concern with the planning board. Thank you.

Rob DiMase
1681 Central Avenue
781-844-5729

February 8, 2022

Paul Alpert
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 Alpert and All Planning Board Members,

Attached please find comments and legal arguments submitted on behalf of neighbors of 1688 Central Avenue in response to the Proponent's Post Draft Decision submissions dated January 31 and February 1, 2022.

We ask that you give careful consideration to these comments and enter them into the formal record of the consideration of this project should there need to be further proceedings on the matter. Thank you for your consideration.

Yours truly,

Holly Clarke

Neighbors' Response to the Proponent's January 31 and February 1 Submissions

1. The Board Should Reject the Proponent's Attempts to Alter the Terms of the Site Plan Approval After the Public Hearing Has Closed

The Zoning Act and the town bylaws require public hearings for a purpose: developments have real world consequences for the people who must live with them and their impacts.

A proponent's statements in its application and throughout the hearing process provide the town with the specifics of the project it seeks to build. These statements inform both town agencies and citizens of the project's true scope and allow them to evaluate the proposal's full impact. Here, Needham Enterprises, LLC presented a plan to place a large, commercial day care facility in a residential neighborhood and it used the dimensions and characteristics of that single lot, as well as the practices of the proposed tenant, to meet its burden before the Planning Board. The proponent repeatedly cited the lot's full frontage and size in arguing the appropriateness of its plan. He described preserving the existing dense trees on the rear and side of the lot as part of the screening for the neighbors. He provided the days and hours of operation of the day care facility. He suggested the use of a detail officer and a cap on the number of students as means to address traffic concerns. He presented the assumptions about traffic, drop off and pick up included in the traffic impact reports, as well as the willingness of the proponent and proposed day care operator to adjust parking, and drop off and pick up procedures if later found to be necessary.¹ The proponent also made agreements capping the maximum number of children that would attend the center, as well as about other mitigation measures, including installing an ADA compliant sidewalk.² The attempt by this proponent and the proposed operator

¹ See: March 12, 2001 attorney letter accompanying submission for minor site plan review referring to the proposal's compliance with the zoning bylaws based on the entire lot's size; July 20, 2021 Planning Board Meeting Presentation by the Proponent, including a chart which compared the lot and proposed building measurements with the by-law requirement; the architect's testimony that trees east of the rear parking lot would be kept. (Asked about the landscaping at the back of the lot, the architect answered, "...The rest of the trees back here are to be left in their natural state." When asked if that meant the trees would be left that "pretty much go right up to the line (on the plan next to the rear parking lot) that I'm seeing?", the architect confirmed that was correct and elaborated that the lot was, "all forested now, it's fairly heavy here (right next to the lot), there gets to be a little open area through here and then it's heavily forested the rest of the way." (<https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s,103:17> and [103:33](https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s,103:33)); the proposed hours of operation; and use of a detail officer. The proponent's traffic impact assessment reports contain the operations of the daycare for drop off, pick up and parking. The proponent's presented his willingness to accept conditions requiring monitoring and adjusting procedures because of traffic issues at the July 20, 2021 Planning Board meeting. (See: <https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s,172:50>, [174:40](https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s,174:40).)

² See: September 30, 2021 letter from Evans Huber, agreeing to 115 student cap. P 6; Statements made at the November 2, 2021 Planning Board meeting. <https://www.youtube.com/watch?v=pjmW0VRRcdY&t=3579s>.

to now change these terms just as they are incorporated into the Planning Board's decision should be rejected by the Board.

The hearing closed on December 8, 2021. After two deliberation sessions, the Board issued its draft decision on January 27, 2022. The proponent's and operator's submissions of January 31 and February 1 go far beyond minor clarifications of the proposed decision's language. Instead, the proponent both renews its advocacy for positions rejected by the Board and attempts to fundamentally change the proposal in critical ways without allowing an opportunity for public comment on these changes. They now ask:

- For a septic system rather than sewer hook up. This would be a major change for any proposal, with potential impacts on stormwater management and health.
- To expand the hours and days of operation. This is a critical consideration for the evaluation of any building project, especially one placing a commercial building in a residential neighborhood. The proposal to build a large commercial daycare facility, which brings an intensity of use along with its massive size and bulk, heightens the importance of lighting, noise and traffic considerations. It potentially impacts the public's safety, health and welfare.
- Waste removal is requested to be permitted as early as 7:00 AM,, bringing a waste hauler and its noise into a residential neighborhood at an early morning hour, potentially impacting both noise and traffic.

These late and unvetted proposals significantly change the impact of this building on the neighborhood. Slipping them in at the last minute, the applicant may seek to suggest to the Board that the changes are minor and inconsequential, but the devil is in the details, and these requests offer nothing to assure that this is true. The effect of including a septic system rather than the proposed sewer connection requires analysis, especially given the site's environmental history. Similarly, the impact of the hours of operation on the neighborhood should be scrutinized. Throughout this process, the proponent repeatedly stated to the Planning Board, the Design Review Board and the neighbors that the daycare would operate Monday through Friday, with staff arrival beginning at 7:15 AM and most staff gone by 6:15 PM. When asked Mrs. Day even stated that they understood large scale events would not take place on site because of parking limitations, and commented that these events would have to "evolve" to off site locations.³ Now, after the hearing closes, the proponent asks for more: to extend the weekday hours and expand some operations to Saturdays and Sundays. The proponent suggests the Board's decision to read only that "No regularly scheduled child care shall be allowed on Saturdays or Sundays." What is "regularly scheduled child care"? What is allowed? How many people will be on site for evening events? How many people will be on site for Saturday or Sunday events? How long do these events run? How often may they be held? Inside or out? How would the building now impact the families next door and in the neighborhood? How will this change

³ July 20, 2021 Planning Board Meeting, <https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s> at 171:44.

impact the Temple? How do Temple events impact this proposal? On Saturdays, the Temple has significant activities, and more people walk, run and bicycle in the area on weekends. The new proposals make light glare and trespass, not only on site but also from headlights, an even larger issue. Regarding waste removal, the plans show the dumpster on the furthest corner of the parking lot surrounded by a fence, far from the building and children. The proponent's experts certify that the proposal's plan is safe. Why then are the times proposed for waste removal - Monday through Saturday 9:30 am to 4:00 pm- not appropriate? Especially when no children would be present on Saturday? The families and neighbors that will bear the brunt of this project and these changes should have been given this information with accurate and specific detail, and afforded the opportunity to address it at the public hearing.

2. The Board Should Reject the Proponent's Attempts to Leverage Agreements Made During the Course of the Proceedings

The proponent goes further in attempting to leverage agreements he made during the course of the hearing process, including installing an ADA compliant sidewalk and capping the number of children at the site. The proponent now attempts to walk away from these agreements in another effort to advocate for its position. This should be rejected by the Board. Having applied for a site for 100 children, the Board and applicant agreed to a cap of 115 children, which seemed to balance the proponent's desire for space with the Board's need to protect the municipal interests. The Board relied on that agreement while proceeding in the hearings. When asked about the potential for increased enrollment, both the proponent and the Board publicly assured residents that the program could be no larger than 115 children. In answer to a resident's concern and question about the possible increase in enrollment, Mr. Huber stated at the November 2, 2021 hearing, **"We're asking for a permit that is going to be conditioned to a maximum of 115,"** (185:49), **"There's no potential to increase it."** (186:13). Mr. Block emphasized, "...If our special permit is conditioned to not exceed 115 people for the duration of Mrs. Day's operation of the daycare, it can never exceed that and furthermore if there was ever an assignment or a transfer of the lease to another operator, that other operator would be obligated to the same terms" (186:23-45). The Board should not abandon this condition, at least not without taking additional measures to protect the town's interests, such as shrinking the building. To do so would undermine the Board's decision in this case and its ability to negotiate and resolve issues in permitting, which require good faith negotiation on both sides.⁴

Simply put, if the proposal considered during the hearing had contained the new requests without the agreed upon mitigations, the analysis of the project would have been differ-

⁴ To be clear, it is beyond question that the Board has the authority to address traffic issues as part of its zoning powers. The proponents assertions that M.G.L. Ch 40A s.3 eliminates this authority is incorrect. The Board may control the size of a proposed building in order to address the municipal interest in safety created by traffic concerns. See: *Rogers v. Norfolk*, 432 Mass 374 (2000), *Campbell v. City Council of Lynn*, 415 Mass. 772 (1993), and the Neighbor's August 13, 2021 filing. The proponent's reliance on *Primrose School Franchising v. Natick*, No 12-459423 (Land Ct, May 29, 2015) is misplaced.

ent. The neighbors' submissions, questions and comments would have changed. The town departments and the traffic engineers would have considered different information and data. The Board may have pressed for additional information and reached different conclusions. The changes in the intensity of the use of the building might have caused the Board to impose other modifications to the plan and different conditions in order to protect the town's well recognized interests. The Board might have reduced the size of the building, set the building even further back to mitigate its impact on the surrounding neighbors, and/or required more screening, or addressed parking differently, all powers firmly grounded in the Board's authority under M.G.L. ch 40a s.3 and the town bylaws.

Allowing the proponent to substantively change the proposal after the hearing closes shuts the neighbors and other town departments out of the decision making process. It denies the Board the benefit of hearing neighborhood concerns and taking advantage of the knowledge of the people who actually live in the neighborhood in order to make the best decision possible. It also lessens public confidence in the ultimate decision.

Further, for months, the proponent deflected questions about his intentions for the site beyond the child care facility.⁵ One need only look at his January 31 submission to understand that that the developer intends this project as the first step in even more development at this site. The four things he most objects to make clear his intentions to further develop the lot. He objects to the setback, which the Board properly concluded is necessary for consistency with the character of the neighborhood. He objects to the removal of the barn which the Board properly recognized as required by ZBL 3.2.1, necessary to protect the character of the neighborhood, and as having no impact on the ability of a child care facility to operate on the site. He also objects to the inclusion of a "No Subdivision" condition, a condition the Planning Director makes clear is a standard inclusion when the Board conducts site review where the current full dimensions and particular characteristics of the current single lot are the basis for the application. He also objects to a condition that the property remain under single ownership. These complaints make plain his plan to even more densely develop this lot beyond building the proposed very large child care facility. The inclusion of the no subdivision condition is a reasonable and necessary protection of this residential neighborhood, particularly in light of this now clear intention to further develop the lot. It is important to remember that the applicant is not entitled to use the Dover Amendment to protect his profit. Restricting the ability to subdivide the property does not impact, in any way, the child care operator or the establishment of a child care facility.

⁵ See: The proponent's failure to produce a lease or other documents connected to the agreement with proposed tenant; his the lack of clarity when asked about the terms of the agreement between Needham LLC and the proposed tenant over control of the driveway, parking lot or any other part of the lot other than the proposed new building, (July 20, 2020 Planning Board meeting, <https://www.youtube.com/watch?v=ooXVPzqaLx4&t=6909s>); and the proponent's changes in representations about the intended use of the barn throughout the hearing and before the Design Review Board.

If the applicant has a subdivision plan that he feels would not change the analysis undertaken by the Board in allowing this child care center in a residential neighborhood, let him seek to amend the Board's decision and remove the subdivision restriction at a time when he is willing and able to present a clear, detailed plan. Maybe he means only to sell to neighbors to expand their backyards as the Board surmised. If that is the case, it would be a quick process to respond to that specific subdivision. However, the Board should not assume to know a developer's intentions, especially given the history in this case. The Board should not limit its authority to protect the neighborhood and town from any inappropriate developments to other facets of zoning law. There is every reason to include the "No Subdivision" restriction in the decision and no reason to remove it. When a proponent is not forthright on his intentions, he should not be heard to complain when the Board acts on his actual presentation, still allows the project, and fashions conditions to protect the town and neighborhood. This current Planning Board should do so.

3. The Board Has the Authority to Review the Proponent's Compliance with Imposed Conditions

Finally, the Board's power to impose conditions on a project brings with it the authority to conduct its own reviews in order to ensure compliance with those conditions. In fact, the Board must be sure not to improperly delegate its reviewing power to other actors. See: *Kiss v. Board of Appeals of Longmeadow*, 371 Mass. 147, 158 (1976) (approving the issuance of permits conditioned on the later submission of plans to be reviewed by multiple agencies, as long as the permit granting authority also reviewed the plans). The Board may also require the proponent to return to the Board for periodic review of the conditions in actual practice to insure protection of the town's interests. See: *Hopengarten v. Board of Appeals of Lincoln*, 17 Mass. App. Ct. 106 (1984) (requiring three year reviews of the safety of a permitted radio tower). Finally, the Board has the power to make substantive alterations to its decision upon proper notice and hearing. See: *Huntington v. Zoning Board of Appeals of Hadley*, 12 Mass. App. Ct. 710, n.4 (1981). The Planning Board members are elected to be the town's representatives and entrusted to make these decisions with input from all parties- including residents. The Board should reject any calls for it to relinquish its authority.

Thank you for your consideration.

Joe Abruzese
30 Bridle Trail Road
Needham, MA 02492
jabruzese@yahoo.com

February 8, 2022

To: Needham Planning Board, planning@needhamma.gov

Re: Needham Planning Board's Decision Process for 1688 Central Avenue

Members of the Needham Planning Board:

The proposal to build and operate a daycare center at the 1688 Central Avenue has been a highly controversial plan for the past 9 months. The idea of relocating an existing daycare operation from a commercial area in the center of town to a single lane residential road on the Needham border has raised significant concerns for residents and the Town.

As a refresher, concerns raised in more than 1000 of pages of documents and hours of public hearings include:

- The disharmony of a 10,000+ square foot commercial daycare building in a single-family residential area
- Concerns about the insufficient building setback on the 3.35-acre property
- Concerns about the adverse impact to traffic on Central Avenue
- Concerns about public safety and lack of shoulders and sidewalks
- Unresolved questions about soil contamination based on previous abuse of the property
- The existing barn and the law that prohibits two non-residential buildings or two non-residential uses on a single residential lot
- Concerns about light trespass and no documented design to mitigate it
- Concerns about water drainage and runoff management on a property that whose elevation will be increased by 6 feet
- Concerns about the legally allowable capacity of the building (219)
- Concerns about daycare operating hours
- Concerns about drop-offs and parking
- Concerns of a pending investigation by the Massachusetts State Ethics Commission of the developer, Matthew Borrelli, Chair of the Needham Select Board
- Concerns of a pending investigation by the Massachusetts State Ethics Commission of the architect, Mark Gluesing, Chair of the Needham Design Review Board

Per the Town's site plan review process, the developer/applicant spent over 6 months presenting his plan to the Board. The Board held hearings to review the plan, listened to concerns, discussed options, and obtained modifications and commitments from the developer to alleviate some concerns.

On December 8, the Board voted unanimously to close the hearing. In addition to closing the hearing, the Board also announced that that no new facts would be accepted now that the hearing was closed. The Board proceeded to deliberate and drafted a decision on February 1.

I attended the Planning Board meeting on February 1. A review the draft decision regarding 1688 Central Avenue was on the agenda.

What I witnessed in the meeting was alarming. Shockingly, the Planning Board disregarded the site plan review process and instead:

1. **The Board accepted new testimony from the developer after the public hearing ended and did not allow the public to review or comment on it.** Why does the Board accept additional facts submitted by the developer after the hearing closed? Why does the Board accept additional requests from Ms. Day, which were not made available to the public at the time of the February 1 meeting? This is in direct contradiction to the policy stated by the Board on December 8. Why are these allowed, yet the Board will not accept any public input?¹
2. **The Board allowed the developer to rescind on commitments that were intended to alleviate public and municipal concerns.** These commitments were explicitly agreed to by the applicant verbally and in writing during the public hearing. These include:
 - A commitment to police detail
 - A commitment to a maximum of 115 children and 18 staff at any given time. It is critical to recognize that the developer's entire traffic study is based on these maximums
 - A commitment to install an ADA-compliant sidewalk along the entire frontage of the property

The developer reversed his position on these commitments on January 31, 2022, after previously assuring residents and the Board in the formal hearing and public forums.

3. **The Board renegotiated (with itself) on its own compromise on the setback.** Board members initially suggested the building be set back 213 feet consistent with Temple Aliyah and voted on a compromise at 135 feet. At the February 1 meeting, the Board disregarded their vote and discussed a shorter setback. What then, is the purpose of voting?
4. **The Board discussed allowing the daycare center to expand operations beyond what was explicitly committed to during the public hearing.**

First, the developer repeatedly and publicly committed to operate Monday-Friday 8am – 6pm, which would limit the times of increased traffic. In addition, the developer assured that the

¹ The Planning Board refused to accept a copy of residents' submission of facts that were presented to the Board of Health on December 13.

outdoor lights would be turned off by 7pm in the evening. On February 1 well after the hearing was closed, the developer added the ability to run some programs as late as 7pm and on Saturday and Sunday. These are not the facts that were presented during the hearing. If the developer needs to change hours, this must be discussed in a public hearing, and the impacts must be assessed.

Second, the proposed daycare operator Ms. Day, disclosed for the first time that additional professionals are needed onsite beyond the previously committed maximum. Incomprehensibly, the Board decided to allow this increase, disregarding any potential impacts and disregarding its own commitment to limit capacity as a condition. The Board clearly stated to the public that the stated maximums would be enforced with conditions, yet the Board is now taking the liberty to relax the conditions without discussion or public input.

Third, the Board drafted a condition to limit trash pickup before 9:30am to limit noise pollution in this residential area. After the hearing was closed, the developer and daycare operator requested trash be picked up at 7:00am, consistent with the service she has in her current commercial location. This should not be entertained. 7:00am trash pickup is not a requirement for a daycare center, especially in a residential location.

5. **The Board disregarded its own unanimous agreement that the barn must be eliminated.** The Board agreed the law does not allow two non-residential uses or structures on a residential lot, nor is the barn deemed to be customary to a daycare center. The Board agreed the barn had to be removed. Yet at the February 1 meeting, the Board discussed an option to keep the barn and move it to another spot on the property, with no further reference to the aforementioned law. How can the law suddenly be disregarded?

The issue of the barn is a significant issue, raised by residents multiple times in writing and in the hearing, contrary to Ms. McKnight's February 1 recollection.

6. **The Board discussed allowing the developer to disregard its fully designed sewer plan and instead use a septic system without a design or impact analysis for this Board or the public to review.** For 9 months, the developer never suggested a septic system, let alone assess how it would impact the surrounding area, drainage, and/or co-exist with potential toxins in the existing soil. How can the Board accept such a significant change with no supporting design, analysis, or documentation? How can this be accepted merely from an email request?
7. **The Board discussed removing its own recommendation to limit the property from being subdivided.** The purpose of this condition is two-fold: First, the applicant's plan is for a daycare center on the existing 3.35-acre property and many of the design decisions are founded on this basis. A 10,000 square foot facility on a smaller property would generate different design considerations.

Second, the Board should be keenly aware of Mr. Borrelli's previous analogous project. It has been submitted to this Board that in Medfield, Mr. Borrelli used the special protections of the Dover Amendment to build a commercial daycare in a residential neighborhood (Goddard School) and then a few years later used the special privileges afforded to affordable housing Local Initiative Projects to shoehorn an apartment building (Hillside Villages) into the same

single family residential lot utilizing the parking and roadway access of the previously built child care center.

This is likely why he vociferously wants to keep the barn and have the ability to split the lot. The barn serves as a temporary barrier, forcing him to build the daycare building on the front of the lot. Later, the barn can be torn down, the lot subdivided, and a second “by right” project can be built, using an easement from his own daycare driveway. Limiting subdivision and further development of this property is a required municipal protection for Needham. permit.

The citizens of Needham elect Planning Board members to guide the physical growth of the town and protect municipal interests. In doing this, the Board has a process to collect facts for site plan reviews and to issue decisions. Citizens trust that the Board faithfully follow this process.

In this case, we ask that you utilize and adhere to the process. Disregarding the process, allowing material changes after the hearing has been closed, and reversing commitments that were made in public forums erodes credibility. Moreover, it erodes citizens’ confidence that any discussion, condition, or decision in this matter will be binding.

Please use the process and authority of your position to uphold your commitments to the Town of Needham.

Respectfully,

Joe Abruzese

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