

NEEDHAM
ZONING BOARD OF APPEALS
AGENDA
THURSDAY, November 16, 2023 - 7:30PM

Charles River Room Public Service Administration Building 500 Dedham Avenue Needham, MA 02492	Also livestreamed on Zoom Meeting ID: 869-6475-7241 To join the meeting click this link: <u>https://us02web.zoom.us/j/86964757241</u>
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- Minutes** Review and approve Minutes from October 19, 2023 meeting.
- Administrative** **Valentina Elzon** – Welcome and Introduction of new Associate Member
- 24 Webster Street** – Approval and Vote of Decision
- Board Rules Article V, Section 2 – Withdrawal** – Amendment

Case #1 – 7:30PM **30 Wilshire Park** –Jeremy & Jessica Karlin, owners, applied for a Special Permit under Sections 1.4.6, and any other applicable section of the By-Law to alter, enlarge and extend a pre-existing, non-conforming single-family to allow the demolition of an existing deck and stairs and replace it with a basement and a family room above. The property is located at 30 Wilshire Park, Needham, MA in the Single-Residence B (SRB) District. **(Continued from October 19, 2023)**

Case #2 – 7:45PM **1688 Central Avenue** - Holly Clarke, Gregg Darish, Robert DiMase, Matthew and Nicole Heideman, Carl Jonasson, Ann and Peter Lyons, and Eileen Sullivan, appellants, applied to the Board of Appeals for an Appeal of Building Inspector Decision (ABID) of Building Permit BC23-10079 issued to Matt Borrelli and Needham Enterprise LLC dated September 19, 2023, for the construction of a childcare facility. The ABID concludes that the Building Permit plans on file do not demonstrate that the construction, alteration or use as proposed complies with the Zoning By Laws as limited by the Dover Amendment MGL 40A, Section 3 The property is located at 1688 Central Street, Needham, MA in the Single-Residence A (SRA) District.

**NEEDHAM
ZONING BOARD OF APPEALS
MINUTES
THURSDAY, October 19, 2023 - 7:30PM
Zoom Meeting ID: 869-6475-7241**

Pursuant to notice published at least 48 hours prior to this date, a meeting of the Needham Board of Appeals was held remotely on Zoom on Thursday, October 19, 2023 at 7:30 p.m.

BOARD MEMBERS PRESENT: Jonathan D. Tamkin, Chair, Howard S. Goldman, Vice-Chair, Nikolaos M. Ligris and Peter Friedenberg.

STAFF PRESENT: Daphne M. Collins, Zoning Specialist.

Mr. Tamkin, Chair presided and opened the meeting at 7:30 p.m.

1. MINUTES OF SEPTEMBER 21, 2023

Mr. Ligris moved to approve the minutes of September 21, 2023. Mr. Friedenberg seconded the motion. The motion was unanimously approved.

2. CASE #1 30 WILSHIRE PARK CONTINUED TO NOVEMBER 16, 2023.

3. ARTICLE V, SECTION 2 – WITHDRAWAL – BOARD RULES AMENDMENT CONSIDERATION

Mr. Tamkin introduced a written proposed amendment to the Board of Appeals Rules – Article V, Section 2 which would clarify the granting of the *withdrawal without prejudices* based on the timing of the Applicant's request. If the request is made prior to a publication of a hearing an application may be withdrawn without prejudice without consent of the Board. This amendment was introduced to more accurately reflect MGL 40A, Section 16.

The proposed amendment is to read as follows:

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. Prior to the publication of the notice of hearing, an application may be withdrawn without prejudice. Thereafter a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to

refiling at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.

There was agreement in support of the proposed amendment. Per Board of Appeals Rules, Article VII, Amendments, the item will be voted upon at the next Board meeting scheduled on November 16, 2023.

4. DECISION PROCESS

Mr. Tamkin reported that he had been in discussions with Lee Newman, Planning Director and the Board, about modifying the Board's Decision Process to have staff draft the Decisions similar to the Planning Board and Conservation Commission process. There has been reluctance by the Town and Select Board in having applicant's representatives write Decisions as contemplated by the Board. Mr. Tamkin was supportive of the proposed process and wanted Decisions to continue to be produced efficiently and promptly. He'd like to implement the new process to test it out.

Mr. Friedenberg was confident that Ms. Collins, Zoning Specialist, could produce the Decisions. He did not want to see the Decisions crafted by staff other than the Board's staff. He was in favor of adopting the new Decision production process. Mr. Tamkin clarified and emphasized that it would be zoning staff that would be drafting the Decisions. He noted that Ms. Newman offered to attend a Board meeting to dialogue about the matter.

Mr. Ligris was in support and had no issue especially if there was another set of eyes reviewing staff's work. He thought the process would expedite the process especially with Board's time constraints. He thought Needham Board members drafting Decisions was unique among municipalities.

Mr. Goldman, joined the meeting, was in support of staff drafting the Decisions.

Mr. Tamkin noted there will be an assigned Board member to review and edit staff's draft Decision. Once the Decision satisfies the assigned Board member the draft Decision will be emailed to the Board for redline review. If changes are minor, staff will prepare the final Decision for adoption and signature at the next meeting. If there are changes to that Decision at the meeting, staff will prepare an updated final Decision and Board members will have to travel to the Zoning Office to sign. The signature circulations to member's homes will be discontinued. Alternatively, if changes to the draft Decision proposed are substantive, the item will be continued at the next meeting for discussion.

Mr. Tamkin proposed that 24 Webster Street be the first case under this new process, and he volunteered to be the reviewer.

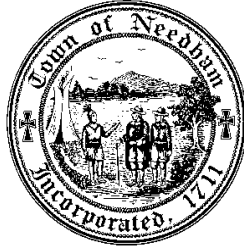
5. CASE #2 24 WEBSTER STREET APPROVED, STAFF TO DRAFT DECISION

ADJOURNMENT

The meeting adjourned at 8:12 p.m.

A summary of the discussions on each subject, a list of the documents and other exhibits used at the meeting, the decisions made, and the actions taken at each meeting, including a record of all votes, are set forth in a detailed decision signed by the members voting on the subject and filed with the Town Clerk.

The hearings can be viewed at <http://www.needhamchannel.org/watch-programs/> and <https://www.youtube.com/@TownofNeedhamMA/videos>



TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS

Special Permit

***Med Adnen Gharsallaoui, owner
24 Webster Street
Map 87, Parcel 32***

October 19, 2023

Med A. Gharsallaoui, owner, applied to the Board of Appeals for a Special Permit under Sections 1.4.6 and any other applicable section of the By-Law to alter, enlarge and extend a pre-existing, non-conforming single-family dwelling to allow the expansion and addition of the second story to accommodate two bedrooms and a bathroom on the second floor. The property is located at 24 Webster Street, Needham, MA in the Single-Residence B (SRB) District. A public hearing was held remotely on Zoom, on Thursday, October 19, 2023 at 7:45 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped September 25, 2023.
- Proposed Plot Plan prepared by Paul Finocchio, Professional Land Surveyor, stamped; and dated July 11, 2023.
- Revised Plot Plan prepared by Paul Finocchio, Professional Land Surveyor, stamped; and dated October 16, 2023.
- Plans (A-3, A-5, A-6, A-10, A-12, A-13) prepared by Farouk F. Youssef, Registered Architect, dated August 4, 2020.
- Plot Plan prepared by Sidney R. Vaugh, Registered Engineer, dated December 6, 1966.
- Assessor Department Real Estate Property Card, December 5, 2003.
- Assessor Department Real Estate Property Card pre-1993.
- Letter from Lee Newman, Director of Planning and Community Development, dated October 3, 2023.
- Email from Joseph Prondack, Building Commissioner, dated October 17, 2023.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated October 11, 2023.
- Email from Chief Tom Conroy, Fire Department, dated October 10, 2023.
- Email from Chief John Schlittler, Police Department, dated September 26, 2023.
- Email from Tara Gurge, Assistant Public Health Director, October 10, 2023.

October 19, 2023

The Board included Jonathan D. Tamkin, Chair, Nikolaos M. Ligris, Member, and Peter Friedenbergl, Associate Member. In the absence of Howard S. Goldman, Vice-Chair, Mr. Tamkin selected Mr. Friedenbergl to be a voting member. Mr. Tamkin opened the hearing at 7:48 p.m. by reading the public notice. (*Mr. Goldman joined the Public Hearing after it begun*).

Med Adnen Gharsallaoui, owner, reported that he has owned the house since 2017. As a family of five he is proposing to expand the current home to the second floor to include four bedrooms to accommodate his children. He noted that the house was built in 1928 and in 1966 a one-story addition was expanded to the back.

Mr. Gharsallaoui noted that the addition is limited to expanding upwards above the existing boundaries of the house. There will be no encroachments outside the existing house limits.

Mr. Tamkin requested clarification about different dates for the construction of the home as shown on the Assessor Property Card: 1928 and 1932. Mr. Ligris noted that the 1932 date was associated for the owners of the first recorded sale of the property. He was satisfied with the 1928 construction date.

The existing property and house are located in the SRB district and have the following pre-existing, non-conformities:

- a south side setback from the bay window of under 10' (the exact distance was not shown on the Plot Plan dated July 11, 2023 nor the Revised Plot Plan dated October 16, 2023);
- frontage of 52 feet;
- lot size of 7,747 square feet.

Mr. Gharsallaoui provided historic documentation substantiating the property's legal pre-existing non-conformities: a Plot Plan from December 6, 1966 illustrates the existence of the bay-window encroaching into the setback, and Assessor Property Cards from 2003 and pre-1993 noting that the home was constructed in 1928.

Mr. Friedenbergl was satisfied with the legal non-conformity as it has been in existence for over 10 years and the 1966 plot plan further confirms it.

Comments received:

- The Police Department was concerned about road hazard created from construction vehicles as it is a heavily used commuter and school drop-off route. Mr. Tamkin noted that the Decision, if approved, would be conditioned that construction vehicles may not impede traffic. The applicant had no issue with complying with the condition.
- The Planning Board had no comment.
- The Engineering Department had no comment or objection.
- The Building Department noted that the existing bay window foundation is less than the required 10' side setback on the south side. The Building Commissioner had requested and was waiting for the dimension to be shown by the surveyor, however, he had no

objections to the proposal.

- The Fire Department was satisfied with the proposal.
- The Health Department noted that the applicant must apply for a Demolition Review online with supplemental report documentation prior to the issuance of a Building Permit, and ongoing pest control must be conducted during demolition and throughout construction.

Mr. Friedenbergr inquired if the bay window would be continued to the second story. Mr. Gharsallaoui affirmed that the plans are to extend and continue the bay window up to the second floor.

The Board noted that the revised October 16, 2023 Plot Plan indicated new side setbacks of 10'2" on the south side, and 10.9" on the north side from the Plot Plan dated July 11, 2023. This revision on the south side appears to reference the Plot Plan of December 6, 1966.

Mr. Tamkin asked the Board if they had any issues issuing the Decision without the revised plot plan in showing the non-conforming measurement on the south side setback from the bay window.

Mr. Goldman and Mr. Ligris concurred that a Decision could be arrived at without the exact measurement of the south side setback from the bay window to the property line. However, the Decision will be subject to the submission of an updated plot plan with the dimension shown.

There were no comments from the public. The public portion of the hearing was closed.

Mr. Friedenbergr was satisfied with the applicant's substantiation of the property's legal pre-existing non-conforming status and directed that the proposed addition not encroach into the sideline. He had no issue with the project.

Mr. Goldman was satisfied with the proposal provided that the proposed addition not encroach or increase further into the non-conformity.

Mr. Ligris was supportive of the project and noted that there was no further encroachment, no abutting single-family property on the south side and that the property abutted the driveway to a multi-family complex.

Mr. Tamkin had no additional comments.

Mr. Ligris moved to grant a Special Permit under Section 1.4.6 of the By-Law to allow the alteration, enlargement and extension of a pre-existing, non-conforming single-family dwelling to allow an addition of the second story to accommodate two new bedrooms and a bathroom at 24 Webster Street in accordance to the plans submitted with the following conditions:

- no construction vehicles be allowed to park on Webster Street or obstruct traffic as requested by the Chief of Police;
- a final plot plan showing the dimensions from the bay window on the south side of the property shall be submitted to the Board and the Building Department prior to the

issuance of a Building Permit; and

- there shall be no further encroachments into the existing non-conforming south side setback, nor increase any other non-conformity.

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

The meeting adjourned at 8:10 p.m.

Findings:

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

1. The premises is a 7,747 square feet lot improved by a one and a half story single-family house in the Single Residence B District. The 1,088 square feet house was built in 1928 with a rear one-story addition added in 1966.
2. The lot is non-conforming in that it is only 7,747 square feet, which is less than the required 10,000 square feet and has frontage of only 52 feet where 80 feet is required. The house is non-conforming in that the south side setback has less than 10 feet* where 10 feet is required. All other setbacks and build factors are compliant. (**a surveyed plot plan indicating the current non-conforming south side setback has been provided to the Board after the hearing and will be provided prior to the issuance of a Building Permit*)
3. The owner provided a Town Assessor Property Card indicating that the original house was built in 1928. The owner also provided a Plot Plan from December 1966 illustrating the original house with the existing non-conforming south sideline setback. Since the non-conformity has existed for more than 10 years without challenge, MGL Chapter 40A, Section 7 provides that the structure is considered to be legally non-conforming.
4. The owner proposes to raise the one and half story to a full second story and extend the second-floor addition within the footprint of the existing structure to accommodate 4 bedrooms, 2 bathrooms and a laundry area. The proposal will add 538 square feet for a total of 2,176 square feet of living space.
5. The applicant confirmed that the proposed addition will be constructed directly above the existing structure and that no part of the proposed addition will extend further into the now existing non-conforming setback.
6. Pursuant to Section 1.4.6 of the By-Law, a lawful pre-existing non-conforming building may be structurally altered, enlarged or reconstructed by Special Permit if such change, extension, alteration, enlargement or reconstruction does not create any new non-conformity.
7. The property is located on a heavy commuter and school drop-off route. The Police Chief was concerned that construction vehicles not impede the lane of travel and create a road hazard. The owner agreed to not allow construction vehicles to park on Webster Street.

8. Based on the evidence submitted to the Board during the hearing, the Board finds that the existing structure is a lawful pre-existing non-conforming structure and that the proposed addition will not further encroach on or enlarge the existing nonconformity of the structure. The proposed addition will not result in a structure that is substantially more detrimental to the neighborhood than the existing non-conforming structure. The Board further finds that the proposed addition is a design that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area. The issuance of a special permit is consistent with the criteria of Section 7.5.2 of the By-Law.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the owner a Special Permit under Sections 1.4.6 and 7.5.2 of the By-Law to allow the proposed addition to 24 Webster Street according to the submitted plans, provided

- no construction vehicles be allowed to park on Webster Street or otherwise obstruct the flow of traffic;
- a final plot plan indicating the existing south side setback be submitted to the Board and the Building Department prior to the issuance of a Building Permit; and
- there be no further encroachment into the existing non-conforming south side setback nor increase any other non-conformity.

Jonathan D. Tamkin, Chair

Nikolaos M. Ligris, Member

Peter Friedenberg, Associate Member



Zoning Board of Appeals
Public Services Administration Building
500 Dedham Avenue
Needham, MA 02492

To: Zoning Board of Appeals

From: Jonathan D. Tamkin, Chair

Re: *Article V, Section 2 Withdrawal*, Proposed Board Rules Amendment

Date: November 16, 2023

To reflect more accurately **MGL 40A, Section 16** *Withdrawal of Petitions for Variance or Applications for Special Permit*, proposed changes to the current **Board of Appeals Rules – Article V, Section 2 Withdrawal** where presented in writing for discussion at the October 19, 2023 meeting. The Board was in support of the changes and as required by *Article VII, Amendments* the item is now brought to a vote at the next meeting of November 16, 2023.

Article V Section 2. Withdrawal - Current

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After commencement of a hearing, a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refiling at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.

Article V Section 2. Withdrawal – Proposed Amendment

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. Prior to the publication of the notice of hearing, an application may be withdrawn without prejudice. Thereafter a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refiling at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.



ZBA Application For Hearing

Applicants must consult with the Building Inspector prior to filing this Application. Failure to do so will delay the scheduling of the hearing.

Applicant Information

Applicant Name	See attached list of appealing residents.			Date: 10/23/2023
Applicant Address				
Phone		email		
Applicant is ☐ Owner; ☐ Tenant; ☐ Purchaser; ☐ Other _____				
If not the owner, a letter from the owner certifying authorization to apply must be included				
Representative Name	Dylan Sanders			
Address	Beveridge & Diamond, P.C.; 155 Federal St., Ste. 1600; Boston, MA 02110			
Phone	617-549-5828	email	dsanders@bdlaw.com	
Representative is ☒ Attorney; ☐ Contractor; ☐ Architect; ☐ Other _____				
Contact ☐ Me ☒ Representative in connection with this application.				

Subject Property Information

Property Address	1688 Central Ave.		
Map/Parcel Number	Parcel 213, Assessor's Plan No. 199	Zone of Property	Single Residence A
Is property within 100 feet of wetlands, 200 feet of stream or in flood Plain? ☐ Yes ☐ No			
Is property ☐ Residential or ☒ Commercial			
If residential renovation, will renovation constitute "new construction"? ☐ Yes ☐ No			
If commercial, does the number of parking spaces meet the By-Law requirement? ☐ Yes ☐ No			
Do the spaces meet design requirements? ☐ Yes ☐ No			
Application Type (select one): ☐ Special Permit ☐ Variance ☐ Comprehensive Permit ☐ Amendment ☒ Appeal Building Inspector Decision			



ZBA Application For Hearing

Existing Conditions:

Statement of Relief Sought:

Revocation of building permit. See attached Notice of Appeal, dated October 19, 2023.

Applicable Section(s) of the Zoning By-Law:

See attached Notice of Appeal, dated October 19, 2023.

If application under Zoning Section 1.4 above, list non-conformities:

	Existing Conditions	Proposed Conditions
Use		
# Dwelling Units		
Lot Area (<i>square feet</i>)		
Front Setback (<i>feet</i>)		
Rear Setback (<i>feet</i>)		
Left Setback (<i>feet</i>)		
Right Setback (<i>feet</i>)		
Frontage (<i>feet</i>)		
Lot Coverage (%)		
FAR (<i>Floor area divided by the lot area</i>)		
<i>Numbers must match those on the certified plot plan and supporting materials</i>		



ZBA Application For Hearing

Date Structure Constructed including additions:

N/A

Date Lot was created:

Submission Materials	Provided
Certified Signed Plot Plan of Existing and Proposed Conditions <i>(Required)</i>	
Application Fee, check made payable to the Town of Needham Check holders name, address, and phone number to appear on check and in the Memo line state: "ZBA Fee – Address of Subject Property" <i>(Required)</i>	
If applicant is tenant, letter of authorization from owner <i>(Required)</i>	
Electronic submission of the complete application with attachments <i>(Required)</i>	
Elevations of Proposed Conditions <i>(when necessary)</i>	
Floor Plans of Proposed Conditions <i>(when necessary)</i>	

Feel free to attach any additional information relative to the application.
Additional information may be requested by the Board at any time during the
application or hearing process.



I hereby request a hearing before the Needham Zoning Board of Appeals. I have
reviewed the Board Rules and instructions.

I certify that I have consulted with the Building Inspector N/A
date of consult

Date: 10/23/2023 Applicant Signature /s/ Dylan Sanders

*An application must be submitted to the Town Clerk's Office at
townclerk@needhamma.gov and the ZBA Office at dcollins@needhamma.gov*

Appealing Needham Residents

Holly Clarke, 1652 Central Avenue

Gregg Darish, 34 Country Way

Robert DiMase, 1681 Central Avenue

Matthew Heideman, 1708 Central Avenue

Nicole Heideman, 1708 Central Avenue

Carl Jonasson, 1729 Central Avenue

Ann Lyons, 1689 Central Avenue

Peter Lyons, 1689 Central Avenue

Eileen Sullivan, 1695 Central Avenue



C. Dylan Sanders
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Boston, MA 02110
(617) 419-2311
DSanders@bdlaw.com

October 19, 2023

Ms. Theodora Eaton
Town Clerk
Needham Town Hall
1471 Highland Avenue
Town of Needham, MA 02492

Mr. Joseph Prondak, CBO
Building Commissioner
Building Department
Public Services Administration Building
500 Dedham Avenue
Needham, MA 02492

Zoning Board of Appeals
Town of Needham
Public Services Administration Building
500 Dedham Avenue
Needham, MA 02492

Re: Notice of Appeal
Building Permit # BC-23-10079
1688 Central Avenue

Dear Clerk Eaton, Board of Appeal, and Commissioner Prondak:

This firm represents the residents of the Town of Needham named below. Pursuant to Mass. Gen. L. c. 40A, §§ 7, 8 and 15, and § 7.5.1 of the Zoning Bylaw of the Town of Needham, these residents appeal the decision by the Building Department to issue Building Permit # BC-23-10079 to Matt Borrelli and Needham Enterprises LLC, dated September 19, 2023, for the construction a childcare facility as proposed for 1688 Central Avenue, Needham. This timely appeal is filed with the Town Clerk and directed to the Zoning Board of Appeals as required by c. 40A, § 15; and we hereby give the required statutory notice of this appeal to the Building Commissioner. This is also a request to the Building Commissioner, made pursuant to Mass. Gen. L. c.40A, §§ 7, to enforce the Zoning Bylaw by revoking or suspending the Building Permit.

The grounds of this appeal and request are as follows:

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Ms. Theodora Eaton, Town Clerk

Zoning Board of Appeals

Mr. Joseph Prondak, Building Commissioner

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1. As a threshold matter, the Planning Board's March 1, 2022 Site Plan Review Decision for the project is still under appeal by certain abutters to the project, and their appeal from the Land Court in the litigation concerning the Site Plan Review Decision is pending at the Massachusetts Appeals Court. *See Appeals Court Docket 2023-P-0838*. Accordingly, the decision to issue the Building Permit was premature; the abutters' appeal of the denial of their motion to participate in the Land Court proceedings may yet result in a retrial over the Site Plan Review Decision, one outcome of which could be a judgment affirming the Site Plan Review Decision with all, or one or more, of its original conditions. Indeed, a Single Justice of the Appeals Court has expressly said that ***"the Appeals Court may order a retrial in the event the abutters succeed in their appeal from the denial of their motion intervene."*** *See Appeals Court Order dated April 24, 2023, Docket No. 2023-J-0227*.

2. As far as the residents below can determine, no Stormwater Management and Erosion Control Plan has been filed, and/or reviewed and approved by the Building Department. The Town Bylaw provides that "[a] Stormwater Management and Erosion Control plan shall be required for any construction activity." Town Bylaw § 7.1. The Bylaw further requires that "all persons required to obtain a Building Permit for new construction and/or additions greater than 25% of the existing building footprint shall be subject to the requirements of the [Stormwater] Bylaw."

The absence of an approved stormwater management and erosion control plan is a critical and substantive omission. Abutters to the project are very much exposed and at risk both from construction site stormwater runoff and from stormwater runoff from an inadequately designed stormwater management system at the completed project. The risk is further heightened by the potential and as yet unassessed presence of hazardous materials at the site – the historical unlicensed uses of which include a junkyard, race car building and repair shop, excavation business and lawn care business operation -- exposing neighbors and the Charles River (the property is in the Charles River Watershed) to runoff and migration of potential hazardous substances during storm events.

The Land Court decision in no way prohibits the Building Commissioner or the Town from enforcing the stormwater management requirements of the Town Bylaw. Stormwater management was not the subject of the Land Court decision and it is not a zoning issue that is in anyway exempted from local regulation by Mass. Gen. L. c. 40A, § 3 (a/k/a. the "Dover Amendment"). The Land Court judgment said that Needham Enterprises is entitled to *apply* for a building permit, not that it is necessarily entitled to a permit.

3. The Zoning Bylaw provides that no building permit "shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with the provisions of

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Ms. Theodora Eaton, Town Clerk

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this By-Law or with a decision rendered by the Board of Appeals.” See ZBL § 7.2.1. The plans that are on file do not demonstrate that “the construction, alteration or use, as proposed” complies with the Zoning Bylaw.

While they are appealing the denial of their motions to intervene in the Land Court proceeding, the residents appealing herein to the ZBA of course acknowledge the August 22, 2023 judgment of the Land Court in the developer’s appeal from the Site Plan Review decision. The plain language of the Land Court’s judgment (1) annulled the March 1, 2022 Site Plan Review Decision (which the Land Court characterized as a decision on a Special Permit, not a decision from Site Plan Review); (2) found that the Project complies with the dimensional requirements of the local zoning bylaw and is not subject to further review thereunder; and (3) ordered that Needham Enterprises may *apply* for a building permit. Notably, the Land Court did not hold that Needham Enterprises was necessarily entitled to a building permit, since that determination necessarily must be made in the first instance by the Building Commissioner. And any determination made by the Building Commissioner may be subject to an appeal to this Zoning Board of Appeals, pursuant to Mass. Gen. L. c. 40A; the residents we represent now exercise this right of appeal to the ZBA.

The residents appealing herein were not parties to the Land Court action and thus are entitled and indeed are now required to raise their issues with the ZBA.

Finally, it must be appreciated that the current posture of the case results from the developer’s failure to exhaust its administrative remedies after the Site Plan Review Decision and election to instead commence a premature appeal to the Land Court. Instead of appealing to the Land Court following the Site Plan Review Decision, the developer should have applied for a Building Permit and, assuming it would have been denied because it had not met the conditions of the Site Plan Review Decision, then appealed that denial and the Site Plan Review Decision to the ZBA, followed by an appeal to court if necessary. That is the route required by decisions of the Massachusetts Appeals Court and Supreme Judicial Court. *See St. Botolph Citizens Comm., Inc. v. Boston Redev. Authy.*, 429 Mass. 1, 9 (1999); *Dufault v. Millennium Power Partners, L.P.*, 49 Mass.App.Ct. 137, 142 (2000); *Cumberland Farms, Inc. v. Planning Bd. of Bourne*, 56 Mass.App.Ct. 605, 608–610 (2002).¹

¹ Indeed, in light of the clear precedent from the Appeals Court and the Supreme Judicial Court holding that a party may not commence an appeal directly from a site plan review decision, this would have been one of the Planning Board’s strongest arguments had the Town elected to appeal the Land Court judgment. It is an argument that the appealing residents will pursue.

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Ms. Theodora Eaton, Town Clerk

Zoning Board of Appeals

Mr. Joseph Prondak, Building Commissioner

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With this framework in mind, the residents appealing herein submit that the plans that are on file do not demonstrate that the construction, alteration, or use, as proposed complies with the Zoning Bylaw, as limited by the Dover Amendment, for the following reasons:

- a. The March 1, 2022 Major Site Plan Review Decision, and the site plan review process under the zoning bylaw are a valid exercise of municipal zoning authority consistent with Mass. Gen. L. c. 40A, § 3, p. 3. Nothing in the Dover Amendment itself precludes site plan review of childcare facilities and, in any event Needham Enterprises entered into a binding agreement with the Planning Board about the process to be used for this application and, therefore, cannot now contest that the appropriate process was used.
- b. The Land Court treated the March 1, 2022 Site Plan Decision as a decision on a Special Permit. The residents appealing herein contend that this was error, and, in any event, the residents appealing herein were denied the opportunity to participate in the Land Court litigation and accordingly they are not bound by the judgment.² Thus, to the extent that the proposed plans do not comply with the March 1, 2022 Major Project Site Plan Review Decision, the residents appealing herein assert that it was error to issue a building permit.
- c. The proposed plan violates § 3.2.1 of the Zoning Bylaw, because it proposes two non-residential buildings on the lot. In its Major Site Plan Review Decision, the Planning Board expressly found that the Project violated § 3.2.1, and required the removal of the existing 4,800 square foot barn. While the Land Court annulled the decision in *toto* on the grounds that the Planning Board was not entitled to review the project after confirming that the minimal dimensional requirements were met, the Land Court did not adjudicate the specific merits of the decision requiring that there be only one building on the lot. The residents appealing herein requests that §3.2.1 be enforced.

Section 3.2.1 constitutes a reasonable regulation on bulk, open space and building coverage of the kind the Dover Amendment expressly permits the Town to apply. Furthermore, the application of this provision of the bylaw would not unreasonably impede the use protected by the Dover Amendment, much less to a degree that would outweigh the municipal interests expressed in the bylaw. Indeed, at various points the developer has said the childcare facility would not use the barn, proving the point that

² And, because the developer elected to appeal the Site Plan Decision directly to Land Court without first applying for a building permit, in contravention of precedent from the Appeals Court and Supreme Judicial Court, neither the Building Commissioner nor the ZBA were parties to the Land Court litigation as well.

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the barn is not integral to the protected use and its removal would not unreasonably interfere with the used protected by the Dover Amendment.

The barn was built in 1989, as an accessory to the residence. With the proposed removal of the residence, the barn will no longer be accessory to a residence. If the proposed daycare facility is built, the barn will become an unlawful as a second non-residential building. Additionally, even if a second building were permitted as an accessory, the proposed use for the barn as an accessory building would not meet the ZBL's definition of an accessory building. The Zoning Bylaw defines "accessory building" as "a building devoted exclusively to a use subordinate and customarily incidental to the principal use." Here, the primary use of the proposed main building is that of a 10,034 square foot child-care facility. The barn has a footprint of 2,600 square feet and overall square footage in its two stories of approximately 4,800 square feet, meaning the barn is approximately half the size of the childcare building, hardly one subordinate or incidental to the principal use. Such a building is not customary for childcare centers, as the Planning Board has already found.

- d. As far as the appealing residents can determine, the plans on file with the Building Department do not indicate the intended use of the barn, as required by Zoning Bylaw § 7.2.1 ("Any application for [a building permit] shall be accompanied by a plot plan . . . showing . . . the existing and intended use of each building"). This is not a mere administrative issue; the developer has made contradictory statements regarding the intended use of the barn and should be required to state definitively now what that use will be once the project is completed.
- e. The conditions set at the direction of the Board of Health are particularly worthy of attention. As discussed above, there has been no independent environmental assessment of the project site, including representative soil testing or compliance with other Board of Health requirements for the site. The decades long unlicensed historical uses of the site, including as a junkyard for abandoned vehicles and equipment, a race car-building and repair shop, the operation of an excavation business including equipment storage and repair, and a lawn care business storing equipment, related materials and refuse, suggests the threats of releases and possible presence of hazardous substances including oil from legacy uses. Given the site history, including prior complaints to the Town and the Massachusetts Department of Environmental Protection, evidence of the refusal of the prior owner to permit environmental due diligence and/or soil testing by any potential buyer, and the addition of fill to the property after the Board of Health identified the need for appropriate environmental testing, the Board of Health required the developer to

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ensure that the property is safe, which included providing access to the property to a licensed site professional (“LSP”) engaged by the Board. That LSP would assess the site, determine the need for and types of soil testing required, oversee the conduct of soil testing and identify any mitigation measures found to be necessary as a result of a comprehensive site assessment, offer guidance on the mitigations required to ensure the air quality in the new building is adequate, as well as to ensure the site is deemed safe for children going forward. Until such environmental assessment has been conducted and reported, a building permit is premature.

In response to the request for the Health Department comments on the proposed construction, the Board of Health first expressed its support for soil testing on April 16, 2021, subsequently held two separate hearings on November 16 and December 14, 2021, and its conditions were included in the Planning Board’s Site Plan Review Decision. The conditions were separate from the zoning conditions imposed by the Planning Board and were to be monitored by the Board of Health. The developer both consented to and participated in the hearings before the Board of Health. The Board of Health’s requirements are in no way a zoning issue that is in any way precluded from local regulation by the Dover Amendment. The environmental condition of the site concerns both the health and safety of the site for its proposed and intended use – a childcare facility – and the impact that the proposed construction or similar future activities at the site may have on neighboring properties from stormwater runoff, dust and disturbed soil.

- f. As far as the appealing residents can determine, the plans on file with the Building Department do not include a landscape plan demonstrating that the project complies with Zoning Bylaw § 4.2.14 concerning screening for institutional uses in this residential district.
- g. The plans on file with the Building Department do not demonstrate that the project complies with the relevant parking requirements of the Zoning Bylaw.
- h. The residents appealing below cannot determine whether the plans on file demonstrate that the project will comply with the General Design Requirements of § 5.3 of the Zoning Bylaw, including –
 - i. a stormwater management plan, as required by § 5.3.2;
 - ii. measures to mitigate threats to water quality and soil stability both during and after construction, as required by § 5.3.3; and/or

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- iii. measures to control or mitigate off-site glare and off-site light spill-over, as required by § 5.3.4.

4. As far as the appealing residents can ascertain, the applicant has not filed a construction management plan, detailing how construction at the site will be managed so as to minimize and mitigate adverse impacts – including from construction traffic, stormwater runoff, dust, noise and hazardous materials – on abutters and the neighborhood. No building permit should have been issued until a comprehensive construction management plan has been filed, reviewed, and approved.

For these reasons, the residents named below, all persons abutting and/or neighboring the proposed project and otherwise persons aggrieved, appeal the Building Department's decision to issue Building Permit # BC-23-10079, and request that the permit be revoked or suspended pending a public hearing and written decision on their appeal.

Sincerely,

/s/ Dylan Sanders

C. Dylan Sanders

Appealing Needham Residents

Holly Clarke, 1652 Central Avenue
Gregg Darish, 34 Country Way
Robert DiMase, 1681 Central Avenue
Matthew Heideman, 1708 Central Avenue
Nicole Heideman, 1708 Central Avenue
Carl Jonasson, 1729 Central Avenue
Ann Lyons, 1689 Central Avenue
Peter Lyons, 1689 Central Avenue
Eileen Sullivan, 1695 Central Avenue

cc: Evans Huber, Esq. (counsel to Needham Enterprises LLC)



Town of Needham
Building Department
500 Dedham Ave.
Needham, MA 02492

Tel. 781-455-7550 x 308

November 1, 2023

Town of Needham / Zoning Board of Appeals
500 Dedham Ave.
Needham, MA. 02492

Re: Application review for the November 16, 2023 Hearing

1688 Central Avenue, Appeal of Building Inspector's Decision and the Issuance of Permit #BC-23-10079

Dear Board Members,

The Applicants in this case are appealing the decision of this office to issue a Building Permit to Needham Enterprises LLC/ Matt Borelli as well as requesting that I, as Building Commissioner, revoke or suspend this same Building Permit, based on grounds stated within their letter dated October 19, 2023.

In response to the latter, I hereby deny the request to revoke or suspend Building Permit #BC-23-10079 and note that this office received no direct request from the applicants.

In response to the appeal, I offer the following comments relative to each point numbered in the letter of 10/19/2023:

1. The judge's Decision entitled Needham Enterprises LLC to a Building Permit. All Building Permits are subject to review and approval by the Building Inspector. This review proved satisfactory to all regulations under the purview of the Department.
2. Sheet #4 of the Site Development Plans show sufficient compliance with the Storm Water Bylaw. These plans are stamped and signed by a Massachusetts Registered Civil Engineer. No engineering evidence has been presented by the applicants showing that the plan submitted is not sufficient.
3. The Dover Amendment (Massachusetts General Law, Chapter 40A, Section 3, 3rd paragraph) exempts childcare uses from many requirements of Zoning Bylaws and:
 - a. The Major Site Plan Review Decision was annulled.
 - b. The Major Site Plan Approval Decision contained the same conditions that are normally within a Special Permit and these cannot be applied to Dover Amendment protected uses.

- c. The Building Department will only allow the barn to be used accessory to the childcare center. There is no requirement or need to determine that now nor is there a requirement forcing removal of this building.
- d. Matt Borelli has been informed of this limitation of “accessory use only”.
- e. Neither the Zoning Bylaw nor State Building Code require further investigation here.
- f. Childcare uses are exempt from landscaping or landscape plans by the Dover Amendment.
- g. The parking requirements in the Bylaw are not specific to childcare uses or other Dover exempt uses. They can be applied arbitrarily and therefore considered unreasonable.
- h. This childcare use is exempt from section 5.3 of the Bylaw as prescribed by the Dover Amendment.
- 4. A Construction Management Plan is not required under the Zoning Bylaw or Building Code. This is a relatively small construction project and the Building Department views the permit holder capable of properly managing this site without need for a formal plan.

PROJECT SUMMARY:

This issued permit, #BC-23-10079, allows the construction of a single story, 10,000 square foot childcare facility. The operator currently has a facility within the Baptist Church at 858 Great Plain Ave. and has been in business for 43 years. The Church is closing and the childcare facility will move to 1688 Central Ave. The new facility will serve approximately 115 children with 8 staff members.

The site lies in an SRA Zoning District, contains 143,003 square feet when 43,560 square feet are normally required, 250 feet of frontage along Central Ave. when 150 feet are normally required. The building will be set back 64 feet from Central Ave. when 30 feet are normally required. The side setback will be 52 feet and the rear, 811 feet when 25 feet and 15 feet are normally required, respectively. The lot coverage is 9% and the floor area ratio is .09, but there are no prescriptive requirements for these. 29 Parking spaces will be provided (if the formula provided in the Bylaw for parking for non-Dover-exempt uses were applied here, the required number would be 25).

The applicant also provided documentation showing that the most intense drop off times would be between 7:30am and 9:15am. Data from the existing facility on Great Plain Ave. shows an average of 29 to 39 cars spread out during these 2 hours. Afternoon pick-up times are 4pm to 6pm and show 39 to 55 cars spread out during these times. In addition to normal travel lanes to access the parking areas, a queueing lane of approximately 200' has been provided.

With respect to childcare facilities, the Dover Amendment only allows application of reasonable regulations that concern the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage. This office has determined the documents submitted for this facility fully comply with the provisions of the Zoning Bylaw that we are allowed to apply.

Therefore, I respectfully request that the Zoning Board uphold the issuance of Building Permit #BC-23-10079.

I will attend the hearing on November16, 2023.

Sincerely,

Joe Prondak
Building Commissioner

Daphne Collins

From: Tom Conroy
Sent: Tuesday, November 7, 2023 1:13 PM
To: Daphne Collins
Subject: RE: 1688 Central Avenue - ZBA Administrative Review - Due November 7, 2023

Hi Daphne,

The Fire Department does not have any comments.

Thanks



From: Daphne Collins <dcollins@needhamma.gov>
Sent: Tuesday, November 7, 2023 12:27 PM
To: Tom Conroy <TConroy@needhamma.gov>
Subject: RE: 1688 Central Avenue - ZBA Administrative Review - Due November 7, 2023

Hi Tom-
Is this the comment or are you ok with the deadline?
Please advise.
Thanks,
Daphne

Daphne M. Collins

Zoning Specialist

Phone 781-455-7550, x 261

Web <https://www.needhamma.gov/>

<https://needhamma.gov/1101/Board-of-Appeals>

www.needhamma.gov/NeedhamYouTube

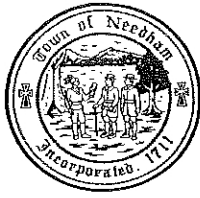
Town of Needham
Planning and Community Development
500 Dedham Avenue
Needham, MA 02492

Regular Office Hours: Mon-Wed 8:00am – 5:00pm

Remote Hours: Thurs 8:00am-5:00pm

From: Tom Conroy <TConroy@needhamma.gov>
Sent: Tuesday, November 7, 2023 12:23 PM
To: Daphne Collins <dcollins@needhamma.gov>
Subject: RE: 1688 Central Avenue - ZBA Administrative Review - Due November 7, 2023

Hi Daphne,
That works for the Fire dept.
Thank you!



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

November 8th, 2023

Needham Zoning Board of Appeals
Needham Public Safety Administration Building
Needham, MA 02492

RE: Case Review-Appeal of Building Inspector Decision (ABID)
1688 Central Ave

Dear Members of the Board,

The Department of Public Works has completed its review of the above referenced ABID by residents.

The documents submitted for review are as follows:

- Application for ABID dated 10/23/23
- Letter of Notice of Appeal by Beveridge & Diamond dated October 19, 2023
- 1688 Central Ave Land Court Decision Dated August 15th, 2023
- 1688 Central Ave Land Planning Board Dated March 3rd, 2022

Our comments and recommendations are as follows:

- An erosion control plan needs to be submitted through viewpoint cloud, the town permitting portal.
- Engineering has no comment or objection to the current storm water plan and find no objections with the issued building permit

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

Truly yours,

Thomas A Ryder
Town Engineer

tryder

Daphne Collins

From: Tara Gurge
Sent: Tuesday, November 7, 2023 8:52 AM
To: Daphne Collins
Cc: Timothy McDonald
Subject: RE: 1688 Central Avenue - ZBA Administrative Review - Due November 7, 2023

Daphne –

In reference to the ZBA Administrative Review for **#1688 Central Avenue**, the Public Health Division has no further comments on the proposed development.

Please let us know if you have any questions or need anything else from us.

Thanks,



TARA E. GURGE, R.S., C.E.H.T., M.S. (she/her/hers)
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
Mobile- (781) 883-0127
Email - tgurge@needhamma.gov
Web- www.needhamma.gov/health



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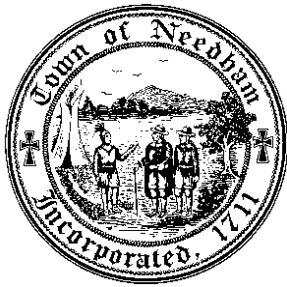
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[Follow Needham Public Health on Twitter!](#)

From: Daphne Collins <dcollins@needhamma.gov>
Sent: Wednesday, October 25, 2023 3:12 PM
To: Joseph Prondak <jprondak@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>; Thomas Ryder



PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

November 8, 2023

Mr. Jonathan Tamkin, Chair, and Members
Zoning Board of Appeals
Public Services Administration Building
500 Dedham Avenue
Needham, MA 02492

Dear Mr. Tamkin and Members of the Zoning Board of Appeals:

At its meeting of November 7, 2023, the Planning Board reviewed the applications to be heard by the Board of Appeals on November 16, 2023, and made the following recommendations:

1. **30 Wilshire Park** –Jeremy & Jessica Karlin, owners, applied for a Special Permit under Sections 1.4.6, and any other applicable section of the By-Law to alter, enlarge and extend a pre-existing, non-conforming single-family to allow the demolition of an existing deck and stairs and replace it with a basement and a family room above. The property is located at 30 Wilshire Park, Needham, MA in the Single-Residence B (SRB) District.

The Planning Board previously commented on this application by letter dated October 3, 2023. The comments were as follows: The subject proposal will require a variance. The property is currently conforming as to FAR at .37. In the SRB district the maximum permissible FAR is .38. The addition as proposed creates a noncompliant FAR of .42. This change is not permissible by special permit and will require a variance. Section 1.4.6 of the By Law states as follows: *“The issuance of a special permit hereunder shall not authorize the violation of any dimensional, parking or intensity regulations with which the structure or use was therefore in conformity.”* The Planning Board further notes that the ZBA should ensure that the proposal meets the Stormwater By-Law. (This was a vote of 3-0, as Planning Board Chair Adam Block recused himself).

2. **1688 Central Avenue** - Holly Clarke, Gregg Darish, Robert DiMase, Matthew and Nicole Heideman, Carl Jonasson, Ann and Peter Lyons, and Eileen Sullivan, appellants, applied to the Board of Appeals for an Appeal of Building Inspector Decision (ABID) of Building Permit BC23-10079 issued to Matt Borrelli and Needham Enterprise LLC dated September 19, 2023, for the construction of a childcare facility. The ABID concludes that the Building Permit plans on file do not demonstrate that the construction, alteration or use as proposed complies with the Zoning By-Laws as limited by the Dover Amendment MGL 40A, Section 3. The property is located at 1688 Central Street, Needham, MA in the Single-Residence A (SRA) District.

The Planning Board makes NO COMMENT.

(This was a vote of 3-0, as Planning Board Vice-Chair Natasha Espada and Planning Board Member Paul S. Alpert recused themselves).

NEEDHAM PLANNING BOARD

Lee Newman

Lee Newman

Director of Planning and Community Development

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

NORFOLK, ss.

22 MISC 000158 (JSDR)

NEEDHAM ENTERPRISES, LLC,

Plaintiff,

v.

NEEDHAM PLANNING BOARD,

And

PAUL ALPERT, ADAM BLOCK, MARTIN
JACOBS, and JEANNE McKNIGHT, in their
capacity as members of the NEEDHAM
PLANNING BOARD,

Defendants.

MEMORANDUM OF DECISION

Introduction

In this action, commenced on March 23, 2022, plaintiff Needham Enterprises, LLC (“the LLC”) appeals from the grant of a special permit with conditions issued by defendant Needham Planning Board (“the Board”) pursuant to a zoning provision requiring a Major Project Site Plan Review Special Permit for projects of a certain size. The special permit was issued with respect to a proposed childcare facility (“the Project”), which is governed in part by G. L. c. 40A, § 3, the Dover Amendment. The LLC challenges the application of the Major Site Plan Review Special Permit process to the Project, and also challenges a number of the particular conditions imposed by the Board.

A view was held on April 21, 2023 and a trial was held over parts of three days, on April 25 and 26 and May 18, 2023. Ms. Patricia Day (“Ms. Day”), Mr. John F. Glossa (“Mr. Glossa”), Mr. Matthew Borrelli (“Mr. Borrelli”), and Mr. Mark Gluesing (“Mr. Gluesing”) testified on

behalf of the LLC. No witnesses testified on behalf of the Board. Thirty-four exhibits were admitted in evidence. Post-trial briefing was completed by June 30, 2023 and the parties waived a hearing on their closing arguments on July 13, 2023, at which time the matter was taken under advisement. For the reasons set forth below, this court concludes that the Board exceeded its authority under the Dover Amendment and its decision, as defined below, will be annulled.

Findings Of Fact

Based on the pleadings, the view, the admitted exhibits, the testimony at trial, as well as the court's assessment of the credibility, weight and inferences to be drawn therefrom, the court finds the following facts, reserving certain details for the discussion of specific legal issues. To the extent any witness testified otherwise, the court did not find that testimony credible, reliable, or in accord with the weight of the other testimony and exhibits in the case and the inferences drawn from the totality of that evidence.

1. The LLC is a single member limited liability company of which Mr. Borrelli is the manager,¹ and is engaged in the acquisition and development of real estate. Trial Transcript of April 26, 2023 ("TT II") at 11:12-17.
2. The LLC is the owner of a parcel of land located at 1688 Central Avenue, Needham, Massachusetts ("the Property"). Trial Exhibit ("TE") 1 at ¶ 1.
3. The Property, consisting of approximately 3.3 acres, is located in a Single Residence A ("SRA") zoning district as identified in the Zoning By-law Of The Town Of Needham ("ZBL"). TE 1 at ¶ 2.
4. A house, a barn ("the Barn") and another outbuilding sometimes referred to as the "garage" are currently located on the Property. TE 1 at ¶ 3.
5. The LLC intends to demolish the house and garage, and to build a facility of approximately 10,000 square feet on the Property, in which it proposes to house a childcare facility. TE 1 at ¶ 4.
6. The contemplated tenant for this facility is the Needham Children's Center ("NCC"). Trial Transcript of April 25, 2023 ("TT I") at 101:23 – 102:1; TT II 14:22-24.

¹ The court takes judicial notice of the records made available by the Secretary of the Commonwealth of Massachusetts' Corporations Division. See Mass. G. Evid. § 201.

7. NCC is a full day childcare center, licensed by the Commonwealth of Massachusetts and, since 1997, nationally accredited by the National Association For The Education Of Young Children. TT I 23:8-14; TT I 31:8-14.
8. NCC was established by Ms. Day in 1980. TT I 22:14-16; TT I 76:7-10.
9. Ms. Day is presently the executive director and a shareholder of NCC. TT I 23:17-20; TT I 75:23-24.
10. NCC originally operated at a facility located at 23 Dedham Street, Needham. TT I 23:21 – 24:4.
11. The original site is now described by Ms. Day as a satellite facility, with NCC's main operations occurring at 858 Great Plain Avenue, Needham, the location of the First Baptist Church, which is NCC's landlord. TT I 23:21 – 24:9; TT I 76:18 – 77:3.
12. NCC's current lease expires in June 2023. TT I 24:16-17.
13. At present, NCC serves 125 children from eighty-six families (some families have more than one child in NCC's programs). TT I 24:16-17.
14. The children range in age from 10 weeks to 12 years, although NCC prefers that children not start until they are three months old and most children leave the program when they are eight years old. TT I 29:10-23.
15. NCC's current hours are from 7:45 a.m. to 5:30 p.m., with the afterschool program running until 6:00 p.m. TT I 29:24 – 30:10.
16. Pre-kindergarten programs run from 9:00 a.m. until 12:30, 1:30 or 2:00 p.m., in order to provide parents with some more affordable options. TT I 30:19 – 31:7.
17. A number of the parents with children enrolled in NCC's program were themselves so enrolled as children. TT I 28:13-21; TT I 122:6-20.
18. In or about 2018, Ms. Day began having conversations with Mr. Borrelli about a new site for NCC. TT I 34:20 – 35:3; TT I 35:19-22; TT II 13:1-11.
19. Ms. Day had by then concluded that NCC's current space would not be viable for much longer, was looking for alternative space, and wanted to build a state-of-the-art childcare facility. TT I 35:19 – 36:7.
20. Mr. Borrelli made an unsuccessful offer on a property across the street from his own property on which to construct such a facility in 2018 or 2019. TT II 13:12-24.
21. In early 2020, Mr. Borrelli learned that the Property was on the market. TT II 14:18-21.
22. He then spoke to Ms. Day about the Property as a potential site for a new childcare facility. TT II 14:22-24; TT II 15:4-8; see TT I 36:8-16.
23. Ms. Day visited the Property and agreed with Mr. Borrelli's assessment. TT I 36:17 – 37:3; TT II 15:9-13.

24. The LLC acquired the Property by deed dated March 25, 2020 and recorded at the Norfolk County Registry of Deeds (“the Registry”) at Book 37770, Page 308, on April 15, 2020.²
25. In anticipation of that acquisition, Mr. Borrelli on behalf of the LLC and Ms. Day on behalf of NCC signed a letter of intent regarding a prospective lease of the Property to NCC. TT I 38:4-17; TE 2.
26. According to both Mr. Borrelli and Ms. Day, the letter of intent is not binding (it says as much at ¶ XII), but, according to Mr. Borrelli, was requested by Needham Bank before closing on the acquisition of the Property, the bank wanting some assurance that there would be a tenant for the Project. TT I 38:18-20; TT I 102:11-18; TT I 118:11-20; TT II 16:1-8; TE 2.
27. It is Mr. Borrelli’s intent to lease the Property to NCC, assuming the Project is constructed, and NCC’s intent to lease it from the LLC. TT I 72:17-23; TT I 101:5-19; TT II 17:10-18.
28. Ms. Day was a long-time resident of Needham before moving to Medway and Mr. Borrelli has lived in Needham his whole life, save two years. TT I 20:17-21; TT II 6:23-24.
29. Mr. Borrelli’s father, also a local developer, knew Ms. Day’s husband and her father-in-law (who was the president of a local bank). TT II 10:10-21; TT II 16:14-18.
30. According to Mr. Borrelli, his “handshake” understanding with Ms. Day regarding the leasing of the Project was “good enough for me.” TT II 16:22-24.
31. According to Ms. Day, NCC has agreed in principle to sign a lease as soon as the parties are able. TT I 101:23 – 102:1.
32. And, according to both Mr. Borrelli and Ms. Day, lease negotiations were placed on hold pending the conclusion of the local permitting issues raised in this litigation. TT I 114:14 – 115:11; TT I 116:1-16; TT II 116:16-20.
33. After the LLC acquired the Property, Ms. Day, Mr. Borrelli and the LLC’s architect, Mr. Gluesing, had a number of conversations and meetings about the design of the Project. TT I 40:3-23; TT II 17:1-21; TT II 18:12 – 19:8.
34. The meetings were both at Mr. Gluesing’s home and at the Property. TT I 40:3-23.
35. Because of concerns about security and safety, NCC does not have any signage, and Ms. Day described her concern that the front of the building have “a soft look,” that the entrance be at the rear of the building, and that the building “not stick out.” TT I 41:3-18.
36. Ms. Day described locating the entrance at the rear of the building as “very important.” TT I 41:19 – 42:4.
37. She also testified that parking should also be at the rear of the building so as not to call attention. TT I 42:5-11.
38. Regarding NCC’s storage needs, Ms. Day testified that NCC presently has approximately 2,000 square feet of storage at the Great Plain Avenue facility (some of it in a two-car

² The court takes judicial notice of the records available at the Registry. See Mass. G. Evid. § 201.

garage where it is “piled up,” some of it in a shed, some in a storage room in the basement, some in storage with outdoor access, some in a room originally designed as a kitchen) and described by Ms. Day as “piecemeal” and “all over the place.” TT I 44:17 – 45:24; TT I 52:3-12; TT I 52:20 – 53:4; TT I 79:22 – 80:14.

39. The initial architectural plans for the facility provide for some storage, as reflected on the 1st Floor Plan. TT I 46:11 – 47:6; TE 3 at A 1-0.
40. According to Ms. Day, the rooms in the Project are designed differently, so that the storage space in each room is designed specifically for the things used in that room. TT I 93:8-17.
41. Both Ms. Day and Mr. Borrelli testified that they anticipated that NCC would use the Barn for additional storage. TT I 51:13-24; TT I 52:16-19; TT II 22:4-15; TT II 23:6-18; TT II 44:8-24.
42. The initial site development plans, entitled “Site Development Plans Daycare 1688 Central Avenue Needham MA June 22, 2020,” TE 4 (“Initial Plans”), showed a forty-foot eight-inch setback from the edge of the Central Avenue layout. TT II 20:7-22; TE 4 at sh. 3 of 9.
43. According to Mr. Borrelli, there is a special setback in Needham of thirty-five feet and he wanted to respect that. TT II 20:23 – 21:5.
44. Mr. Borrelli also testified that it was his understanding that there was ledge further back on the Property. TT II 21:5-7.
45. The Initial Plans, TE 4 at sh. 5 of 9, also showed a two-lane driveway entering the Property at its westerly boundary at Central Avenue, proceeding along the northerly edge of the Property to the rear of the proposed building where an entrance and parking were located, then proceeding past the Barn, still along the northerly edge of the Property, where additional parking was located.
46. Mr. Borrelli requested a process known as “minor project review,” pursuant to which the Board could provide comments to the Town’s building inspector on the LLC’s submission. TT II 23:23 – 24:9.
47. Instead, the Town’s planning director, Ms. Lee Newman (“Ms. Newman”), informed Mr. Borrelli that the LLC would need to apply for major site plan review. TT II 24:14-20.
48. Mr. Borrelli objected to this level of review, and counsel for the LLC put that objection in writing to Ms. Newman by letter dated April 16, 2021, in part by quoting G. L. c. 40A, § 3. TT II 25:8-9; TE 29.
49. Thereafter, the LLC applied for site plan review as a “major project” by Application For Site Plan Review dated May 20, 2021. TE 5.
50. According to Mr. Borrelli, that application was made “under protest.” TT II 26:24 – 27:8.
51. Thereafter, the Board held eight public hearings between June and December 2021 and then deliberated between December 2021 and March 2022. TT II 29:10-21; TT II 30:7-19.

52. The Board hired a peer review consultant, Mr. John Diaz, who was paid for by the LLC. TT II 33:16 – 34:14.
53. Mr. Diaz provided his peer review in six letters dated July 15, 2021 (TE 7), August 26, 2021 (TE 9), October 18, 2021 (TE 10), November 1, 2021 (TE 11), November 16, 2021 (TE 12) and December 17, 2021 (TE 14).
54. Mr. Diaz’s initial peer review, on July 15, 2021, addressed traffic impact and the LLC’s proposed site plan. TE 7.³
55. Regarding traffic, Mr. Diaz concluded generally that traffic volumes had been adequately projected, that “the impacts of the site operation will have minimal impacts on traffic along Central Avenue,” TE 7 at 1, but that site operations and site circulation would require further evaluation. *Id.*
56. Among other things, Mr. Diaz questioned why the Barn was being retained, questioned traffic circulation on the site, suggested consideration of a second driveway, and stated that the LLC should be required to construct fully compliant ADA sidewalks along the Property’s frontage on Central Avenue. *Id.*
57. In the conclusion to his initial peer review letter, Mr. Diaz identified the following “major concerns:”
- The proponent needs to clearly identify the square footage of the building and the maximum number of students and teachers.
 - The proponent needs to provide additional information to support the drop-off/pick-up schedules including how long it takes parents, particularly with younger children to unload and load.
 - The reports continually indicate the morning is the critical time; however, the site generates virtually the same number of trips during the evening peak hours and generally pick periods are more congested as parents arrive and have to wait for children rather than simply dropping off in the morning.
 - Trip Generation should be based on the more conservative ITE LUC 565 based on square footage, for both the morning and evening peak hours.
 - Further explanation is need to support the distribution of exiting vehicles.
 - An analysis of the Central Avenue at Charles River Road should be completed under the following scenarios:
 - Existing 2021 No Build Conditions
 - Future 2028 No Build Conditions
 - Future 2028 Build Conditions (No Mitigation)
 - Future 2028 Build Conditions (with Mitigation)
 - Revisions/modifications to the site plan appear to be required for better circulation, drop-off/pick-ups, and parking, as well as pedestrian access.

³ The July 15, 2021 peer review letter is based, in part, on the review of site plans dated June 22, 2020, TE 4, and revisions thereto dated April 15, 2021 and June 2, 2021, although a site plan with only those revision dates is not in the record.

Id.

58. Mr. Diaz’s second peer review letter, dated August 26, 2021, was based in part on a revised traffic impact assessment prepared by the LLC’s traffic engineer and on a revised site plan provided by the LLC.⁴ TE 9.

59. According to Mr. Diaz, “[t]he revised Traffic Impact Assessment and Site Plans address the majority of the concerns raised in the July 15, 2021 Peer Review letter” and listed the “following minor comments ... that should be addressed:”

- Adjust the description of the LOS impacts to the SB lane on Central Ave to clarify that it is a single lane approach and the LOS decreases from LOS A to LOS B with the addition of left turning vehicles.
- Revise the analysis of the traffic signal operations to match existing times in use in the field. The proponent should also explore optimized signal times, or time of day plans to improve overall operations.
- The site plan should account for the width of the curb in the sidewalk and driveway dimensions.
- Truck turning templates should be provided to ensure large vehicles can access the loading zone and dumpster site without impacting parked vehicles.
- Sidewalks in front of the site should be reconstructed to ensure ADA compliance.
- The catch basin in the proposed driveway should be relocated.

TE 9.

60. Mr. Diaz’s third peer review letter, dated October 28, 2021, was based in part on a further revised site plan. TE 10.

61. Mr. Diaz continued to question the purpose of the loading zone and request turning templates for trucks, continued to request the construction of ADA compliant sidewalks along the front of the Property, and continued to express concern about drainage, particularly at the northwest corner of the exiting driveway. *Id.*

62. Mr. Diaz’s fourth peer review letter (erroneously labeled “Peer Review 3”), dated November 1, 2021, was based in part on a further revised site plan. TE 11.

63. The loading zone, the ADA compliant sidewalks and drainage, even though modified to reflect Mr. Diaz’s previously expressed concerns, continued to be concerns in the fourth peer review letter. *Id.*

64. Based on an updated traffic analysis, Mr. Diaz recommended the following traffic mitigation:

- The proponent should commit to a follow up traffic study after the site is open and operational to at least 80% of student capacity.

⁴ The record contains, at TE 13, the Initial Plan, as subsequently revised on April 15, 2021, June 2, 2021, July 28, 2021, September 28, 2021, October 28, 2021, November 8, 2021 and November 22, 2021.

- The proponent should commit to provide police details during the peak morning and afternoon hours of arrivals and dismissals. The detail should remain in place, until the Police Chief believes the site is operating without significantly impacting operations along Central Ave.
 - The proponent should provided detailed traffic signal timing plans for optimized operations during the weekday morning and evening peak hours. The proponent should coordinate with Needham DPW on how to implement the revised signal times.
- Id.*

65. Mr. Diaz’s fifth peer review letter (also erroneously labeled “Peer Review 3”), dated November 16, 2021, was based in part of a further revised site plan and on truck turning templates. TE 12.
66. While the loading zone and turning issue had been addressed by the LLC, the ADA compliant sidewalks and drainage remained as issues and the same three traffic mitigation measures were recommended as were set forth in the Mr. Diaz’s fourth peer review letter. *Id.*
67. Mr. Diaz’s sixth peer review letter (erroneously labeled “Peer Review 4”), dated December 17, 2021, addressed traffic issues and, after reviewing the LLC’s methodology and making his own independent assessment, concluded that “we again feel that the methodology used to estimate the ‘normal’ existing and future traffic levels along Central Avenue is valid.” TE 14.
68. In addition to the Board’s review, the Project was subject to review by an entity known as the Design Review Board. TT II 29:4-9; TT II 30:20-23.
69. According to Mr. Borrelli, the Design Review Board reviews applications for signs and applications for both major and minor site plan review, but has no approval authority over those applications. TT II 31:2-12.
70. This Project was before the Design Review Board three times, TT II 40:6-10, and the Design Review Board issued three reports dated March 22, 2021, May 14, 2021 and August 13, 2021. TE 21, TE 22, TE 23.
71. In the Design Review Board’s first report, it raised concerns regarding the front setback from Central Avenue, the west façade facing Central Avenue, the retention of the Barn, the proposed lighting, the proposed color of a vinyl fence along the south side of the building, the proposed landscaping, and parking in relation to the dumpster enclosure. TE 21.
72. In the Design Review Board’s second report, it commented on the front set back, which had been increased. TE 22.
73. As a result of the Design Review Board review, the LLC made a number of changes to the Project, including increasing the setback from Central Avenue, increasing the landscaping, changing the street-facing façade from sheer to including “bump outs,” and changing the fence. TT II 40:20 – 41:6.
74. The Board issued its 40-page decision on March 1, 2022 (“the Decision”). TE 15.

75. Among others, the Board imposed the following conditions on the Project: hours of operation (Decision at 3.3); maximum number of children and staff (Decision at 3.4); traffic mitigation measures, including securing and paying for a police detail during specified hours, traffic signal timing plans for a specified intersection, and a follow-up traffic study (Decision at 3.14); a maximum “trip count” during specified hours (Decision at 3.15); that the LLC provide a copy of its lease with NCC to the Board (Decision at 3.19); trash removal by a private contractor and restrictions on snow removal services (Decision at 3.30); the timing of trash removals (Decision at 3.31); restrictions on exterior lighting (Decision at 3.32); hours of operation during construction (Decision at 3.37); that any violation of a condition of the Decision “shall be grounds for revocation of this Decision, or of any building permit or certificate of occupancy granted hereunder” (Decision at 4.44); that the front yard setback be a minimum of 120 feet (Decision at 2.1.d); and that trees removed during construction be replaced at a 2 to 1 ratio as reflected on a revised landscaping plan to be approved by the Director of Parks and Forestry (Decision at 2.2.a).
76. In the Joint Pretrial Memorandum or during trial, the Board agreed that the following conditions would be stricken from the Decision: requiring the construction of an ADA-compliant sidewalk along the entire frontage of the Property (Decision at 3.33); requiring approval of a plan to remedy “frequent or chronic” backup of vehicles “based on reliable observations reported” to the Board (Decision at 3.13); allowing the Board to modify the Decision in the event that traffic or parking problems were inconsistent with what was represented to the Board during the hearings (Decision at 3.17); requiring implementation of and compliance with Board of Health requirements (Decision at 3.18); and requiring that the Barn be demolished or removed (Decision at 2.1.d).

Relevant ZBL Provisions

The following provisions from the Town’s ZBL, TE 17, are relevant to this matter:

Section 3.2, governing use regulations, lists in the schedule of use regulations at § 3.2.1, childcare facilities as a use included in the category of “public, semi-public & institutional” uses that is allowed as of right in a SRA district.

Section 4.2.4, governing dimensional requirements for public, semi-public or institutional uses in an SRA district, requires a minimum lot area of 43,560 square feet, minimum frontage of 150 feet, a minimum setback of 35 feet (which must be kept open, landscaped with grass or other plant materials, and unpaved except for walks or driveways), a minimum side setback of 25 feet, a minimum rear setback of 25 feet, a maximum floor area ratio of .30, a maximum lot coverage of 15%, maximum stories of 2-1/2 and a maximum height of 35 feet.

7.4 Site Plan Review

7.4.1 Purpose

The purpose of this Section is to provide a comprehensive review procedure for construction projects, herein defined, to insure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas.

7.4.2 **Definitions**

For the purposes of this Section the following definition of terms should apply to any construction project excluding single and two family homes.

MAJOR PROJECT – Any construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces.

...

MINOR PROJECT – Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project.

7.4.3 **Requirements**

A Site Plan Review shall be performed by the Planning Board for each major and minor project prior to the filing of an application for a building permit.

...

MAJOR PROJECTS – No building, use or occupancy permit for any improvement to real property which constitutes a Major Project under this By-Law shall be issued, except in accordance with the terms of a special permit for such project, after site plan review as further set forth herein. A special permit shall be required for every Major Project, regardless of whether the contemplated use thereof is designated as permissible, as of right or by special permit, under the table of uses set forth in Section 3.2 of this By-Law. The special permit granting authority for all permits the issuance of which is necessary for the construction or use of a Major Project shall be the Planning Board, which, for such purposes, shall have all the powers conferred upon such special permit granting authorities by General Laws Chapter 40A, and shall conduct its business in accordance with the notice, hearing and decisional requirements set forth therein, and in accordance with the requirements of this By-Law.

Prior to issuance of a Certificate of Occupancy by the Building Department, the Building Inspector or his designee shall transmit an approval of the completed project as conforming to the approved site plan special permit to the Planning Board.

7.4.4 **Procedure**

...

The application for Site Plan Review shall be accompanied by a site plan with supporting documentation which shall show, among other data, the following:

- (a) Locus plan;
- (b) Location of structures within 100 feet of property line;
- (c) Existing and proposed building showing setback from property lines;
- (d) Building elevation, to include penthouses, parapet walls and roof structures; floor plans for each floor; cross and longitudinal views of the proposed structure(s) in relation to proposed site layout, together with an elevation line to show the relationship to the center of the street;

- (e) Existing and proposed contour elevations in one foot increments;
- (f) Parking areas, including type of space, dimensions of typical spaces, and width of maneuvering aisles and landscaped setbacks;
- (g) Driveways and access to site, including width of driveways and driveway openings;
- (h) Facilities for vehicular and pedestrian movement;
- (i) Drainage;
- (j) Utilities;
- (k) Landscaping including trees to be retained and removed;
- (l) Lighting;
- (m) Loading and unloading facilities;
- (n) Provisions for refuse removal;
- (o) Projected traffic volume in relation to existing and reasonably anticipated conditions; and
- (p) Other information as may be necessary to determine compliance with the provisions of the Zoning By-Law.

Upon request the Planning Board may, at its discretion, waive the submission by the applicant of any of the required information.

7.4.6 Review Criteria

In conducting the Site Plan Review, the Planning Board shall consider the following matters:

- (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;
- (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed use of the premises;
- (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law;
- (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

...

7.5.2 Special Permits

To hear and decide an application for a special permit for a use, building, structure, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity where it would not otherwise be permitted but only in those cases where this By-Law specifically refers to a change from the provisions of this By-Law by the granting of a special permit and only in those cases where the Board of Appeals makes the finding and determination set forth in subparagraph 7.5.2.1. An applicant is not entitled to a special permit and the Board of Appeals, in its discretion, may decline to grant a special permit if it is unable to make a positive finding and determination as required in subparagraph 7.5.2.1.

A special permit shall lapse within a specified period of time, not more than two years, and including any time required to pursue or await the determination of an appeal pursuant to General Laws, Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause or in the case of a permit for construction has not begun within the period except for good cause.

7.5.2.1 Finding And Determination

Prior to granting a special permit, the Board of Appeals shall make a finding and determination that the proposed use, building, structure, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity, which is the subject of the application for the special permit:

- (a) Complies with such criteria or standards as may be set forth in the section of this By-Law which refers to the granting of the requested special permit;
- (b) Is consistent with: 1) the general purposes of this By-Law as set forth in subparagraph 1.1, and 2) the more specific objections and purposes applicable to the requested special permit which may be set forth elsewhere in this By-Law, such as, but not limited to, those at the beginning of the various sections;
- (c) Is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

Where the Board of Appeals determines that one or more of the following objectives are applicable to the particular application for a special permit, the Board of Appeals shall make a finding and determination that the objective will be met:

- (d) The circulation patterns for motor vehicles and pedestrians which would result from the use or structure which is the subject of the special permit will not result in conditions that unnecessarily add to traffic congestion or the potential for traffic accidents on the site or in the surrounding area; and
- (e) The proposed use, structure or activity will not constitute a demonstrable adverse impact on the surrounding area resulting from:
 - 1) Excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area,
 - 2) Emission or discharge of noxious or hazardous materials or substances, or
 - 3) Pollution of water ways or ground water.

7.5.2.2 Conditions for Approval of a Special Permit

In addition to the conditions, standards and criteria as may be set forth in the section of this By-Law that refers to the granting of the special permit, the Board of Appeals may impose additional conditions and limitations, as it deems necessary to insure that the findings and determination that it must make under subparagraph 7.5.2.1 is complied with, including but not limited to:

- (a) Screening or landscaping of structures or of principal or accessory uses from view from adjoining lots or from a street, by planting, walls, fences or other devices; planting of larger planting strips, with more or larger plant material or higher walls or fences than that required in Sections 4.2.14 or 4.4.8.5;
- (b) Modification of the exterior features or appearance of a building or structure to ensure compatibility with surrounding buildings and uses;
- (c) Limitations on the size, number of occupants or employees, method or hours of operation, extent of facilities or other operating characteristics of use;
- (d) Regulation of the number, design and location of access drives or other traffic features of the proposed use;
- (e) Provision of a greater number of parking spaces or loading bays with estimates based on the ITE Parking Generation Manual, 2nd Edition, or an alternative technical source determined by the Board of Appeals to be equally or more applicable, but only in such cases that the Board of Appeals makes a finding that the proposed use generates parking demand in excess of that required by the By-Law;
- (f) Limitations on construction activities, such as but not limited to, the hours during which construction activity may take place, the movement of trucks or heavy equipment on or off the site, measures to control dirt, dust, erosion and to protect existing vegetation on the site;
- (g) Requirements for independent monitoring, at the expense of the applicant, and reporting to the Building Inspector, if necessary to insure continuing compliance with the conditions of a special permit or of this By-Law;
- (h) Limitations on the period of time the special permit shall be in effect; and
- (i) Such other limitation as may be reasonably related to reducing any adverse impact on, or increasing the compatibility of the proposed use, structure or activity with, the surrounding area.

...

7.5.3 Variances

...

In the case of every appeal made to the Board of Appeals, every petition for a variance, and every application for a special permit to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication being not less than fourteen days before the day of the hearing and by posting said notice in the Town Hall for a period of not less than fourteen days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner, abutters, owners of land directly

opposite on any public or private street or way, owners of land within three hundred (300) feet of the property line including owners of land in another municipality all as they appear on the most recent applicable tax lists, the Planning Board, and the Planning Board of every abutting municipality. The assessors shall certify to the Board the names and addresses of the parties in interest.

...

In the case of a special permit, an application shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of the filing date and shall render a decision within ninety (90) days from the date of the public hearing, unless said time is extended by written mutual agreement between the petitioner and the Board, such agreement(s) having been filed with the Town Clerk. Failure to take final action upon an application within the said ninety-day period shall be deemed to be a grant of the permit applied for. (See M.G.L., Ch. 40A, S. 9 as amended for further procedural requirements.)

7.6 Planning Board

7.6.1 Special Permit Granting Authority

The Planning Board shall act as a Special Permit Granting Authority only where so designated in Section[] ... 7.4 of this By-Law. In all other cases, the Board of Appeals shall act as the Special Permit Granting Authority. Procedures and decision criteria for the Planning Board shall be the same as specified in Section 7.5.2 and Section 7.5.3 (second and fourth paragraphs) for special permits acted on by the Board of Appeals, except where alternative or supplemental criteria are specified, such as at Sections 3.4 and 6.6.

Analysis

This is a Dover Amendment case. G. L. c. 40A, § 3, third para., added to the statute in 1990, protects childcare facilities. It provides in pertinent part:

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, setbacks, open space, parking and building coverage requirements.

Similar language precluding the requirement of a special permit is found in § 3, first para. (local zoning ordinance may not “unreasonably regulate, or require a special permit for,” the use of land or structures for the primary purpose of commercial agriculture, aquaculture, silviculture,

horticulture, floriculture or viticulture) protecting agricultural uses.⁵ Similar language limiting regulation to “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements” is found in G. L. c. 40A, § 3, second para., protecting religious and educational uses. Cf. G. L. c. 40A, § 3, ninth para. (neither prohibits the use of special permits nor limits regulation to dimensional features for solar energy systems: “No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.”). “Where the same statutory term is used more than once, ‘the term should be given a consistent meaning throughout.’ *Morgan*, 476 Mass. at 777, 73 N.E.3d 762, quoting *Commonwealth v. Hilaire*, 437 Mass. 809, 816, 777 N.E.2d 804 (2002). ‘[T]he need for uniformity [in interpreting statutory language] becomes more imperative where ... a word is used more than once in the same section.’ 2B N.J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 51:2 (7th ed. rev. 2012), quoting *Commissioner of Internal Revenue v. Estate of Ridgeway*, 291 F.2d 257, 259 (3d Cir. 1961).” *Williams v. Bd. of Appeals of Norwell*, 490 Mass. 684, 694-95 (2022). Accordingly, case law interpreting the “reasonable regulation” of religious and educational uses found in § 3, second para., is germane here. See also *Rogers v. Town of Norfolk*, 432 Mass. 374, 377-78 (2000) (relying on case law interpreting the religious and educational protections of the second paragraph in interpreting the childcare facility protection of the third paragraph).

⁵ That being said, research did not reveal any case law interpreting the special permit prohibition contained in § 3, first para.

Trustees of Tufts College v. City of Medford, 415 Mass. 753, 757 (1993) (emphasis in original) (citation omitted), addressing the protections afforded educational uses by the Dover Amendment, had the following to say about “reasonable regulation:”

The Dover Amendment bars the adoption of a zoning ordinance or by-law that seeks to prohibit or restrict the *use* of land for educational purposes. However, a proviso in the statute authorizes a municipality to adopt and apply “reasonable regulations” concerning bulk, dimensions, open space and parking, to land and structures for which an educational use is proposed. The whole of the Dover Amendment, as it presently stands, seeks to strike a balance between preventing local discrimination against an educational use, and honoring legitimate municipal concerns that typically find expression in local zoning laws.

With respect to those “reasonable regulations,” “[l]ocal zoning laws are intended to be uniformly applied,” *id.* at 759, “consequently, local officials may not grant blanket exemptions from the requirements to protected uses.” *Campbell v. City Council of Lynn*, 415 Mass. 772, 778 (1993).

As set forth in *Campbell*:

The officials may, however, on an appropriate showing, decide that facially reasonable zoning requirements concerning bulk and dimension cannot be applied to an educational use occupying a particular site because application of the requirements would improperly nullify the protection granted to the use, or because compliance with the requirements would significantly impede an educational use, in either instance without appreciably advancing municipal goals embodied in the local zoning bylaw.

Id. In that circumstance, the bylaw is presumptively valid, *Rogers*, 432 Mass. at 379, and the burden of proof is on the educational institution to prove that the local requirements are unreasonable as applied to its proposed project. *Id.*; *Tufts College*, 415 Mass. at 759. As described by the Supreme Judicial Court in *Tufts College*,

The education institution might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution’s campus, without appreciably advancing the

municipality's legitimate concerns. Excessive cost of compliance with a requirement imposed on an educational institution, without significant gain in terms of municipal concerns, might also qualify as unreasonable regulation of an educational use.

415 Mass. at 759-60.

A number of cases addressing the protections afforded to educational uses have also considered the propriety of subjecting such a use to local site plan review or special permit requirements, even though G. L. c. 40A, § 3, second para., unlike the first and third paragraphs, does not expressly prohibit the application of special permit requirements to the protected use. The seminal case is *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19 (1979). In that case, the Appeals Court described the issue before it as “whether a town may require an application for a special permit for all new religious and educational uses, or changes in such uses, in residential districts consistent with the provisions of G.L. c. 40A, § 3.” *Id.* at 20. More particularly, the court was tasked with deciding (1) whether a sectarian educational institution should have been granted building permits for certain uses attendant to a softball field used by its students without first applying for a special permit, and (2) whether the local board of appeals could condition the grant of permission to change the use of three of the plaintiff's existing buildings on restrictions affecting the entire campus or affecting buildings that were not the subject of the plaintiff's applications. See *id.*

Two provisions of the local zoning bylaw were of particular concern. First, § 6 provided that educational and religious uses were only permitted in residential districts by special exception, not as of right. *The Bible Speaks*, 8 Mass. App. Ct. at 22 n.6. Second, § 9.18 required any non-municipal educational or religious use to provide a site plan and “informational statement.” *Id.* at 21 n.5. The site plan was required to show “existing buildings, roads, parking areas, sewer and water lines, drainage systems, water courses, trees over 12 [inches] in diameter

at breast height, and any other significant existing man-made or natural features.” *Id.* The information statement was required to detail the probable effects of fourteen items: (1) attendance at public schools; (2) increase in vehicular traffic; (3) changes in the number of legal residents; (4) increases in municipal service costs; (5) load on public utilities or future demand on them; (6) public safety, police, and fire protection; (7) changes in tax revenue; (8) changes in surface drainage; (9) increased consumption of water; (10) increased refuse disposal; (11) land erosion or loss of tree cover; (12) character of surrounding neighborhood; (13) master plan of the town; and (14) any pertinent regional plans. *Id.*

After considering and rejecting the plaintiff’s argument that it was exempt from The Zoning Enabling Act, G. L. c. 40A, as a religious entity protected by the then-newly adopted provisions of St. 1975, c. 808, § 6, the *The Bible Speaks* court turned to the issue of whether §§ 6 and 9.18, “when taken together, impose the type of permissible bulk, dimensional, and parking limitations specified in G.L. c. 40A, § 3, as the defendants claim, or whether they impermissibly regulate the use of a sectarian educational institution, as plaintiff claims.” *The Bible Speaks*, 8 Mass. App. Ct. at 31. As the court noted, “[t]here would be no difficulty” if the local bylaw was limited to regulating the bulk, dimensional and parking limitations permitted by the statute. *Id.* The local bylaw, however, went beyond that, and impermissibly so:

[T]here is nothing in the language of G.L. c. 40A, § 3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses. ... Section 9.18 in its entirety goes beyond a collation of all of the reasonable bulk and dimensional requirements which a by-law can legitimately impose on educational buildings and districts.

Id. at 32. The *The Bible Speaks* court concluded that the special permit requirements imposed by the local bylaw were barred by the Dover Amendment:

In our opinion, the provisions of the by-law taken together invest the board with a considerable measure of discretionary authority over an educational institution's use of its facilities and create a scheme of land use regulation for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by G.L. c. 40A, § 3. The Legislature did not intend to impose special permit requirements, designed under c. 40A, § 9, to accommodate uses not permitted as of right in a particular zoning district, on legitimate educational uses which have been expressly authorized to exist as of right in any zone.

Id. at 33. As a result, the court, among other things, invalidated the bylaw provisions to the extent that they required a site plan, informational statement or special permit and upheld the bylaw provisions insofar as they imposed bulk, dimensional and parking requirements. *Id.* at 34.

The decision in *The Bible Speaks* has since been favorably cited by the Supreme Judicial Court in other protected educational use cases. In *Tufts College*, the court stated:

A local zoning law that improperly restricts an educational use by invalid means, such as by a special permit process, may be challenged as invalid in all circumstances. In this case, for example, the Land Court judge properly declared invalid the site plan and special permit requirements of the ordinance as to present and future, unspecified projects on the Tufts campus. *The Bible Speaks v. Board of Appeals of Lenox, supra* at 32-33. The Appeals Court correctly did not disturb this aspect of the judgment.

415 Mass. at 765 (emphasis in original). And, in *Campbell*, the court stated that, “[a]s a general rule, a municipality cannot condition the use of property for an educational purpose on the grant of a special permit,” 415 Mass. at 775 n.5, citing *Tufts College* and *The Bible Speaks*.

The argument against applying special permit requirements to a childcare facility, as opposed to an educational use, has even more force. As observed by the Appeals Court in *Petrucci v. Board of Appeals of Westwood*, 45 Mass. App. Ct. 818, 821-22 (1998), “[w]e need look no further than the language of the statute, which states that a zoning by-law may not ‘prohibit, or require a special permit for, the use of ... structures, or the expansion of existing

structures, for the primary ... purpose of operating a child care facility.’” In *Petrucchi*, the applicant’s proposed use of a barn as a childcare facility “cannot, therefore, be prohibited or subject to special permit requirements.” *Id.* at 822. Accord *Calhoun v. Zoning Bd. of Appeals of Wellesley*, 64 Mass. App. Ct. 1107, 2005 WL 2096651, at *1 (2005) (Rule 1:28 Decision) (upholding determination that childcare facility was not required to undergo site plan special permit process because, among other things, (1) “the prohibition against special permits is plain on the face of the statute” as a result of which “the judge properly determined that a site plan approval requirement is prohibited” and (2) “the site plan approval process in Wellesley goes well beyond the reasonable regulation permitted under the [Dover] Amendment”).

Having reviewed the applicable law, the conclusion is inescapable that the Board erred in requiring the LLC to undergo the ZBL’s major site plan review special permit process for this Project. The statute expressly prohibits it. While the statute does allow “reasonable regulation” of the bulk and height of structures, yard sizes, setbacks, open space, parking and building coverage requirements, the Project meets those regulations. As the Board found in its Decision:

1.7 ... The Petitioner is proposing 30 on-site parking spaces which more than satisfies the requirements of the By-Law.

...

1.19 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.

TE 15. Any analysis of this Project by local officials should have ended there. As was the case in *Calhoun*, the site plan approval process imposed on the Project here went well beyond the reasonable regulation of childcare facilities permitted by the Dover Amendment.

In reaching that conclusion, this court rejects the notion that the Board could impose requirements on the Project different from those dimensional requirements contained in the ZBL. In particular, this court reads the term “reasonable regulation” set forth in the statute as meaning regulations adopted as a part of the local zoning bylaw. Once again, the statute says as much: “No zoning ordinance or bylaw shall prohibit, or require a special permit for,” a protected use, but “such land or structures may be subject to reasonable regulations.” G. L. c. 40A, § 3, third para. In addition, the Supreme Judicial Court has interpreted that language as allowing for regulation by way of zoning ordinance or bylaw. In *Tufts College*, the court noted that “a proviso in the statute *authorizes a municipality to adopt and apply* ‘reasonable regulations.’” 415 Mass. at 757 (emphasis added). Thus, conditions imposed here as part of the special permit process, not required as a dimensional regulation set forth in the ZBL, fail. That includes not only conditions that are completely unrelated to permitted dimensional regulations (e.g., cap on the number of children and staff; requiring a police detail; requiring traffic studies; imposing landscaping requirements) and therefore prohibited by the statute, but also conditions that exceed the dimensional criteria established by the ZBL, here the front yard setback requirement imposed in the Decision. Because that setback condition is not required by ZBL regulation, one never reaches the issue, addressed in *Tufts College*, *Campbell* and *Rogers*, of whether such a regulation would be facially invalid or would be invalid as applied to the protected use here.

What has been set forth above amounts to a wholesale rejection of the Board’s arguments. In Defendant Needham Planning Board’s Post Trial Brief (“Defendant’s Post Trial Brief”), the Board largely focused on the third of the three issues identified for trial at the pre-trial conference—the *Tufts College*, *Campbell* and *Rogers* analysis—that the court has determined is irrelevant based on its analysis of the first and second issues (whether the ZBL

improperly restricts a Dover Amendment use by improper means, such as by a special permit process; and whether the particular conditions imposed can be regulated under the Dover Amendment).⁶ Regarding the first issue, the Board does argue that the special permit process and site plan review are available here, based on *Rogers, Trustees of Boston College v. Board of Alderman of Newton*, 58 Mass. App. Ct. 794 (2003), and a decision of this court entitled *Primrose Sch. Franchising Co. v. Town of Natick Zoning Bd. Of Appeals*, 21 LCR 305 (2013) (Sands, J.). Each is considered in turn.

First, citing to *Rogers*, 432 Mass. at 383, the Board argues that dimensional regulations permitted by the Dover Amendment, as opposed to “the use of land or structures,” may be implemented by special permit or site plan review, and “the provision is presumed to be valid, and the plaintiff must demonstrate that it is not. The test is not the other way around.” Defendant’s Post Trial Brief at 20. This argument ignores *Rogers*’ admonition that a zoning regulation is facially invalid if “the provision either prohibits, or requires a special permit (or other local approval) for, child care facilities.” 432 Mass. at 378. *Rogers* cannot be read to allow a special permit process for a childcare facility.

Next, the Board cites *Boston College* for the proposition that “it has been settled for over two decades that procedural devices such as special permits and site plan review are available to a presiding board to serve as a vehicle for the reasonable regulation of uses protected by the Dover Amendment, including childcare facilities.” Defendant’s Post Trial Brief at 20. The *Boston College* case involved the educational protections granted by G. L. c. 40A, § 3, second para., not the childcare facility protection granted by § 3, third para. The *Boston College* court

⁶ This is not a criticism of the Board. As the Board noted in Defendant’s Post Trial Brief at 19, the other issues were previously the subject of pre-trial briefing. As a result, the Board incorporated those arguments in Defendant’s Post Trial Brief and addressed the issues there in summary fashion.

held that “the special permit procedure, in itself, cannot be invalid in all circumstances involving *educational* institutions.” *Boston College*, 58 Mass. App. Ct. at 800 (emphasis added). As previously noted, however, § 3, second para., does not contain the express bar on requiring special permits for educational or religious uses that is set forth in § 3, third para., governing childcare facilities. Accordingly, the *Boston College* decision is of limited, if any, applicability here.

Finally, the Board relies on this court’s decision in *Primrose* for the proposition that, while special permits cannot be required for the use of land or existing buildings for childcare facilities, a special permit can be required for new construction of such a facility and a local board can impose reasonable conditions on the same. This court declines to follow *Primrose*. It was based on the Appeals Court decision in *Prime v. Zoning Bd. of Appeals of Norwell*, 42 Mass. App. Ct. 796 (1997), a case involving the agricultural protection of § 3, first para. At the time, the statute provided that “no ordinance or by-law shall ... prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture ... nor prohibit, or unreasonably regulate, or require a special permit for the use, expansion or reconstruction of existing structures thereon for the primary purpose of agriculture.” *Primrose*, 21 LCR at 308. The *Prime* court held that a bylaw could impose a special permit requirement for an entirely new agricultural structure, but not “unreasonably and in a manner designed to prohibit the [protected use].” 42 Mass. App. Ct. at 799 n.8. After the decision in *Prime*, the Legislature amended § 3, first para., to prohibit a special permit for “the use, expansion, reconstruction or *construction of structures thereon* for the primary purpose of agriculture” (emphasis added), thereby superseding the holding in *Prime*.

In *Primrose*, this court noted that, while the Legislature amended § 3, first para., to make clear that special permits could not be required for new construction, it did not similarly amend § 3, third. para. See 21 LCR at 309. The court, relying on the rationale set forth in *Campbell v. Town of Weymouth*, 6 LCR 276 (1998), was persuaded that, in the absence of such an amendment, the language of § 3, third para., must be read to exclude new construction:

The court in *Campbell* reasoned that if the phrase “the use of land or structures” prohibited a special permit requirement for new construction, then the second phrase, “or expansion of existing structures” would be superfluous. To wit, if new construction and reconstruction were included in the phrase “use of land or structures,” then surely expansion of an existing structure would also be protected and encompassed within the language “use of land or structures.” If that were indeed the proper interpretation, then the next clause, “expansion of existing structures,” would be superfluous.

Primrose, 21 LCR at 309.

This court parts ways with the *Primrose* decision for three reasons. First, it is not unreasonable to read “use of land or structures” as encompassing new and existing structures, and the second clause as encompassing the expansion of existing structures. The language considered by the court in *Prime* and analyzed in *Campbell* was notably different (referencing the “use of land for the primary purpose of agriculture,” not “use of land or structures” found in § 3, third para., and precluding a special permit requirement “for the use, expansion or reconstruction of existing structures thereon,” not “the expansion of existing structures” found in § 3, third para.). Second, similar language in § 3, second para., *Tufts College*, 415 Mass. at 754 n.2 (“No zoning ordinance or by-law ... shall ... regulate or restrict the use of land or structures for religious purposes or for educational purposes”), has been interpreted to preclude special permits for new construction. *Id.* at 765 (“the Land Court judge properly declared invalid the site plan and special permit requirements of the ordinance as to all present *and* future,

unspecified projects on the Tufts campus.”). Third, while the issue was not squarely raised in *Calhoun*, that court found that § 3, third para., prohibited the requirement of a special permit for the construction of a new childcare facility. Accordingly, this court does not find *Primrose* to be persuasive authority.

Conclusion

For the foregoing reasons, judgment shall issue on Count II of the complaint filed herein annulling the Decision. **This matter is set down for a Status Conference at 11:00 a.m. on Tuesday, August 22, 2023.**

/s/ Jennifer. S.D. Roberts
Jennifer S.D. Roberts, Associate Justice

Dated: August 15, 2023.

Judge decides against Planning Board on day care project



by **Peter O'Neil**
August 16, 2023



1688 Central Ave. Credit: Georgina Arrieta-Ruetenik

A Massachusetts Land Court judge issued a decision for the proposed day care facility at 1688 Central Ave. on Tuesday, saying the Needham Planning Board “exceeded its authority” in how it conducted its process. The judge’s decision annulled the permit the board had granted to Matt Borrelli’s Needham Enterprises in March 2022.

Needham Enterprises argued that the approval it had received came with numerous conditions that made the project economically unfeasible. Borrelli, a former Select Board member, sued on multiple counts, including claims the permit was effectively denied and that the Planning Board process was illegal.

Judge Jennifer Roberts focused on Count II of the complaint, in which Borrelli's attorney Evans Huber argued that a state law, the Dover Amendment, exempted the project from the level of review the Planning Board ultimately conducted. As the [Observer reported](#) last month, the board's review was a nine-month process with eight public hearings from June to December 2021, followed by deliberation from December 2021 to March 2022.

Under "Findings of Facts," Judge Roberts noted, "Mr. Borrelli requested a process known as minor project review, pursuant to which the board could provide comments to the town's building inspector on the LLC's submission."

Instead, the town would not allow the project to apply for a building permit without first undergoing a major site plan review. Borrelli formally objected to this level of review on April 16, 2021.

In her decision, Judge Roberts agreed with Needham Enterprises' argument that, under the Dover Amendment, a child care facility is a protected use exempt from the level of review that was ultimately conducted.

She wrote, "... the lot conforms to zoning requirements as to area and frontage of the Single Residence A District."

"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.

"Any analysis of this project by local officials should have ended there," she wrote. "The site plan approval process imposed on the project here went well beyond the reasonable regulation of childcare facilities permitted by the Dover Amendment."

In summary, Roberts wrote, "What has been set forth above amounts to a wholesale rejection of the (Planning) Board's arguments."

Judge Roberts' decision is not her final judgment and will be discussed at a hearing next week to consider next steps. The judge retains the authority to issue a judgment should the parties not be able to come to an agreement that the judge would ultimately need to approve.

The Planning Board acknowledged the decision at its Tuesday meeting with a statement, which said in part, "The Planning Board expects that it will discuss the decision and any next steps with special counsel, but

it has not had an opportunity to do so yet. Accordingly, that is the extent of the update that the Board can offer at this time.”

Asked for comment, the board’s special counsel, Attorney Jay Talerman, said via email, “Aside from noting our disappointment in the Judge’s departure from well-established legal principles, I have no comment at this time.”

Huber, the attorney for Matt Borelli, declined comment.



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TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

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

PLANNING

DECISION
March 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 a 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

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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 Mach 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, , 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, 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, dated 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, dated 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 Memoranda and Comments submitted by abutters and neighbors after the close of the public hearing:

- Exhibit 193 - Email from Norman MacLeod, 41 Pine Street, dated December 9, 2021.
- Exhibit 194 - Email from Robert Onofrey, 49 Pine Street, dated December 16, 2021.
- Exhibit 195 - Letter from Khristy Thompson, Holly Clarke, and Maggie Abruzese with attachments, dated December 16, 2021.
- Exhibit 196 - Table prepared by Attorney Christopher H. Heep of Dover Amendment Cases regarding Child-care Facilities, undated.
- Exhibit 197 - Email from Attorney Evans Huber, dated January 4, 2022.
- Exhibit 198 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated January 4, 2022.
- Exhibit 199 - Letter directed to Lee Newman from Attorney Evans Huber, dated January 31, 2022.
- Exhibit 200 - Email from Attorney Evans Huber, dated February 1, 2022.
- Exhibit 201 - Email from Pat Day, NCC, dated February 1, 2022.
- Exhibit 202 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated February 4, 2022.
- Exhibit 203 - Email from Rob DiMase, 1681 Central Avenue, dated February 7, 2022.
- Exhibit 204 - Letter from Holly Clarke, dated February 8, 2022, transmitting "Neighbor's Response to the Proponent's January 31, 2022 and February 1, 2022 Submissions."
- Exhibit 205 - Letter directed to Attorney Chris Heep from Attorney Evans Huber, dated February 4, 2022.
- Exhibit 206 - Letter from Joe Abruzese, 30 Bridle Trail Road, dated February 8, 2022.
- Exhibit 207 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated February 10, 2022.

- Exhibit 208 - Email from David Lazarus, Oxbow Road, dated February 10, 2022.
- Exhibit 209 - Email from Stanley Keller, 325 Country Way, dated February 10, 2022.
- Exhibit 210 - Email from Brian O'Neill, 149 Charles River Street, dated February 15, 2022.
- Exhibit 211 - Email from Carla and Alexis Kopikis, dated February 15, 2022.
- Exhibit 212 - Email from Sharon Gillespie, Stratford Road, dated February 15, 2022.
- Exhibit 213 - Email from Kevin Jay, 14 Heather Lane, dated February 15, 2022.
- Exhibit 214 - Email from Rick Hardy, 1347 South Street, dated February 15, 2022.
- Exhibit 215 - Email from Lois Merrill, 31 Bridle Trail Road, dated February 15, 2022.
- Exhibit 216 - Email from Henry Ragin and Laura Rosen, 25 Bennington Street, dated February 15, 2022.
- Exhibit 217 - Email from Cynthia Frost, 543 Chestnut Street, dated February 15, 2022.
- Exhibit 218 - Email from Ronit and David Klein, 335 Hunnewell Street, dated February 15, 2022.
- Exhibit 219 - Email from Jennifer Bannon, Jarvis Circle, dated February 15, 2022.
- Exhibit 220 - Email from Leon Shaigorodsky, Bridle Trail Road, dated February 15, 2022.
- Exhibit 221 - Email from Kenneth Bassett, South Street, dated February 15, 2022.
- Exhibit 222 - Email from Rob DiMase, dated February 15, 2022.
- Exhibit 223 - Email from Mary Buffinger, dated February 15, 2022.
- Exhibit 224 - Email from MarySue Cotton, dated February 15, 2022.
- Exhibit 225 - Email from Ricki and Mark Nickel, 191 Stratford Road, dated February 15, 2022.
- Exhibit 226 - Email from Patricia Falcao, 19 Pine Street, dated February 15, 2022.
- Exhibit 227 - Email from Helen and Paul Cantor, Locust Lane, dated February 15, 2022.
- Exhibit 228 - Email from Jonathan Bracken, 921 South Street, dated February 15, 2022.
- Exhibit 229 - Email from Jonathan Shaer, 242 Bridle Trail Road, dated February 15, 2022.
- Exhibit 230 - Email from Norman MacLeod, 41 Pine Street, dated February 15, 2022.
- Exhibit 231 - Email from Robert Onofrey, 49 Pine Street, dated February 16, 2022.

- Exhibit 232 - Email from Timothy McDonald, Director, Needham Health and Human Services, dated February 11, 2022.
- Exhibit 233 - Email from Jeffrey Turk, 312 Country Way, dated February 17, 2022.
- Exhibit 234 - Email from Elyse Park and Mark Ettinger, dated February 17, 2022.
- Exhibit 235 - Email from Raven Register, 89 Charles River Street, dated February 17, 2022.
- Exhibit 236 - Email from Eliot Herman, Country Way, dated February 17, 2022.
- Exhibit 237 - Email from John and Adrienne McCusker, 248 Charles River Street, dated February 17, 2022.
- Exhibit 238 - Email from Evan Rauch, 224 Country Way, dated February 17, 2022.
- Exhibit 239 - Email from Sandy Jordan, 219 Stratford Road, dated February 18, 2022.
- Exhibit 240 - Email from Kathleen Buckley, dated February 18, 2022.
- Exhibit 241 - Email from Sally McKechnie, dated February 18, 2022.
- Exhibit 242 - Email from Stanley Keller dated February 18, 2022.
- Exhibit 243 - Letter from Nicole & Jeremy O'Connor, 50 Country Way, dated February 18, 2022.
- Exhibit 244 - Letter from Holly Clarke, dated February 18, 2022, transmitting "Neighbor's Submission in Response to the Board's February 11 Soliciting of Written Comments."
- Exhibit 245 - Letter from Attorney Evans Huber, dated February 18, 2022.
- Exhibit 246 - Letter from John Glossa, Glossa Engineering, Inc., dated February 17, 2022.
- Exhibit 247 - Letter to the Needham Planning Board, from Pay Day, NCC, dated February 18, 2022.
- Exhibit 248 - Email from Holly Clarke, 1652 Central Ave, dated February 18, 2022.
- Exhibit 249 - Email from Maggie Abruzese, 30 Bridle Trail Road, dated February 18, 2022.
- Exhibit 250 - Letter from Joe Abruzese, 30 Bridle Trail Road, dated February 18, 2022.
- Exhibit 251 - Letter from M. Patrick Moore Jr., and Johanna W. Schneider, Hemenway & Barnes, LLP, dated February 18, 2022.

Exhibit 252 - 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.
- 1.17 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 45 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 using the methodologies and presenting conclusions consistent with the traffic studies presented to the Planning Board in this application after the site is open and operational

to at least 80% of student capacity. The child-care operator shall report monthly to the Planning and Community Development Department the number of children enrolled at the facility. The Petitioner shall further fund a peer review of this post occupancy traffic study. Upon request of the Petitioner, the Planning Board after notice and hearing may determine that the traffic study is not necessary. 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.

- 1.18 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).

- 1.19 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.

- 1.20 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 7.4.6(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

7.4.6(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.”

- 1.21 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.

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.

- 1.22 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 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.

1.23 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.
- g. The lighting on site shall not cause a public health nuisance, with light 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.

1.24 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.

- 1.25 The Design Review Board reviewed the project and issued review memoranda dated March 22, 2021, May 14, 2021, and August 13, 2021.
- 1.26 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.
- 1.27 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, 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.
- 1.28 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.

- 1.29 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.
- 1.30 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.
- 1.31 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. 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.
- 1.32 The Board finds the Plan, as modified, conditioned and limited 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.
- 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.

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 56 feet back from Central Avenue to a minimum front yard setback of 120 feet in accordance with the sketch plan shown as Exhibit 252 as modified by the dimensional adjustments detailed in this paragraph. 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 35-foot minimum setback distance along the southern property line. Parking on the property shall not be located less than 265 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 252. The drainage plan and storm water report shall be updated to reflect the above-noted modifications.

- 2.2 The Plans shall be modified to include the requirements and recommendations of the Board as set forth below. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.
 - a. The plan shall be revised to show all trees having a caliper of greater than 6 inches DBH (diameter at breast height) located within the proposed area of disturbance that will not be retained during the construction process. Said trees shall be replaced at a 2 to 1 ratio with the location, size and species selected to be reflected on a revised landscaping plan submitted to and approved by the Director of Parks and Forestry. Replanting required because of this condition shall be focused within the required front yard setback area.

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 3.44 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, and 1.17 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. Notwithstanding the above, the childcare facility may be used on weekdays until 8 p.m. and on Saturdays and Sundays for administrative purposes, meetings with staff, and small meetings with parents and guardians provided all other conditions of this Decision including, but not limited, to parking requirements are not violated.
- 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 Any change to the property shall require an amendment of the site plan approval.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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.

- 3.14 As detailed in Section 1.17 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 45 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.
- 3.15 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.
- 3.16 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.
- 3.17 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.
- 3.18 The Petitioner shall be responsible for implementing and complying with the requirements of the Board of Health as detailed in Section 1.23 and Section 1.24 of this Decision, and all other requirements of the Board of Health as the Board of Health shall determine based on the report of the licensed site professional as set forth in Section 1.24. The Petitioner shall provide access to the property by the licensed site professional retained by the Board of Health for the purpose of completing the tasks set forth in

Section 1.24.

- 3.19 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, 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 that they are licensed by the Massachusetts Department of Early Education and Care. 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.
- 3.20 All utilities, including telephone and electrical service, shall be installed underground from the street line.
- 3.21 The Petitioner shall secure from the Needham Department of Public Works a Sewer Connection Permit, with impact fee paid if applicable.
- 3.22 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.
- 3.23 The Petitioner shall secure from the Needham Department of Public Works a Water Main and Water Service Connection Permit pursuant to Town requirements.
- 3.24 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.
- 3.25 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.
- 3.26 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.
- 3.27 The maintenance of site and parking lot landscaping shall be the responsibility of the Petitioner and the site and parking lot landscaping shall be maintained in good condition.
- 3.28 The 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.
- 3.29 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.

- 3.30 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.
- 3.31 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 Friday, not at all on Saturdays, 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.
- 3.32 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. By 8:30 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.
- 3.33 An ADA- compliant sidewalk shall be installed along the entire frontage of the property with the final design approved by the Town Engineer.
- 3.34 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.
- 3.35 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.
- 3.36 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.
- 3.37 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.

3.38 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 3.14 of this decision.
- d. The Petitioner shall have submitted the Transportation Demand Management Work Plan to the Board as outlined in Section 3.16 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 3.29 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.

3.39 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 3.14.
 - 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 3.19 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 3.29 of this decision.
 - i. The ADA- compliant sidewalk shall have been installed along the entire frontage of the property as detailed in Section 3.33 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.
- 3.40 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.
- 3.41 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.
- 3.42 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.

- 4.43 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.
- 4.44 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 property 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 March 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 March 1, 2024. 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 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.

NEEDHAM PLANNING BOARD

Adam Block

Martin Jacobs

Jeanne S. McKnight

March 3rd. 2022

 **CAROLINA MERCADO**
Notary Public, Commonwealth of Massachusetts
My Commission Expires February 26, 2027

Carolina Mercado
Notary Public

Notary Public

My Commission Expires: ~~03.03.2022~~
2. 26. 2027

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

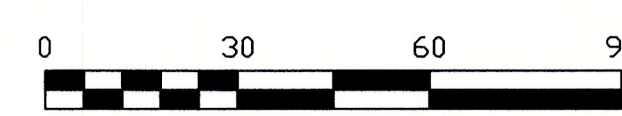
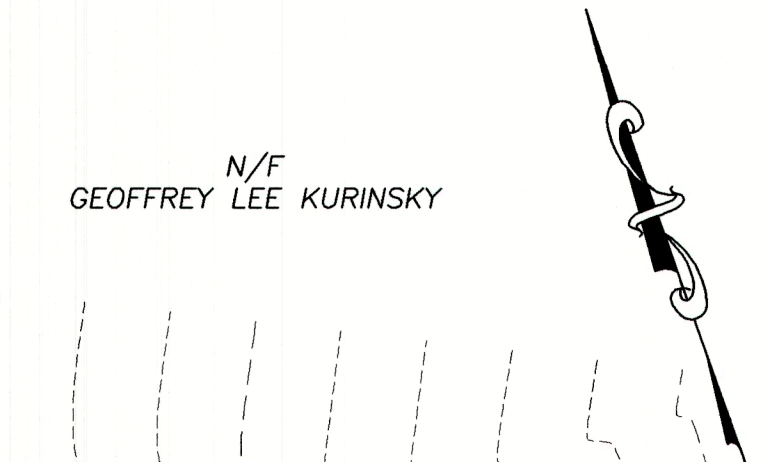
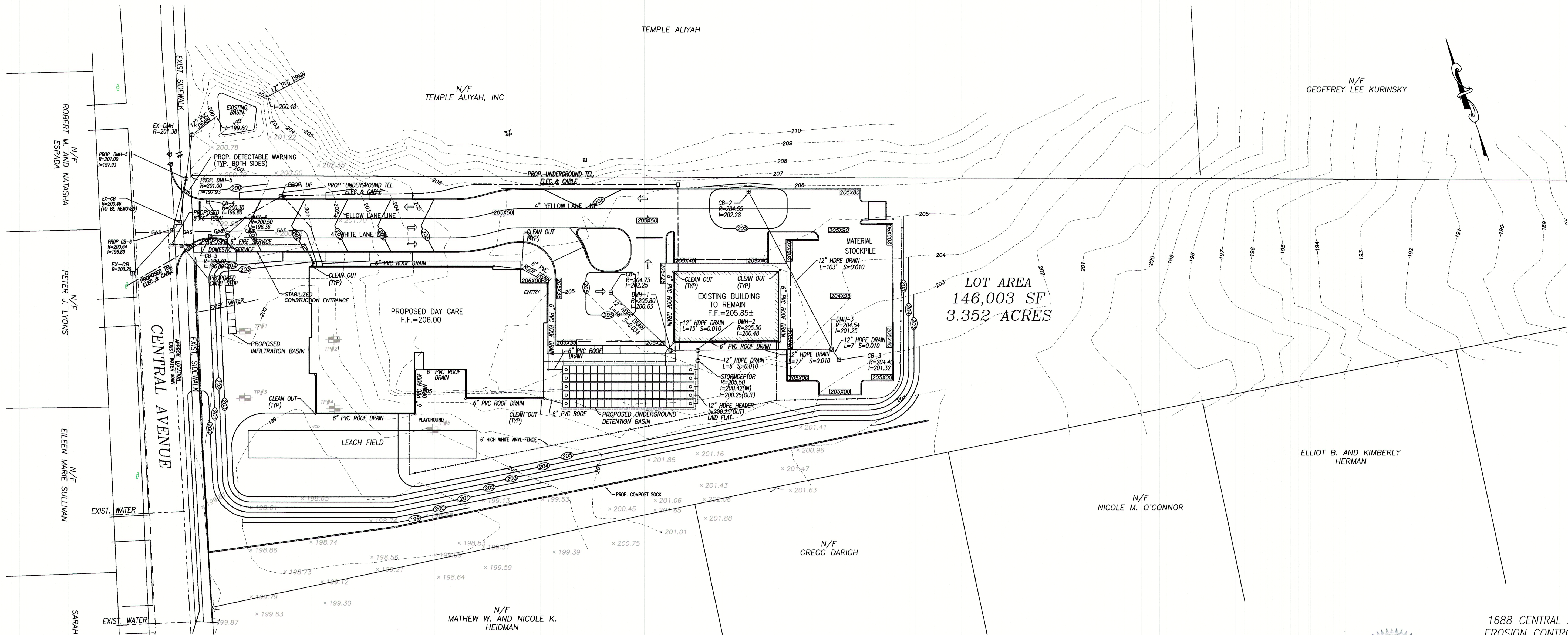
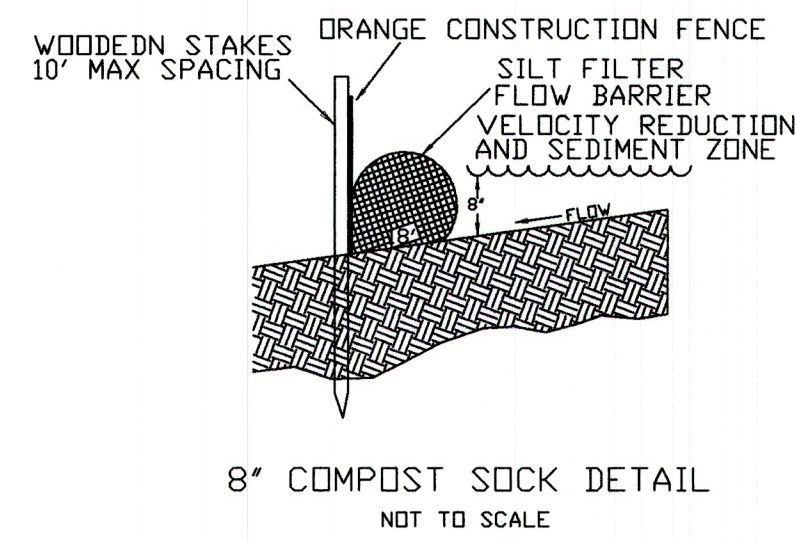
Date _____

Theodora K. Eaton, Town Clerk

Petitioner-Certified Mail # _____
 Town Clerk
 Building Commissioner
 Conservation Commission
 Parties in Interest

Board of Selectmen
Engineering
Fire Department
Police Department

Board of Health
Director, PWD
Design Review Board
Evans Huber



1688 CENTRAL AVENUE
EROSION CONTROL PLAN
IN
NEEDHAM MA
SCALE: 1"=30' NOVEMBER 9, 2023
GLOSSA ENGINEERING INC.
46 EAST STREET
EAST WALPOLE, MA
508-668-4401

JOHN F. GLOSSA
CIVIL
No. 32398
REGISTERED
PROFESSIONAL ENGINEER
MASSACHUSETTS

FRIEZE CRAMER ROSEN & HUBER LLP

C O U N S E L L O R S A T L A W

62 WALNUT STREET, SUITE 6, WELLESLEY, MASSACHUSETTS 02481

781-943-4000 • FAX 781-943-4040

November 13, 2023

BY ELECTRONIC MAIL

Board of Appeals Members
Town of Needham
Administration Building
500 Dedham Avenue
Needham, MA 02492
Attn: Daphne Collins

Re: Appeal of Building Permit # BC-23-10079
1688 Central Ave, Needham, MA

Dear Members of the Board of Appeals:

I am writing on behalf of Needham Enterprises, the recipient of the Building Permit at issue in this appeal. The purpose of this letter is to address the issues raised by the appellants in their letter of October 19, 2023. As the Board considers this appeal, we ask that you keep in mind two basic points.

First, as this Board is no doubt aware, Needham, through its Planning Board, has already litigated extensively in the Land Court the question of whether the Town has the authority to impose on this project the sorts of conditions that the appellants are now asking for and which the Planning Board imposed in its Decision. A copy of that decision has been provided to you. Appellants argue, *again*, that the alleged failure to address these issues means that the building permit was issued in violation of the Town's bylaws.

The so-called Dover Amendment, M.G.L. c. 40A, § 3, provides in relevant part:

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

In the litigation between Needham Enterprises and the Needham Planning Board, the Land Court has unequivocally ruled, after trial, that because this child care facility is

Board of Appeals Members

November 13, 2023

Page 2

protected by the Dover Amendment and because the proposed project complies with (or in some cases is exempt from) all Town Bylaws, the Planning Board had no authority to require Site Plan Review, nor to impose (among others) the conditions that the appellants are now claiming are unmet and should be required. Thus, if this Board were to void the Building Permit, it would be doing so **on the basis of arguments that the Town has already lost in court**, and which the Planning Board has not appealed.¹ A copy of the Land Court decision has also been provided to you.

Second, in this appeal the **only** question for this Board is whether the building permit for this project has been issued in violation of the Town's zoning bylaws. Section 7.2.1 of the zoning bylaws provides, in part:

No building or structure shall be constructed, relocated, added to or demolished without a permit having been issued by the Building Inspector. No such permit shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with the provisions of this By-Law

For this reason, the appellants' arguments, each of which is discussed below, are divided into two categories; those which allege violations of the Town's zoning bylaws, and those which do not.

I. Arguments Based on Alleged Violations of the Town's Bylaws

A. Does the Barn Violate the Prohibition, in This Zoning District, on More Than One Non-Residential Structure or Use on a Lot?

1. The Bylaw in Light of Applicable Law and Town Practice

The appellants' argument is based on the table of use regulations found in Section 3.2.1. of the bylaw, which provides (on page 31) that "more than one non-residential building or use on a lot" is not permitted in the SRA and SRB zoning districts. This argument completely ignores the fact that such prohibitions are void as applied to Dover Amendment uses, and was explicitly rejected by the Appeals Court in *Petrucchi v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. 818, 822 (1998)(property at issue had an existing residence and a separate barn that the applicant sought to convert to a child care facility; application rejected on the grounds, among others, that the town Bylaw prohibited more than one primary use on a lot; Appeals Court stated: "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.")

¹ It is also worth noting that the letter from the Planning Department dated November 8, 2023 (included in the Board's packet) states that the Planning Board has "NO COMMENT" on this appeal.

Board of Appeals Members
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The Town's recognition of the utter lack of merit of appellants' argument is demonstrated by what is going on right next door to the property at 1688 Central Avenue, at the Temple Aliyah, which houses both a place of worship and a child care facility. These are both "non-residential uses" and are being conducted in the SRA zoning district, not because Temple Aliyah is simply ignoring the zoning bylaw, but because both "Dover Amendment" uses (place of worship and child care) are exempt from that prohibition. Similarly, in 2015, the Planning Board issued a decision regarding Temple Beth Shalom which specifically allowed multiple non-residential uses on a single lot in a zoning district (SRB) that, under Town bylaws, has the same prohibition on more than one non-residential use on a single lot. Clearly, by issuing that decision, the Planning Board was recognizing that such a prohibition does not apply to uses protected by the Dover Amendment.² A copy of that 2015 decision is attached as Exhibit 1.

Consequently, the argument that the barn must be demolished, because it runs afoul of the prohibition on more than one non-residential structure on a lot, has no merit.

2. Does the Barn Qualify as an Accessory Structure?

It has been the repeatedly stated intention of both Needham Enterprises and the anticipated tenant, Needham Childrens' Center ("NCC"), that the barn will be used for storage for the child care facility. For the reasons stated above, this Board need not consider the secondary question of whether the Barn would also qualify as an "accessory structure" to be used by the child care facility for storage. Nevertheless, it is clear that the barn *would* also qualify as an "accessory structure" (to which the prohibition on "more than one non-residential structure on a lot" would not apply). The relevant portions of section 1.3 of the Bylaw provide the following definitions:

Accessory Building – a building devoted exclusively to a use subordinate to and customarily incidental to the principal use.

Accessory Use – a use subordinate to and customarily incidental to the principal use.

Appellants argue that the barn does not qualify as an "accessory structure or building" because its size (less than half of the main building to be built) is not "customary" for storage buildings. The bylaw definition of accessory building clearly states that it is the use of the structure (in this case, storage) that must be "customarily incidental" to the principal use (in this case, child care facility). Nowhere does the definition state that the size of the structure must be "customary." Indeed, this Barn (approx. 4,600 s.f.) was permitted by the Town as an accessory structure in 1989, and is approximately *three times the size of the house* (1633 s.f.) that it was accessory to. The appellants argue that now that the house has been demolished, the barn can no longer be

² The Planning Board that issued the 2015 decision regarding Temple Beth Shalom included three of the Board members that issued the 2021 Decision regarding 1688 Central Ave.

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“accessory” to the house. This argument completely misses the point that relative sizes of the principal structure and the accessory structure are irrelevant to whether any particular structure qualifies as an accessory building.

In addition, the Board’s attention is directed to a December 7, 2021 letter from then-Building Commissioner David Roche to the Planning Board, in which Mr. Roche discusses the definitions of “Accessory Building “ and “Accessory Use” under the Needham zoning bylaw in the context of M.G.L. c. 40A, § 3 and concludes: **“Based on the definitions in the Bylaw and the section from 40A I believe that the use of the barn if used specifically by the child care facility would be a permitted use and not a violation of zoning.”** (emphasis added) A copy of that letter is attached as Exhibit 2.

3. What Will the Barn Be Used For?

Appellants reiterate the categorically false claim that “at various points the developer has said that the child care facility would not use the barn.” The first Planning Board hearing on this matter at which evidence was presented was July 20, 2021. During the hearing, undersigned counsel for Needham Enterprises stated that although there was no lease yet between Needham Enterprises and NCC, there was an understanding between those entities that NCC would have the right to use the Barn for storage. At subsequent Planning Board hearings (and at trial in Land Court), Patricia Day, head of NCC, provided testimony that at its current location, NCC is using approximately 1,850 s.f. of space for storage, and that it was always her intention and understanding that the barn would be available for NCC’s storage needs.

Moreover, at the later Planning Board hearings, Needham Enterprises’ intention that the Barn would be used for storage exclusively by NCC was repeatedly stated, and the intention to use the Barn for storage for the child care facility was confirmed by a letter from Needham Enterprises’ undersigned counsel to the Planning Board dated September 30, 2021. A copy of this letters is attached as **Exhibit 3**. Mark Gluesing, architect for the project, testified at trial in the Land Court to the same effect, as well as to the fact that, because of the intention to use the barn for storage, the proposed new building shown on the Plans does not provide for anywhere near the amount of storage space needed by NCC. Lastly, Commissioner Prondak has stated in his written response to this Board that the barn will be used exclusively for storage for NCC.

Consequently, the claim that the barn may not be used for storage for NCC, or that its future use is ambiguous, is incorrect, and provides no justification for vacating the building permit.

B. Stormwater Management

Section 5.3.2 of the zoning bylaw provides as follows:

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Drainage Storm-water and snow melt drainage shall be provided for without causing surface flows across any public sidewalk and without creating more than a 10% increase in peak flows in any offsite drainage structures or water courses in a 25-year storm unless provisions have been made to accommodate that increase without public expense.

Section 7.4.2 of the Town's "regular" bylaws provides that the stormwater management and erosion control plan is to be reviewed and approved by the Building Commissioner.

As part of its application for a building permit, Needham Enterprises submitted a stormwater management plan prepared by its engineer, John Glossa. The Building Commissioner determined that Needham Enterprises' plan satisfies the requirements of the Bylaw, stating: "Sheet #4 of the Site Development Plans show sufficient compliance with the Storm Water Bylaw. These plans are stamped and signed by a Massachusetts Registered Civil Engineer. No engineering evidence has been presented by the applicants showing that the plan submitted is not sufficient."

Consequently, the allegation that the proposed project does not comply with the Town's Stormwater Bylaw has no merit.³

C. Landscaping

Appellants argue that the proposed project does not comply with Section 4.2.14.1 of the Town's bylaws, which provides in relevant part:

Transition Areas Where a building or structure devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, is to be placed within a Rural Residence-Conservation, Single Residence A, Single Residence B or General Residence District, a landscaped transition and screening area shall be provided along those segments of the lot lines necessary to screen the public, semi-public or institutional use from buildings located on abutting lots. The transition area shall be at least twenty-five (25) feet wide, as measured at its narrowest point, and shall be suitably landscaped as specified at Section 4.2.14.3.

. . .

Appellants' argument on this point is incorrect for two reasons. First, as stated in the submission of the Building Commissioner, the landscaping requirements of the bylaw do not apply to uses protected by the Dover Amendment. As quoted above, the Dover amendment allows the Town to impose "reasonable regulations" regarding "the bulk and

³ It is true that the Engineering Department, by letter dated November 8, noted that an erosion control plan needs to be submitted through the Town's permitting portal. Needham Enterprises has now done so. The Engineering Department letter concludes: "Engineering has no comment or objection to the current stormwater plan and **finds no objections with the issued building permit**" (emphasis added). A copy of that letter is included in the Board's packet of documents relating to this matter.

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height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.” There is no mention of “landscaping” in this list of permissible areas of regulation.

Second, even if it were permissible to apply the Town’s landscaping regulations to this child care facility, the project complies with them. Section 4.2.14.2 of the bylaw provides in part: “**Use of Transition Areas** Only necessary driveways or interior drives shall be located across a required transition area.” The project complies with the requirements of section 4.2.14.1 on the southern boundary of the property, and on the northern boundary, adjacent to Temple Aliyah, the only reason it does not is the presence of the access drive within 25 feet of the property boundary, which is explicitly permitted by section 4.2.14.2. It is also worth noting that the landscaping plan was extensively reviewed and approved by the Design Review Board as part of the hearing process before the Planning Board.

Consequently, this argument provides no basis to vacate the building permit issued to Needham Enterprises.

D. Parking

Appellants assert that the plans do not demonstrate that the project complies with the town parking requirement. This argument is clearly incorrect. The Town does not have a bylaw requirement for parking for child care facilities. 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,” Bylaw 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 formula the Town uses for child care facilities, which this Board has approved multiple times, 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).

NCC has clearly stated its intention to begin operations with up to 115 children and up to 18 staff members. Applying this formula that the Town uses leads to a calculated parking requirement of $8 + 3 + 18 = 29$ spaces. The proposed project includes 30 on-site parking spaces which more than satisfies the requirements of the Bylaw.

In this regard, two points are worth noting. First, it is the Building Commissioner’s view that application of this formula results in requiring more parking

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spaces than are actually needed, particularly for this site which has a well-designed drop-off and pick-up layout, ensuring that few, if any parents or caretakers will park in order to drop off or pick up their children. Second, even application of this formula does not result in a limit of 115 children and 18 staff. NCC could increase its enrollment to 120 children, or increase its staff to 19, and, with 30 on-site parking spaces, still satisfy the requirements of the formula that the Town has used in the past.

But this Board need not address that question now. Dover Amendment considerations aside, the project as proposed meets the Town's parking requirements. This argument provides no basis to revoke the building permit.

E. Lighting

Plaintiffs assert that that "they cannot determine" whether the project complies with Bylaw requirements regarding lighting. Section 5.3.4 of the Bylaw provides, in part:

Light: Off-site glare from headlights shall be controlled through arrangement, grading, fences, and planting. Off-site light over-spill from exterior lighting shall be controlled through luminaries selection, positioning, and mounting height so as to not add more than one foot candle to illumination levels at any point off-site.

As with most of the other issues raised by the Appellants, "lighting" is not included in M.G.L. c. 40A, § 3, which lists the subjects of permissible regulation for Dover Amendment uses. But even if the project is subject to the requirements of section 5.3.4, there is no evidence that the project does not comply with those requirements. The appellants' inability to determine whether the project complies with section 5.3.4 is a preposterous basis on which to ask this Board to revoke the building permit. It is tantamount to asking this Board to second-guess every other department in Town that has reviewed this project, because the project "might" not comply with some requirement. This Board should reject this argument as a basis for revoking the building permit.

II. **Arguments That are Not Based on Alleged Violations of Actual Provisions of the Bylaws**

Appellants have also included in this appeal a variety of arguments and issues that are not based on alleged non-compliance with the Town's Bylaws. As such, they need not be considered by this Board, and would be beyond this Board's authority if relied on as a basis or justification for revoking the building permit. Nevertheless, these arguments are discussed briefly, below.

A. There Might be a Retrial in Land Court

Appellants argue that the building permit is premature because they are also pursuing an appeal in the Massachusetts Court of Appeals seeking to intervene in the

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litigation between Needham Enterprises and the Planning Board. They point to the fact that it is *possible* that the outcome of that appeal will be that the Appeals Court will order a retrial of the matter in Land Court. The fact that the Appeals Court might order a retrial in the litigation with the Planning Board does not make this building permit premature. The Land Court issued a judgement that Needham Enterprises is entitled to apply for a building permit without further review of the project. That Court Order has not been stayed. Needham Enterprises was and is entitled to apply for a Building Permit, and that permit has now been issued by the Building Department.

To the extent the **remote** possibility of a retrial in Land Court, and the similarly **remote** possibility of a retrial leading to a different outcome,⁴ creates any risk for Needham Enterprises, Needham Enterprises is entitled to proceed with this project (which has now been delayed for almost **three years**) at its own risk.

B. Allegations of Possible Hazardous Materials Onsite

The appellants allegations of “*potential and as yet unassessed* presence of hazardous materials at the site” (emphasis added) are not a basis to revoke the building permit. The appellants cite no portion of the Needham Bylaws that are allegedly violated in connection with the “potential and as yet unassessed” presence of hazardous materials at the property. And it is clear that the Needham Board of Health has no authority to address this alleged issue at the property, nor to impose the sorts of requirements that appellants are seeking. In this regard the Board’s attention is directed to a memo dated September 14, 2023 from Tara Gurge, Assistant Public Health Director, to the Building Commissioner addressing comments about the possibility of a septic system, and the fact that the Board of Health will review and keep a copy of the final graded as-built plan for the property. A copy of that memo is attached as **Exhibit 4**. The Board’s attention is further directed to the November 7, 2023 email from Ms. Gurge (included in the Board’ packet of materials), in which Ms. Gurge stated that “the Public Health Division **has no further comments on the proposed development.**” (emphasis added).⁵

Appellants’ argument on this point provides no basis to revoke the building permit.

⁴ The only way the appeal pending before the appeals court leads to a different outcome in Land Court is if (a) The Appeals Court reverses the Land Court’s denial of these appellants’ motion to intervene; (b) the Appeals Court concludes that the outcome of the trial might have been different had these appellants been permitted to intervene in that lawsuit and therefore remands the matter to the Land Court; and (c) in subsequent proceedings, the Land Court does in fact reach a different result.

⁵ It is also worth noting that at trial in the Land Court, the Planning Board dropped its defense of the Board of Health conditions, the absence of which the appellants are now arguing justify revocation of the building permit. It is reasonable to conclude that the Planning Board did so because it recognized that those conditions would not survive judicial scrutiny.

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C. The Land Court Stated Only That Needham Enterprises Was Entitled to Apply for a Building Permit

Appellants repeat, multiple times, the argument that the Land Court only stated that Needham Enterprises was entitled to apply for a building permit, not to the issuance of a building permit. This statement, while factually correct, is a complete *non-sequitur*. It does not follow from this argument that the building permit should be revoked. Needham Enterprises applied for a building permit; the Building Commissioner issued it; and now the appellants are appealing. But the fact that the appellants have the right to appeal does not mean their appeal is meritorious.

D. The Planning Board Decision Was Only Site Plan Review, Not a Special Permit

Appellants repeat the baseless argument advanced by the Planning Board before the Land Court that the Planning Board decision was only Site Plan Review, not a Special Permit, and that Needham Enterprises should have applied for a building permit following the Planning Board's "Site Plan Review." In connection with this argument, appellants claim that Needham Enterprises entered into a "binding agreement" that the review process would only be SPR and not a special permit,

It is difficult to understand why the appellants even raise this argument, other than perhaps to imply that this Board should feel free to engage in a lengthy hearing process of its own. This Board should give that argument no weight

The Planning Board moved to dismiss Needham Enterprises' appeal to Land Court on the basis of these arguments. Their position was thoroughly and properly rejected by the Land Court. Its decision, a copy of which is attached as Exhibit 5, stated in part:

In the Motion, the Board argues that this action should be dismissed for lack of subject matter jurisdiction in this court, either because Plaintiff has failed to exhaust its administrative remedies or because Plaintiff has no standing to make claims for protection under G. L. c. 40, § 3 ("the Dover Amendment"). The Motion is DENIED.

The Board has cited no authority in support of its argument that the Plaintiff, which apparently is not a licensed day care operator, lacks standing to pursue this appeal in the absence of its prospective tenant, Needham Children's Center ("NCC"). Leaving aside that NCC actively participated in proceedings before the Board, . . . and that it strains credulity to believe that the Plaintiff would undertake all the plan preparation and permitting required for a childcare facility if that was not the intended use of the Plaintiff's property, the court has also not found any legal authority to support the Board's standing argument.

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The Board's exhaustion argument is based on the argument that, while the Plaintiff submitted an application for major site plan review, it expressly limited the Board's review to the criteria enumerated in the Dover Amendment and stipulated that no special permit pursuant to the town of Needham's Zoning Bylaw ("ZBL") would issue. . . . The Board's argument fails. First, the ZBL provides that the Board acts as a special permit granting authority when acting under § 7.4, the section governing site plan review. Index Ex. 4. Section 7.4.3 provides that "[n]o building, use or occupancy permit for any improvement to real property which constitutes a Major Project under this By-Law shall be issued, except in accordance with the terms of a Ex. 4. Section 7.4.3 provides that "[n]o building, use or occupancy permit for any improvement to real property which constitutes a Major Project under this By-Law shall be issued, except in accordance with the terms of a special permit for such project." . . . The ZBL having embraced the mechanism of a special permit in the review of major site plans, the proper appeal is by way of G. L. c. 40A, § 17, as was done by the Plaintiff here.

Were more required, and it is not, the record as laid out in Plaintiff's opposition is replete with evidence that the Board, the Board's staff and the Board's legal counsel considered Plaintiff's application to be, and treated it as, a special permit.

The denial of the Planning Board's motion to dismiss was not appealed at that time, nor after trial and judgment. This argument does not justify further hearings on this matter, much less revocation of, or conditions imposed by this Board on, the building permit.

E. Construction Management Plan

Lastly, appellants argue that the permit should not have been issued without a construction management plan. Dover Amendment considerations aside, appellants do not cite any section of the Town's bylaws that requires such a plan, because there is no such requirement. The Building Commissioner has stated that he does not believe that such a requirement is necessary or appropriate in this case, a decision that is clearly within his discretion. Again, this argument provides no basis for this Board to revoke the building permit.

III. Conclusion

Needham Enterprises began the process of seeking a building permit for this project at the beginning of 2021. Under protest, Needham Enterprises was required to submit an application for minor project site plan review, and then, again under protest, was required to re-submit for Major Project Site Plan Review and Special Permit. The Planning Board dragged that process out for one year, and did not issue a decision until March of 2022. That decision was replete with onerous, extremely costly conditions that would have resulted in even further hearings and delays in getting the project started, much less completed, and which the Planning Board did not have the authority to impose.

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This forced Needham Enterprises to appeal the matter to Land Court, where the appeal was vigorously and aggressively defended by outside counsel hired by the Planning Board for that purpose.

After trial, the Court ruled that Needham Enterprises should never have been required to go through that process in the first place, and that, because the proposed use is protected by the Dover Amendment, the entire Planning Board decision was void. The Planning Board did not appeal that decision.

Needham Enterprises has been forced by the Town to go through an egregiously lengthy and costly process that the Land Court has ruled should never have been required. Now, almost three years later, these appellants are attempting to force Needham Enterprises to go through that process again. It is long past time for this process to end, at least as far as the Town is concerned. For the reasons set forth above, Needham Enterprises asks that this Board promptly close the public hearing on this process, and deny this appeal forthwith.

We appreciate the Board's attention to the matters raised in this letter.

Sincerely,

/s/ *Evans Huber*

Evans Huber

Exhibit 1



2015-01

TOWN OF NEEDHAM, MA
RECEIVED TOWN CLERK
NEEDHAM, MA 02492
PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT
2015 MAY 18 PM 3:08

500 Dedham Ave
Needham, MA 02492
781-455-7500

PLANNING

DECISION
April 28, 2015

MAJOR PROJECT SITE PLAN SPECIAL PERMIT

Joint Application of the Congregational Church of Needham and Temple Beth Shalom
1180 Great Plain Avenue
Application No. 2015-01

DECISION of the Planning Board (hereinafter referred to as the "Board") on the joint application of The Congregational Church of Needham, of 1154 Great Plain Avenue, Needham, MA 02492 (hereinafter Church), and Temple Beth Shalom, of 670 Highland Avenue, Needham, MA 02494 (hereinafter Temple), (the Church and Temple hereinafter will be collectively referred to as Applicant unless the context dictates otherwise), for property located at 1180 Great Plain Avenue, Needham, Massachusetts (hereinafter referred to as the property). The property is shown on Needham Assessor's Plan No. 139 as Parcel 1, and is located in the Single Residence B District.

This decision is in response to an application submitted to the Board on March 31, 2015 by the Applicant for: (1) Major Project Site Plan Review under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law); ; and (2) a Special Permit under Section 5.1.1.5 of the By-Law to waive strict adherence with the parking requirements of By-Law Sections 5.1.2 (number of parking spaces) and 5.1.3(a) (parking lot illumination), 5.1.3(f) (parking space size), 5.1.3(i) (width of maneuvering aisle), 5.1.3(k) (landscaped areas), 5.1.3(l) (trees), and 5.1.3(m) (location).

The requested Major Project Site Plan Special Permit would, if granted, permit the joint use of the property and the existing building on it by the Congregational Church of Needham for administrative space, and by Temple Beth Shalom on a temporary basis under a lease for the conduct of a K-12 religious school and a daycare program.

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 Applicant, abutters, and other parties in interest, as required by law, the hearing was called to order by the Chairman, Martin Jacobs, on Tuesday, April 28, 2014 at 7:00 p.m. in the Charles River Room of the Public Services Administration Building, 500 Dedham Avenue, Needham, Massachusetts. Board members Jeanne S. McKnight, Bruce T. Eisenhut, Martin Jacobs, and Elizabeth Grimes were present throughout the proceedings. Mr. Alpert recused himself because he represents Temple Beth Shalom. 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:

Exhibit 1 - Properly executed Application for Site Plan Review for: (1) A Major Project Site Plan Special Permit under Section 7.4 of the Needham By-Law; and (2) A Special Permit under Section 5.1.1.5 of the By-Law to waive strict adherence with the By-Law Sections 5.1.2 (number of parking spaces) and 5.1.3(a) (parking lot illumination), 5.1.3(f) (parking space size), 5.1.3(i) (width of maneuvering aisle), 5.1.3(k) (landscaped areas), 5.1.3(l) (trees), and 5.1.3(m) (location), dated

True Copy

Attest:

Shoshana K. Sater 05/18/2023
Town Clerk of Needham, MA

March 31, 2015.

- Exhibit 2 -** Site Plan entitled "Proposed Site Layout, 1180 Great Plain Avenue", prepared by DiPrete Engineering, dated March 27, 2015, consisting of 1 sheet.
- Exhibit 3 -** Site and Floor Plans entitled "Site Plan, CCON/TBS Renovations", prepared by Colin P. Smith Architecture, Inc., consisting of three sheets: A1.1 titled "Site Plan", issue date March 27, 2015; A1.2 titled "Proposed Basement and First Floor Plans", dated November 18, 2014, issue date March 30, 2015; and EX titled "Existing Conditions, issued and dated May 20, 2014".
- Exhibit 4 -** Lighting Specifications entitled "Largent MicroCore – SLVT", by Architectural Area Lighting, Copyright 2014, Rev. 2.15, consisting of three pages.
- Exhibit 5 -** Lighting Specifications entitled "ASW1 LED, LED Wall Luminaire", by Lithonia Lighting, dated 2012-2014, consisting of two pages.
- Exhibit 6 -** A letter from David Dirks, Moderator, Church Board, The Congregational Church of Needham, dated March 27, 2015.
- Exhibit 7 -** A letter from Daniel Barkowitz, Executive Director, Temple Beth Shalom, dated March 30, 2015, with two charts attached: "Parking Needs for 1180 Great Plain" and "Drop Off Needs for 1180 Great Plain".
- Exhibit 8 -** Two letters from Robert T. Smart, Jr., Esq. both dated March 30, 2015.
- Exhibit 9 -** Letter from Robert T. Smart, Jr., Esq. dated April 8, 2015.
- Exhibit 10 -** A letter from Jonathon Smith, AIA, Project Manager for The Congregational Church of Needham, dated April 23, 2015.
- Exhibit 11 -** A Traffic and Parking Report, entitled "Transportation Impact Assessment, Proposed Religious Use, Needham, MA", by Vanasse & Associates, Inc., dated March, 2015.
- Exhibit 12 -** A Letter from Robert T. Smart, Jr., Esq., dated April 28, 2015, enclosing copies of off-site driveway parking agreements from 6 Temple Beth Shalom member families, a chart prepared by Rachel Happel, Director of K-12 Learning at Temple Beth Shalom, regarding time and walking distances, and letters agreeing to walk from Temple members' driveways to and from work, from 16 Temple Beth Shalom K-12 and child care center employees.
- Exhibit 13 -** Interdepartmental Communication (IDC) to the Board from Tara Gurge, Health Department, dated March 20, 2015 and May 6, 2015; IDC to the Board from Chief Dennis Condon, Fire Department, dated April 23, 2015; IDC to the Board from Lt. John H. Kraemer, Police Department, dated April 22, 2015; and IDC to the Board from Thomas Ryder, Assistant Town Engineer, dated April 28, 2015.
- Exhibit 14 -** A letter from Donald H. Libbey and Sarah C. Libbey, both of 20 Linden Street, dated April 24, 2015.

Exhibit 15 - A letter from Jon and Christine Hickey, both of 21 Linden Street, dated April 27, 2015.

Exhibit 16 - A letter from Susan Tanner and E. Stephen Tanner, both of 1186 Great Plain Avenue, dated April 28, 2015.

Submitted following the close of the public hearing were the following exhibits:

Exhibit 17 - A Letter from Robert T. Smart, Jr., Esq., dated May 4, 2015, enclosing a May 4, 2015 Chart, titled "Temple Beth Shalom, Children's Center and K-12 Program Details".

Exhibit 18 - A Letter from Robert T. Smart, Jr., Esq., dated May 5, 2015, enclosing revised off-site driveway parking agreements from 6 Temple Beth Shalom member families, which allow Temple employees working at 1180 Great Plain Avenue to park in their driveways.

Exhibit 19 - A Letter from Robert T. Smart, Jr., Esq., dated May 15, 2015, enclosing copies of revised agreements from 13 Temple staffers, agreeing to park in Temple members' driveways year round, for up to 24 months.

Exhibit 20 - A Letter from Robert T. Smart, Jr., Esq., dated May 15, 2015, enclosing a revised chart titled "Temple Beth Shalom, Children's Center and K-12 Program Details, May 15, 2015."

Exhibit 21 - A Letter from Robert T. Smart, Jr., Esq., dated May 18, 2015, clarifying a maximum of 74 preschoolers, and a maximum of 70 K-12 students will use the space with a maximum number of preschoolers and K-12 students on site at any one time of 74.

Exhibits 1-5, 7-12, and 17-21, 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 B District at 1180 Great Plain Avenue, Massachusetts, and is shown on Needham Assessor's Plan No. 139 as Parcel 1 containing 35,286 square feet.

1.2 The subject property located at 1180 Great Plain Avenue is presently occupied by a one story building with a small basement, with total square footage of 13,616 square feet. The Church currently uses, and will continue to use, 4,894 square feet as administrative space, and 486 square feet as storage space. The remaining building square footage will be used as follows: 6,799 square feet by the Temple as educational space, 940 square feet by the Temple as storage space, and 497 square feet by the Temple as mechanical space. The Temple's use will be pursuant to a lease from the Church for a period of 14 months, running from July 1, 2015 to August 31, 2016, with the Temple holding an option to use the space for an additional 4 months. The site is currently served by 11 parking spaces, one of which is handicapped accessible. Based on the usage breakdown set forth in

Robert T. Smart, Jr.'s letter dated March 30, 2015 and on Sheet A1.2 of the plans prepared by Colin Smith Architects, Inc., both filed with the application, 55 parking spaces are required to satisfy the By-Law's requirements for the proposed uses.

- 1.3 No changes are proposed to the building footprint or parking lot. Proposed improvements, as shown on the Site Plan prepared by DiPrete Engineering and the Site and Floor Plans prepared by Colin P. Smith Architecture, Inc. include: signage, fenced in dumpster on an asphalt pad, concrete walks, landings, steps, and curbing, railing, driveway striping, bollards, light pole, wall sconces, relocated propane tank and enclosure, and an asphalt path. Other planned improvements are a fence along part of the westerly property boundary dividing the property from the Tanner family property, traffic channeling devices, and recharge infiltration chambers as requested by the Engineering Division.
- 1.4 Pursuant to By-Law Section 5.1.1.5, Applicant has requested a special permit waiving 44 parking spaces from the number required under Section 5.1.2. In support of this request, Applicant has provided a March 30, 2015 letter from Temple Executive Director Daniel Barkowitz, with Parking Needs and Drop-Off needs charts, and May 4, 2015 and May 15, 2015 letters from Robert T. Smart, Jr., Esq., with charts titled "Temple Beth Shalom, Children's Center and K-12 Program Details", which demonstrate that the actual peak parking demand for the property is 23 spaces - 18 for Temple staff, and 5 for short-term parkers (parents dropping off or picking up their children, and visitors). Applicant has also provided an April 28, 2015 letter from Attorney Robert T. Smart, Jr., Esq., with copies of driveway parking agreements for the use of 13 off-site parking spaces from Temple members, Temple staff letters agreeing to park off-site in Temple members' driveways, and a chart prepared by Rachel Happel, its Director of K-12 learning, showing time and walking distances, a letter from Robert T. Smart, Jr., Esq. dated May 5, 2015, enclosing revised driveway parking agreements, and a letter from Robert T. Smart, Jr., Esq. dated May 15, 2015 (Exhibit 6), enclosing revised Temple staff letters agreeing to park off-site in Temple members' driveways. There are 11 parking spaces on site, one of which is handicapped accessible. Of the 10 remaining spaces, Applicant proposes to use 8 for staff, and 2 for short-term parkers. As described in David Dirks' March 27, 2015 letter, the Church has agreed to the Temple's use of 3 short-term parking spaces on the Church property. In summary, the Temple has demonstrated that it has 1 handicapped space on site, 10 standard spaces on site, 3 short term standard spaces on the Church lot, and 13 off-site spaces in Temple members' driveways, which meets the 23 space parking demand generated by the proposed uses at the property.
- 1.5 Pursuant to By-Law Section 5.1.1.5, the Applicant has requested a waiver of certain parking plan and design requirements: Section 5.1.3(a) (parking lot illumination), 5.1.3(f) (parking space size), 5.1.3(i) (width of maneuvering aisle), 5.1.3(k) (landscaped areas), and 5.1.3(l) (trees). The waiver is justified, because no changes to the parking lot on site are proposed, and the parking lot is an existing condition, dating back to the Board of Appeals decision approving construction of the building in 1966, prior to the adoption of parking plan and design requirements in Needham.
- 1.6 Pursuant to By-Law Section 5.1.1.5, the Applicant has requested a waiver of the Section 5.1.3(g) requirement that all off-site parking spaces be located within 500 feet of the building entrance. The waiver is justified, because what's proposed is a temporary use, the distances to be walked, for 11 of the 13 Temple member driveway spaces, are .5 miles or less, many employees walk considerably longer distances to and from work year-round, and it would be unreasonably costly to require the Temple, a religious

institution protected by the Dover Amendment, to rent off-site spaces and pay a shuttle service to drive employees to and from work during the lease period.

- 1.7 The Plan, the Traffic and Parking Report, and the other documents submitted in connection with the application, support Major Project Site Plan approval under By-Law Section 7.4.
- 1.8 The Church employees will park on the Church lot. K-12 students who attend the 6:00 p.m. to 8:00 p.m. classes on Tuesdays and Thursdays will be directed to park in the Town's Lincoln Street lot.
- 1.9 The Temple's preschool/day care program will operate Monday through Friday, between the hours of 7:45 a.m. and 6:00 p.m., with a maximum of 74 preschool children on the property at any one time. The Temple's K-12 religious education program will operate Monday through Thursday, between the hours of 1:00 p.m. and 6:00 p.m. on Mondays, 2:30 p.m. to 8:00 p.m. on Tuesdays and Thursdays, and 2:30 p.m. to 6:00 p.m. on Wednesdays. The maximum number of children from both programs on the property at any one time will be 74. The maximum number of Temple staff on site at any one time will be 18. The Temple has provided information detailing the number of children and cars arriving at and leaving the site, in the form of a chart titled Temple Beth Shalom, Children's Center and K-12 Program Details, May 4, 2015, and a chart titled Temple Beth Shalom, Children's Center and K-12 Program Details, May 15, 2015.
- 1.10 Drop-off and pick-up times for all children will be staggered, so as to reduce queueing. Giles Ham, of Vanasse & Associates, Inc., stated that there is room in the driveway, between the entrance at Walnut Street to the drop-off point on the westerly side of the building, for at least 15 cars.
- 1.11 Parents of the preschool and K-12 children will be directed to use the drop-off and pick-up arrangements being provided by the Temple, rather than parking and walking their children into and out of the building. Children being dropped off and picked up will be escorted into the building, and from the building into the parents' cars, by Temple staff, to assure their safety.
- 1.12 Adjoining premises will be protected against seriously detrimental uses on the site by the handling of surface water drainage as requested by the Town's Engineering Division sound and site buffers, and preservation of views, light and air. The project will involve the redevelopment of existing interior space within the existing building, to accommodate the educational and day care use proposed by the Temple. No changes to the footprint of the building are proposed.
- 1.13 The proposed project will ensure the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets. The rear parking lot will have 8 spaces for Temple staff, and 2 spaces for short-term parkers. The circular drive at the front of the building will be used by the Church for short-term parking by visitors to the Church administrative offices. A sign will be installed at the Walnut Street entrance stating "Private Entry for Temple Beth Shalom, No Pass Thru". A double-sided sign will be installed at the northwesterly corner of the property, and will state "Right Turn Only" on one side, and "Do Not Enter" on the other. Traffic cones will be placed at the northwest corner of the property, as proposed by the Police Department, so as to prevent conflicts between the cars exiting the property onto Great Plain Avenue and the very limited number of cars entering the property to park on a short-term basis near the front entry. A

"No Left Turn" sign will be placed at the juncture of the easterly site driveway and Great Plain Avenue.

- 1.14 The proposed project will provide an adequate arrangement of parking and loading spaces in relation to the proposed use of the premises. The parking area is adequate to accommodate the parking and loading requirements of the present tenants and proposed use.
- 1.15 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.
- 1.16 The relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area are in compliance with the requirements of the By-Law.
- 1.17 The proposed project will not have any adverse impacts on the Town's resources, including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets. The proposed use will not result in an increased demand or adverse impact on the Town's resources.
- 1.18 Under Section 7.4 of the By-Law, a Major Project Site Plan Special Permit may be granted within the Single Residence B District provided the Board finds that the proposed use of the property by the Applicant meets the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions the Board finds the proposed Plan, as 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.
- 1.19 Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.2 of the By-Law may be granted provided that the Board finds that owing to special circumstances, the particular use, structure or lot does not warrant the number of parking spaces required under that Section. On the basis of the above findings and conclusions, the Board finds that there are special circumstances for a waiver of the required number of parking spaces, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town and neighborhood.
- 1.20 Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.3 of the By-Law (Off-Street Parking Requirements) may be granted provided the Board finds that owing to special circumstances, the particular use, structure or lot does not warrant the application of certain design requirements. On the basis of the above findings and conclusions, the Board finds that there are special circumstances for a waiver of the design requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town and neighborhood.

THEREFORE, the Board voted 4-0 to GRANT: (1) the requested Major Project Site Plan Special Permit under Section 7.4 of the Needham By-Law; and (2) the requested Special Permit under Section 5.1.1.5 of the By-Law to waive strict adherence with the off-street parking requirements of Section 5.1.2, and with the requirements of Section 5.1.3, Subsections 5.1.3(a) (parking lot

illumination), 5.1.3(f) (parking space size), 5.1.3(i) (width of maneuvering aisle), 5.1.3(k) (landscaped areas), 5.1.3(l) (trees), and 5.1.3(m) (location).

PLAN MODIFICATIONS

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

2.0 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 Applicant.

- a. The plan shall be revised to show a minimum of 2 precast recharge infiltration chambers (or equal) for the northwest corner of the building and 2-units for the northeast corner of the building.

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 Applicant.

- a. The plan shall be revised to show a fence six feet in height to be located along the boundary of the Tanner property, with a detail indicating height and type.
- b. The Plan shall be revised to show the placement of traffic cones near the northwest corner of the property, as proposed by the Police Department, so as to prevent conflicts between the cars exiting the property onto Great Plain Avenue and those cars entering the property from Great Plain Avenue.
- c. The Plan shall be revised to show a "No Left Turn" at the juncture of the easterly site driveway and Great Plain Avenue.
- d. The Plan shall be revised to provide signage for the 2 short-term Temple visitor parking spaces and for the 8 temple staff parking spaces indicating their restricted purpose.

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 3.29 hereof.

- 3.1 The Board approves the Plan submitted by the Applicant and authorizes the Temple's use of the property for a period of up to 24 months, running from August 31, 2015 to August 30, 2017 for the conduct of a K-12 religious school and a daycare program at the premises.
- 3.2 The operation of the proposed K-12 religious school and daycare program at 1180 Great Plain Avenue, Needham, Massachusetts, shall be as described in Sections 1.2, 1.4, 1.8, 1.9, 1.10, 1.11 and 1.13 of this decision and as further described under the support materials provided under Exhibits 6, 7, 8, 11, 12, 17 and 18 of this decision.
- 3.3 The improvements described in Section 1.3 hereof shall be located and constructed in accordance with the Plan. Any changes, revisions or modifications to the Plan shall require approval by the Board.
- 3.4 The proposed administrative, storage and educational uses shall be located in the building substantially as shown on the Plan. Changes, revisions or modifications to the Plan, other than to the floor plan as set forth in Section 3.5 hereof, shall require approval by the Board.
- 3.5 The floor plans may be modified without further review by the Board, provided that the building footprint and the square footage of the building dedicated to Temple and Church activities is not increased, the overall use allocation for the Church is maintained, the maximum number of children participating in classes at any given time is no greater than 74 and the maximum number of Temple staff present at any given time is no greater than 18.
- 3.6 A total of eleven (11) 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 spaces shall comply with the requirements of Section 5.1.2 and 5.1.3 of the By-Law, as shown on the Plan, except as otherwise waived herein.
- 3.7 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 and 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.
- 3.8 The preschool and K-12 programs may be open for business during the days and hours described in Section 1.9 hereof.
- 3.9 The maximum number of children participating in classes or functions at any given time shall not exceed 74. The maximum number of Temple staff persons present at any one time shall not exceed 18.
- 3.10 In the rear lot, 8 parking spaces shall be reserved for Temple staff, and 2 parking spaces shall be reserved for short-term Temple parkers. The circular drive at the front of the

property shall only be used by short-term Church visitors, and there shall be no long-term parking there. Church employees shall park on the Church lot.

- 3.11 The Church shall continue to make 3 short-term parking spaces on the Church lot available for Temple use during the lease period.
- 3.12 Drop-off and pick-up for all children, and staff assistance with that activity, shall occur as described in Sections 1.10 and 1.11 hereof and as further detailed in Exhibit 17.
- 3.13 Signage and traffic cones shall be installed as provided in Section 1.13 hereof and as shown on the Plan.
- 3.14 If any of the driveway parking agreements are revoked or expire because the Temple members providing the driveway parking move, or otherwise become unavailable, the Temple shall obtain the equivalent number of subsequent off-street parking spaces within .5 miles of the locus and shall provide documentation of same to the Director of Planning and Community Development.
- 3.15 The Temple shall encourage car-pooling to the property by staff and by parents driving their children to the K-12 and preschool programs.
- 3.16 The Church shall obtain the necessary snow removal services to keep the parking lot, handicapped space, driveway, and front 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.
- 3.17 The Applicant shall install the fence, as shown on the Plan, as modified by this decision, along the Tanner property prior to issuance of a certificate of occupancy to the Temple.
- 3.18 All lights on the site shall be shielded and adjusted during the evening hours to minimize annoyance to the neighbors. The parking lot and exterior building lighting shall be reduced during the night with that reduction remaining in effect until the following morning. On Monday through Sunday sometime between the hours of 9:00 p.m. and 10:00 p.m. the parking lot lights shall be shut off with only the lights off the building shining down to provide basic security. The building lights shall be set at a low light level to prevent any annoyance to the neighbors.
- 3.19 All deliveries and trash dumpster pick up shall occur only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, not at all on Sundays and holidays. The 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.
- 3.20 If the Applicant is notified by citizens or by the Planning Board of frequent or chronic backup of vehicles onto Walnut Street, 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.
- 3.21 This special permit to operate a K-12 religious school and a daycare program is issued to Temple Beth Shalom, 670 Highland Avenue, Needham, MA, and may not be transferred, set over or assigned by them to any other person or entity without the prior written

approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient.

3.22 No building permit shall be issued for the project until:

- a. The Applicant shall submit seven copies of the final Site Plan (Exhibit 2) as approved by the Board.
- b. The final plans shall be in conformity with those previously approved by the Board, which approval has been incorporated herein by reference, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
- c. The Applicant shall have recorded with the Norfolk Registry of Deeds a certified copy of this Approval with the appropriate reference to the book and page number of the recording of the Applicant's title deed or notice endorsed thereon.

3.23 The Temple shall not occupy the building space which it is leasing from the Church until:

- a. There shall be filed with the Board and Building Inspector a Certificate of Compliance signed by a registered architect upon completion of construction.
- b. There shall be filed, with the Building Inspector, a statement by the Board approving the Certificate of Compliance, in accordance with this Decision and the approved Plan.
- c. An as-built plan site plan supplied by the surveyor of record certifying that the project was built according to the approved documents has been submitted to the Board and Department of Public Works.
- d. An as-built plan floor plan supplied by the architect of record certifying that the project was built according to the approved documents, with the caveat that Section 3.5 of this Decision allows the floor plans to be modified without further review by the Board, provided that the building footprint and square footage are not increased, the maximum number of children participating in classes at any given time is no greater than 74 and the maximum number of Temple staff present at any given time is no greater than 18 has been submitted to the Board.
- e. That there shall be filed, with the Building Inspector, a statement by the Board approving the as-built site plan and floor plans for the proposed improvements, in accordance with this Decision and the approved Plan.
- f. The Applicant has installed the fence required under Section 3.18 of this decision.

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

3.25 The portion of the building that is authorized for construction by this Approval shall not be occupied or used by the Applicant and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of

Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Inspector.

- 3.26 All solid waste shall be removed from the site by private contractor.
- 3.27 The Applicant, by accepting this Approval, warrants that the Applicant has included all relevant documentation, reports, and information available to the Applicant in the application submitted, and that this information is true and valid to the best of the Applicant's knowledge.
- 3.28 Violation of any of the conditions of this Decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this Decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this Decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Applicant by this permit is limited as follows:
- 4.1 This permit applies only to the site improvements, which are the subject of this petition. All construction to be conducted on site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan.
- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this decision and to take other action necessary to determine and ensure compliance with the decision.
- 4.3 This decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction should not be assumed or implied by this decision.
- 4.5 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.
- 4.6 This Site Plan Special Permit shall lapse 24 months after this Decision has been recorded at the Norfolk Registry of Deeds 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 the lapse date. 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.

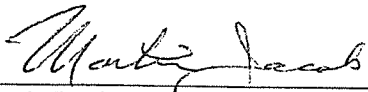
- 4.7 This approval shall be recorded in the Norfolk District Registry of Deeds. This Special Permit shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry of Deeds and until the Applicant has delivered a certified copy of the recorded document to the Board.

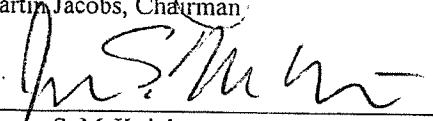
The provisions of this Major Site Plan Special Permit amendment shall be binding upon every owner or owners of the lots and the executors, administrator, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on the Plan, as modified by this Approval, 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 the General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this Approval with the Needham Town Clerk.

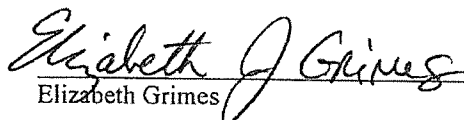
WITNESS our hands this 6 day of May, 2015.

NEEDHAM PLANNING BOARD


Martin Jacobs, Chairman


Jeanne S. McKnight


Bruce T. Eisenhut

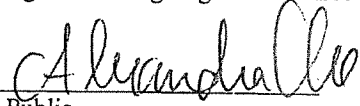

Elizabeth Grimes

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

May 6 2015

On this 6 day of May, 2015, before me, the undersigned notary public, personally appeared Martin Jacobs, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was personally known, 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: March 18, 2022

To Whom It May Concern: This is to certify that the 20-day appeal period on the Approval of the Project proposed jointly by The Congregational Church of Needham, 1154 Great Plain Avenue, Needham, MA 02492, and Temple Beth Shalom, 670 Highland Avenue, Needham, MA 02494, has passed, and there have been no appeals made to this office. (All Judicial Appeals taken from this Decision have been dismissed.)

Name:
Title: Town Clerk

Copies sent to:

Applicant
Town Clerk
Building Inspector
Director, DPW
Board of Health
Conservation Commission

Engineering Department
Fire Department
Police Department
Board of Selectmen
Parties-In-Interest
Design Review Board

Exhibit 2



Town of Needham
Building Department
500 Dedham Ave.
Needham, MA 02492

Tel. 781-455-7550 x 308

December 7, 2021

Town of Needham
Planning Board
500 Dedham Ave.
Needham, MA. 02492

Re: 1688 Central Ave. / Accessory Use

Dear Planning Board Members,

I have been asked to comment on the Special Permit application for 1688 Central Ave. specifically the use of the existing barn on the property. Section **1.3 Definitions** of the Needham Zoning By-Law has the following definitions:

Accessory Building – a building devoted exclusively to a use subordinate to and customarily incidental to the principal use.

Accessory Use – a use subordinate to and customarily incidental to the principal use.

The following is a section from Chapter 40A Section 3 that states:

No Zoning ordinance or bylaw in any city or town shall prohibit, or require a Special Permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

Based on the definitions in the By-Law and the section from 40A I believe that the use of the barn if used specifically by the child care facility would be a permitted use and not a violation of Zoning.

Any questions please contact my office.

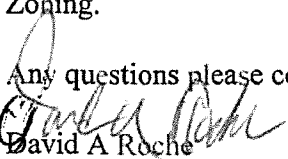

David A Roche
Building Commissioner
Town of Needham

Exhibit 3

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

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

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

September 30, 2021

Via Electronic Mail
Members of the
Needham Planning Board

And

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

Re: 1688 Central Avenue, Needham

Dear Planning Board Members and Ms. Newman:

I am writing on behalf of Needham Enterprises LLC, to address certain issues that have been raised at the most recent hearing on this matter. We recognize that the process has, at times, become contentious and has raised a number of questions about the impact of M.G.L. c. 40A, Section 3 (the so-called "Dover Amendment") on the Town's zoning procedures and Bylaws that might otherwise be applicable to this project. We appreciate the Board's careful attention to these matters, but we feel it is important to keep in mind, throughout the remainder of this hearing process, that this project falls squarely within the protections afforded to child care facilities by the Dover Amendment, which, as this Board has previously acknowledged, limits this Board's ability to impose conditions on the project.

In particular, we would like to draw the Board's attention to the following:

1. Allegations of Violations of the State Ethics Law.

There are obviously strongly differing views on (1) whether there have been violations of M.G. L. c. 268A in connection with this application; and, (2) if any such violations are found to exist, what the appropriate consequences, if any, should be. It is not the purpose of this letter to attempt to persuade the Planning Board of the merits of the Applicant's position on those two issues.

Needham Planning Board
September 30, 2021
Page 2

What is abundantly clear, however, is that it is not within the jurisdiction or expertise of the Planning Board to consider, much less resolve, these alleged violations of M.G.L. c. 268A. As stated on the Planning Board's page on the Town website, "the Board is legally mandated to carry out certain provisions of the Subdivision Control Law (M.G.L., c. 41, s. 81K-81GG) and of the Zoning Act (M.G.L., c. 40A)." Nothing in either of those statutes even discusses potential violations of M.G.L. c. 268A, much less suggests that the Planning Board has the authority and jurisdiction to consider and resolve such issues.

On the contrary, the statute establishing the State Ethics Commission, M.G.L. c. 268B, specifically states in Section 3(i) that the State Ethics Commission "shall . . . act as the primary civil enforcement agency for violations of all sections of chapter two hundred and sixty-eight A and of this chapter." Indeed, even the Needham residents actively pursuing this issue have, citing the Board, Commission and Committee Member Handbook for the Town of Needham, argued to the *Select Board* that it is the *Select Board* that has the authority and responsibility to address this issue ("The Select Board is an overseeing entity for the Town of Needham. It has general supervision *over all matters that are not specifically delegated by law or vote to some other officer or board.*" (emphasis added)). Whatever the merits of that argument may be as applied to the facts of this case (and the Select Board has taken no action in response to the assertion that it has the authority and responsibility to address these alleged violations), this argument by the opponents of the application is a clear acknowledgement that the responsibility for addressing this issue has *not* been "*specifically delegated by law or vote to some other officer or board,*" i.e., the Planning Board.

It is not surprising, then, that by email dated July 16, 2021, Town Counsel, attorney Christopher Heep, advised this Board that "as previously discussed, I don't believe that Mrs. Abruzese's arguments relative to the *State Ethics Law* provide a basis for the Board to stop, or postpone, its hearing on a zoning application." And while the Board has nominally allowed the hearing to move forward on the merits, at the last hearing an inordinate amount of time was spent listening to and discussing these allegations, and then concluding that the Board needed to hire outside counsel to further advise it on these issues.

It is unfortunate that by the time of the last hearing, the Board did not have the benefit of the written opinion of attorney Heep issued pursuant to M.G.L. c. 268A section 22, to Mr. Borrelli (on the same date as the hearing) to the effect that Mr. Borrelli's ongoing connection to the Applicant, Needham Enterprises LLC, did not mean that Mr. Borrelli was "acting as an agent of Needham Enterprises LLC," and that, based on the facts recited in that letter, by continuing to pursue this application, Mr. Borrelli is "not acting in violation of M.G.L. c. 268A, section 17(c)." Perhaps having that written opinion would have expedited discussion of this issue at the last hearing.

In any event, for the reasons stated above, this is not a topic that the Board should be spending any additional time on, particularly where the hearing on this application has been rescheduled/postponed, and continued multiple times already.

Needham Planning Board
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Furthermore, as the Board is well aware, certain opponents of this project continue to insist that, while it may not be this Board's responsibility to address the merits of these allegations, this Board should nevertheless suspend this hearing while it awaits resolution of these allegations before the State Ethics Commission, and/or further opinions from outside counsel. The applicant wishes to clearly state its position on this point, that any further delay in the hearing(s) as a result of, or for reasons related to, this issue, including but not limited to spending any meaningful time discussing it during the remainder of the hearing; continuances or delays to await the results of the opinion of outside counsel; or suspending the hearing to await the outcome of action by the State Ethics Commission, will constitute an unreasonable delay in the completion of the hearing, raising the possibility of constructive grant of the Special Permit pursuant to M.G.L. c. 40A, section 9. See, e.g., *Merrimac Plan. Bd. v. Moran*, 2009 WL 191840 (Mass. Land Ct. Jan. 28, 2009), in which the Land Court affirmed the decision of the local Zoning Board of Appeals, which had ruled that the failure of the local Planning Board to act within the time required resulted in constructive approval of the application for Site Plan Review. In doing so, the Court specifically rejected the argument that the necessity of seeking an opinion of counsel on an issue raised by the applicant justified an extension of the time within which the Planning Board had to act:

It is clear that the application was constructively approved. Accordingly, I rule that the decision of the Merrimac Zoning Board of Appeals is affirmed. Plaintiffs argue that the circumstances surrounding the Planning Board's review of the application merit an extension of time set for review. Specifically, plaintiffs argue that applicant's consulting engineer informed the Planning Board that the town's designated consulting engineer had a conflict of interest. The Planning Board, therefore, had to seek a new engineering firm for consultation. Plaintiffs also argue that because Defendant L.T. was questioning whether a special permit was required, the Town sought legal counsel. These matters not having been resolved in time for a public hearing scheduled for September 26, 2006, the Planning Board continued the hearing. The Court is not persuaded by these excuses for inaction. The timing requirements of town bylaws for municipal action on review applications are strict and stringently adhered to by the Courts.

Merrimac Plan. Bd., supra, 2009 WL 191840, at 6. See also *Pheasant Ridge Assocs. Ltd. P'ship v. Town of Burlington*, 399 Mass. 771, 783 (1987)(the period within which the Board must act "runs from the date of the last session at which interested persons presented information and argument. [citations omitted] The date may be even earlier if a board of appeals has not conducted the public hearing expeditiously, scheduling adjourned sessions at reasonable intervals in the circumstances.")

Accordingly, we urge the Board to forego any further discussion of the alleged ethical violations, and to conduct and complete the remainder of the hearing "expeditiously," focusing only on the remaining issues that relate to the project itself.

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2. The Existing Barn.

Several arguments have recently been raised to support the idea that the applicant should be required to take down the existing barn and move the proposed new building to the location where the barn used to be. First, it has been argued that Section 3.2.1 of the Town Bylaw prohibits more than one non-residential structure on a lot in this zoning district, and that the barn, even if used solely for purposes relating to the child care facility, is prohibited by this portion of the Bylaw.¹ This argument is incorrect, and was explicitly rejected by the Appeals Court in *Petrucci v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. 818 (1998). In that case, the property had an existing residence and a separate barn that the applicant sought to convert to a child care facility. The application was rejected on the grounds, among others, that the town Bylaw prohibited more than one primary use on a lot. The Appeals Court stated: “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. Similarly, in this case the portion of the Needham Bylaw that prohibits more than one non-residential structure on a lot is overridden by M.G.L. c. 40A, section 3, which states:

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. (emphasis added).

In sum, this Board cannot prohibit the Applicant from using the barn for purposes relating to the child care facility, on the grounds that Section 3.2.1 of the Town Bylaw prohibits more than one non-residential structure or use on a lot in the SRA district.

Second, it has been suggested that the Board has the authority to require the applicant to demolish the barn because (a) demolishing the barn will allow the main building to be moved further back from Central Ave; and/or (b) the barn is “too big” to be used as a storage facility. Again, this is incorrect. The statutory language quoted above clearly prevents the Town from “prohibit[ing], or requir[ing] a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility.” Particularly given that the statute repeatedly refers to the use of *structures* (plural), it is hard to think of a more clear example of violating that statutory prohibition than if the Town were to say “we will give you a special permit to operate a child care facility in structure A, but only if you demolish structure B and locate structure A where

¹ As a preliminary matter, before even considering the argument that follows this footnote, this Board would have to conclude that the prohibition against “more than one non-residential structure or use on a lot” found in Section 3.2.1 applies to accessory structures. In this context, the barn would meet the definition of an accessory structure, and the proponents of this argument would need to demonstrate that the Bylaw has been interpreted to prohibit non-residential accessory structures in this zoning district.

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B was previously located” (where structure B is also intended to be use for accessory purposes relating to operating a child care facility).

In addition, with respect to the barn, it is worth noting that it has been argued to this Board that because the main building will be new construction, the Board has the authority to require the Applicant to apply for a Special Permit, notwithstanding the language of M.G.L. c. 40A, Section 3 quoted above. This argument clearly does not apply to the use of *existing* structures for purposes relating to a child care facility, meaning that with respect to the barn, the Board does not even have the authority to require a Special Permit in order for the Applicant (or the tenant) to use the barn for purposes relating to the child care facility, much less require the Applicant to demolish it.

Nor is the view that the barn is “too big” to be used as a storage facility a valid basis to require the Applicant to tear it down. *Rogers v. Town of Norfolk*, 432 Mass. 374 (2000) is instructive on this point. In *Rogers*, the applicant proposed to use a 3200 s.f. home as a child care facility, even though the town had a Bylaw limiting child care facilities to 2500 s.f., The SJC held that while the 2500 s.f. limitation might be “facially valid,” it was invalid as applied to that case, because there was no practical way to use the house as a child care facility if the 2500 s.f. limit on child care facilities were to be enforced. The *Rogers* Court even noted that it would be possible to make the structure comply with the 2500 s.f. limit set forth in that town’s bylaw, by demolishing certain portions of the building, but that doing so would weaken the structure, and serve no valid municipal interest. Accordingly, the applicant in that case was not required to comply with the town’s “facially valid” limit of 2500 s.f. for child care facilities.

In this case, Needham does not even have a Bylaw limitation on the size of child care facilities (much less for accessory structures used for child care facilities) but even if such a limitation existed, and the barn exceeded it, there is no practical way to make the barn smaller without destroying it. As applied to the facts of this case, then, *Rogers* stands for the proposition that this Board cannot require the demolition of the barn on the grounds that it is “too big” for storage for the proposed facility.

Furthermore, “storage” is only one of the uses relating to operating a child care facility to which the barn can be put. The roof provides a good platform for the installation of solar panels. Equipment used to maintain the property could also be stored there. In the future, other uses relating to operating the child care facility can be imagined. As long as the barn is used solely for purposes relating to operating the child care facility, it is protected by M.G.L. c. 40A, section 3, and this Board cannot require the applicant to take it down.

3. Moving Forward With This Application

This process began with the Applicant’s initial request for Minor Project Site Plan Review in March of this year. Since that time, the applicant has made multiple revisions to the project in an effort to address concerns that have been raised by this Board, by the Design Review Board, by neighbors, and by the peer reviewer hired by the town, whose services the

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applicant has agreed to pay for, even though there is clear authority for the proposition that that traffic and vehicular access are not among the matters as to which this Board may issue “reasonable regulations.” See *Primrose Sch. Franchising Co. v. Town of Natick*, 2015 WL 3477072, at 9 (Mass. Land Ct. May 29, 2015) (“Based upon the clear language of G.L. c. 40A, § 3, ¶ 3, this court, in Land Court Decision 1, noted that imposing reasonable frontage and lot size requirements was within the authority of the ZBA. **However, G.L. c. 40A, § 3, ¶ 3 is silent as to issues relating to site access and vehicular traffic.** Moreover, the statute is clear that such regulations may apply only to the “land and structures” to be used in connection with the Dover Amendment facility. *Id.* Thus, Defendants’ broad suggestion that this court “endorsed the imposition of access related conditions under the aegis of the Dover Amendment” is mistaken” (emphasis added)).

The revisions that the applicant has made to the initial proposal, in order to address the concerns raised by various interested parties, include:

1. Increasing the setback from Central Ave twice, from 40 feet to 50 feet, and then to 64 feet;
2. Making the landscaping plan significantly more robust;
3. Increasing the number of parking spaces from 24 to 30;
4. Adding a new parking area behind the barn;
5. Redesigning and widening the access drive to include a drop-off and pick-up lane;
6. Redesigning, while retaining, the pick-up and drop-off area adjacent to the main entrance to the building, to maximize the smooth flow of traffic into and out of the site;
7. Changing the design of the side of the building facing Central Ave to include multiple gabled and projecting front surfaces and bayed windows, in order to break up the overall façade and provide more architectural interest; and
8. Agreeing to accommodate other changes suggested by the Design Review Board.

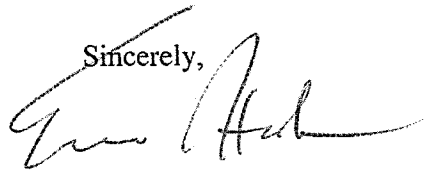
As noted above, the applicant has also agreed to pay for the peer review process, and has spent considerable time, effort, and money to address the concerns and issues raised by the town’s peer reviewer, John Diaz of GPI. The applicant has also agreed to a cap on the number of children at the facility (115) even though (1) under applicable Massachusetts regulations the size of the proposed building would allow a higher number of children at this facility, and (2) it is our position that this Board does not have the authority to impose any limit on the number of children at the facility. See *Primrose Sch. Franchising Co. v. Town of Natick*, *supra* (“While local zoning authorities may apply limited restrictions to the “land and structures” used in connection with a Dover Amendment facility, authority to regulate the actual use of said facility is vested in the Massachusetts Department of Early Education Care (“MassEEC”). See G.L. c. 15D, §§ 2(c), 6(a). . . . 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.”).

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In sum, we believe that throughout this process the Applicant has acted in good faith in an effort to address neighborhood and Board concerns, and, as part of addressing those concerns, has agreed to things that it is not legally obligated to agree to, and which this Board does not, in light of M.G.L. c. 40A, section 3, have the authority to require. These changes and accommodations have significantly lengthened this process, which is now in its seventh month. In light of the foregoing points, we ask that the Board make every effort to conduct the upcoming hearing as expeditiously as possible, and, if possible, complete the public hearing portion of this process at the upcoming meeting on October 5.

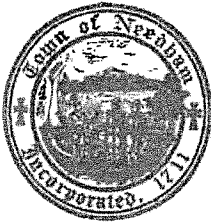
I appreciate your attention to the points raised in this letter.

Sincerely,

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

Evans Huber

Exhibit 4



Needham Public Health Division

178 Rosemary Street, Needham, MA 02494
www.needhamma.gov/health

781-455-7940 ext. 504
781-455-7922(fax)



Memo

To: Joseph Prondak, Building Department

From: Tara Gurge, Public Health Division 

Date: 9/14/23

Re: #1688 Central Avenue – Approval of Demolition

The Public Health Division received an application for the proposed demolition of the structures located at the property address noted above.

The Public Health Division has no objections to release of the building permit for the proposed demolition at 1688 Central Avenue subject to the following conditions:

1. As a reminder, per 310 CMR 15.004 (3), a new septic system may not be constructed if it is feasible to connect the facility to sanitary sewer. It had been previously determined that this is likely feasible and if this continues to stand true the new facility must tie into sanitary sewer.
2. As we discussed during our meeting held on Sept. 14, 2023, per our Needham Board of Health and guidance received from town counsel, to confirm the final grades our office will review and keep a final copy of the certified graded as-built plan of the site as part of our records for this property.

Please contact me if you have any additional questions on these requirements. You can reach me at (781) 455-7940, Ext. 211.

cc: Needham Enterprises, LLC, builder

Exhibit 5

NOTICE OF DOCKET ENTRY	DOCKET NUMBER 22 MISC 000158	Commonwealth of Massachusetts Land Court Department of the Trial Court 
CASE NAME Needham Enterprises, LLC v. Needham Planning Board , et al. Plaintiff(s) Defendant(s)		
NOTICE ISSUED TO	COURT ADDRESS & PHONE NUMBER	
Evans Huber, Esq. Frieze Cramer Rosen and Huber LLP 60 Walnut St Wellesley Hills, MA 02481	Land Court Three Pemberton Square Room 507 Boston, MA 02108 (617)788-7470	
Notice is hereby given that the following docket entry has been made in the above captioned matter: August 16, 2022. This matter, which is an appeal from the site plan review of a proposed childcare facility, is before the court on the Motion To Dismiss ("Motion") of defendant members of the Needham Planning Board ("the Board"), with respect to which Plaintiff's Opposition To Motion To Dismiss For Lack Of Jurisdiction and Reply Brief In Further Support Of Motion To Dismiss were also filed. In addition to the exhibits attached to the Motion as an appendix ("App."), plaintiff Needham Enterprises, LLC ("Plaintiff"), the applicant seeking site plan review from the Board, also filed Plaintiff's Index Of Documents Cited In Plaintiff's Response To Defendants' Statement Of Material Facts, And Statement of Additional Material Facts Requiring Denial Of Defendants' Motion ("Index"). See <i>Wooten v. Crayton</i>, 66 Mass. App. Ct. 187, 190 n. 6 (2006) ("when a rule 12(b)(1) motion is filed, the judge may consider documents, affidavits and other materials outside the pleadings"). In the Motion, the Board argues that this action should be dismissed for lack of subject matter jurisdiction in this court, either because Plaintiff has failed to exhaust its administrative remedies or because Plaintiff has no standing to make claims for protection under G. L. c. 40, § 3 ("the Dover Amendment"). The Motion is DENIED. The Board has cited no authority in support of its argument that the Plaintiff, which apparently is not a licensed day care operator, lacks standing to pursue this appeal in the absence of its prospective tenant, Needham Children's Center ("NCC"). Leaving aside that NCC actively participated in proceedings before the Board, see Index Ex. 1, and that it strains credulity to believe that the Plaintiff would undertake all the plan preparation and permitting required for a childcare facility if that was not the intended use of the Plaintiff's property, the court has also not found any legal authority to support the Board's standing argument. The Board's exhaustion argument is based on the argument that, while the Plaintiff submitted an application for major site plan review, it expressly limited the Board's review to the criteria enumerated in the Dover Amendment and stipulated that no special permit pursuant to the town of Needham's Zoning Bylaw ("ZBL") would issue. This matters because, as this court (Speicher, J.) has previously noted, "[t]he ripeness of a site plan decision, usually by a planning board, for appeal, is generally determined by the treatment of the site plan review provision in the bylaw as either a special permit, as an administrative review preliminary to the issuance of a building permit, or as something in between, where the bylaw specifies a specific right, and avenue, of appeal." <i>Corner v. Forest Delahunt Dev., LLC</i>, 27 LCR 425, 427 (2019). The Board's argument fails. First, the ZBL provides that the Board acts as a special permit granting authority when acting under § 7.4, the section governing site plan review. Index Ex. 4. Section 7.4.3 provides that "[n]o building, use or occupancy permit for any improvement to real property which constitutes a Major Project under this By-Law shall be issued, except in accordance with the terms of a		
DATE ISSUED: 08/16/2022	RECORDER: Deborah J. Patterson	

NOTICE OF DOCKET ENTRY

DOCKET NUMBER

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Commonwealth of Massachusetts
Land Court
Department of the Trial Court

special permit for such project." App. Ex. D. Quincy v. Planning Bd., 39 Mass. App. Ct. 17 (1995), which also involved a zoning bylaw providing for site plan review by special permit, the Appeals Court concluded that "[s]ite plan special permit applications should be handled in exactly the same manner as they were prior to [a previous court decision invalidating the substantive requirements of the bylaw], except that where the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with Prudential Ins. Co. of America v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278, 502 N.E. 2d 137 (1986) (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use.)." The ZBL having embraced the mechanism of a special permit in the review of major site plans, the proper appeal is by way of G. L. c. 40A, § 17, as was done by the Plaintiff here.

Were more required, and it is not, the record as laid out in Plaintiff's opposition is replete with evidence that the Board, the Board's staff and the Board's legal counsel considered Plaintiff's application to be, and treated it as, a special permit.

Judge: Roberts, Hon. Jennifer S.D.

DATE ISSUED: 08/16/2022

RECORDER: Deborah J. Patterson

053NOTDKTENTRY (2-2022)

www.mass.gov/courts/landcourt

Printed:08/16/2022 10:43:03 AM

NOTICE OF DOCKET ENTRY

DOCKET NUMBER

22 MISC 000158

Commonwealth of Massachusetts
Land Court
Department of the Trial Court

**cc:**

Lydon, Esq., Elizabeth Gloria Mead, Talerman and Costa, LLC 227 Union St Suite 607 New Bedford MA 02740
Talerman, Esq., Jason Redlo Mead, Talerman and Costa, LLC 730 Main St Suite 1F Millis MA 02054
Winner, Esq., Brian James 730 Main St Suite 1F Millis MA 02054

DATE ISSUED: 08/16/2022

RECORDER: Deborah J. Patterson

Daphne Collins

From: Joe Abruzese <jabruzese02492@gmail.com>
Sent: Saturday, November 11, 2023 8:22 AM
To: Daphne Collins
Subject: Request to speak and present at ZBA Public Hearing - November 16, 2023

Ms. Collins and the Needham Zoning Board of Appeals,

I am a Town Meeting Member and would like to speak at the upcoming ZBA meeting on November 16, 2023 regarding Case #2 – 1688 Central Avenue. I will attend in person and will also have material to share in hardcopy and on Zoom.

Regards,
Joe

Joe Abruzese
Town Meeting Member, Precinct D
617-429-3964
jabruzese02492@gmail.com

Daphne Collins

From: Patricia Falcao <pfalcao@rcn.com>
Sent: Monday, November 13, 2023 12:18 PM
To: Daphne Collins; James Blumenfeld
Subject: About 1688 Central Ave

Good afternoon D. Collins, Needham Government,

About 1688 Central Avenue:

It would be a terrible violation of the character and quality of living of our residential neighborhood, if Needham allows a large commercial building to be built at 1688 Central Ave.

Already, we face overwhelming traffic, noise levels, and pedestrian dangers on daily walking, daily driving, daily attempts in quest of healthy sleep cycles.

Although the new owners are using a "day care exclusion" (whether non-profit or for-profit) in their attempts to saddle this neighborhood with a large building, and another load of rush hour traffic, there is nothing to prevent them from ending the lease of the day care, and opening a commercial office park, or worse, in this RESIDENTIAL neighborhood.

All of us who live here have stressful enough jobs, that we had HOPED to create more quiet, peaceful, lower stress home environments, where Needham is advertised as a "great place to raise a family".

We beg you: PLEASE do NOT allow this commercial venture, from an entrepreneurial venture capital company, to dominate the character of residential neighborhoods in Needham.

Respectfully, Patricia Falcao & for spouse James Blumenfeld, 40 year Needham residents, near abutters (entry to Central Ave & Pine Sts - within 100 yards of 1688 Central Ave)

Daphne Collins

From: Meredith Fried <meredith@thefrieds.net>
Sent: Monday, November 13, 2023 9:04 AM
To: Daphne Collins
Subject: 1688 central ave property

To the Zoning Board of Appeals –

Unfortunately I'm not able to attend the meeting this Thursday evening, but I wanted to express my strong disapproval around the building permit granted to Mr. Borrelli. There are myriad concerns about his plans for the site, including safety around both environmental and traffic issues, among others. The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met. I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli. Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you very much for your consideration.

Regards,

Meredith Fried
136 Stratford Road
Needham

Daphne Collins

From: Leon Shaigorodsky <shaigor@gmail.com>
Sent: Sunday, November 12, 2023 11:49 PM
To: Daphne Collins
Subject: 1688 central av. demolition

I am writing to express my major concern about start of development of large commercial facility that will host child care center at 1688 central av

As a resident of Bridle Trail I spend at least 15-20min in the morning just to get to the lights at Newman school

Additional expected traffic to and from 1688 central av will make the situation even worse!

How can the town allow building large child care facility when the traffic situation is already ridiculous

Please make every attempt to make the condition for people leaving in this area at least not been worse then it is now

Thank you

Daphne Collins

From: Alan Langsner <alangsner70@gmail.com>
Sent: Monday, November 13, 2023 1:43 PM
To: Daphne Collins
Subject: Central Ave Daycare

Dear Zoning Board of Appeals,

I wanted to express my strong disapproval for the building permit granted to Mr. Borrelli. There are several concerns about his plans for the site, including safety around both environmental and traffic issues, among others. The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met. I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli.

The traffic on Central Avenue is already horrendous and a commercial property will compound this problem. Further, several kids in this area ride bikes to school and will be at risk with the additional traffic. Finally, the property itself was once (recently) a storage facility for lawn equipment and automobiles. A thorough soil study MUST be performed for the safety of the small children.

Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you for your consideration,

Alan Langsner

30 Windsor Road

Daphne Collins

From: Karen Langsner <kblangsner@gmail.com>
Sent: Monday, November 13, 2023 3:58 PM
To: Daphne Collins
Subject: 1688 Central Avenue

To the Zoning Board of Appeals –

Unfortunately I'm not able to attend the meeting this Thursday evening, but I wanted to express my strong disapproval of the issuance of the building permit granted to Mr. Borrelli.

There are myriad concerns about his plans for the site, including safety around both environmental and traffic issues, among others. Additionally, Mr. Borelli has consistently tried to evade the requirements and rules imposed on developers to protect the interests of the taxpayers of Needham.

The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met.

I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli. Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you very much for your consideration.

Regards,

Karen Langsner
30 Windsor Road

The following residents submit this memorandum to the Needham Zoning Board of Appeals, in connection with the appeal of Building Permit #BC-23-10079, for a project at 1688 Central Avenue: Holly Clarke, Gregg Darish, Robert DiMase, Matthew Heideman, Nicole Heideman, Carl Jonasson, Ann Lyons, Peter Lyons, and Eileen Sullivan.

Executive Summary

The Building Commissioner issued a building permit for a commercial childcare facility, including the construction of a new 10,045 square foot building, in a residential neighborhood despite its failure to comply with town zoning bylaws and town bylaws. As approved, the plan permanently changes the character of the neighborhood for the worse. The approved project has no plan to mitigate the hundreds of additional vehicle trips which will spill onto one of the most congested roads in town, no stormwater or soil erosion mitigation plan, and no condition to address the risk of environmental contamination on the lot, both during construction and afterwards. It allows the smallest setback of any building on this section of Central Avenue, and even permits a second non-residential building on this lot, bringing the total square footage of buildings to nearly 15,000 sf, in violation of NZBL § 3.2.1. The building inspector issued the permit in reliance on a court order that is under appeal and is not final and, in any event, does not remove the ZBA's authority to review the project and enforce the town bylaws.

Nine town residents, all of whom will be severely and uniquely harmed by the project absent mitigation of its severe impacts, bring this appeal. Raising the grade by six feet and only 64 feet back from Central Avenue, the new building will dwarf the Heideman's house next door, as the new building will be higher, larger and closer to the road. The business traffic from the building's operations will impact the ability of these residents to enter and leave their properties, at times of the day literally blocking access to their driveways. There is no protection of abutters in the form of required sight or sound buffers, and the history of this site, including its use as an excavation company and refuse yard, building and repairing race cars, a site for a landscaping company and fill dumping, presents the risk of environmental contamination which impacts these residents, their families, and properties during construction and after.

This filing provides the ZBA with the relevant information about this project and does so in sufficient detail for the Board to appreciate that it can and must reverse the Building

Commissioner's decision, revoke the building permit and require certain conditions to be written into any Building Permit issued for this project.

Our filing proceeds as follows. First, we introduce you to the appealing parties and briefly state how each is affected by this project. Next, we give you a sketch of the procedural background that brings us here before you. Finally, we discuss why it is necessary and proper for the ZBA to revoke the building permit and require conditions to be included on any building permit for this project. We follow this outline of the issues:

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The Residents

The residents appealing the grant of this building permit are each directly and seriously aggrieved by the proposed project. All are direct abutters, abutters to abutters or live within 300' of the site.

Matthew and Nicole Heideman live with their three children at 1708 Central Avenue, the dark blue house immediately abutting to the south of 1688 Central Avenue.

As proposed, the new building would overwhelm their home and be nearly six times larger. The proposed new building will be closer to the street and on a raised grade 6' higher than their home, completely changing the view from their property; the removal of the second building would protect them from the excessive size of the project. The project impacts their privacy and the enjoyment of their home. A landscape plan should provide them with sight and sound buffers, and a lighting plan should protect them from light spillage. The traffic created will impact their ability to enter and leave their driveway safely, and causes safety concerns not only for driving, but also for walking or biking past the 30' wide commercial driveway. Off-site parking will impact their sight line to safely exit their driveway, as well as to drive on the street. The environmental concerns are extremely important to this family because of the possible risk that contamination will spread to their home and property, through dust and water runoff, during construction or after. The stormwater and erosion control measures are especially important to this family and their property.

Peter and Ann Lyons live with their family at 1689 Central Avenue, almost directly across from 1688 Central, slightly to the south.

Robert DiMase lives with his family at 1681 Central Avenue, directly across the street from 1688 Central.

Eileen Sullivan lives at 1695 Central Avenue, across the street and just to the south of 1688 Central.

Carl Jonasson lives with his family at 1729 Central Avenue, across and to the south of 1688 Central.

These families face similar negative impacts and aggrievement from the project. Ms. Sullivan is closer to the project, but all look across and up at it. They look directly across and up to the building, closer to the street than any other building on this part of Central Avenue, making the proposed setback, size and raising of the lot grade very harmful to them. A greater setback helps them with the “institutional appearance” of the building (as found by the Design Review Board) and its effect on the established residential character of the neighborhood. The failure to remove the barn worsens the impact of the building’s bulk. The traffic impacts of this project seriously aggrieves these families. Their ability to use their driveway to enter and exit their homes is greatly compromised by the proposed project. Cars waiting to turn into 1688 Central Avenue will block the Lyons’ driveway. They all will be blocked by cars queued and waiting at the traffic light at Charles River Street and Central Avenue, as well as behind cars waiting to turn into the 1688 driveway. A landscaping plan needs to provide them with sight and sound buffers. It needs to be part of a lighting plan to protect them from light spillage from the proposed light poles, and buildings especially because the lights from this project will combine with the Temple lights. The headlights from the vehicles exiting the property will shine directly onto the Lyons’ and Mr. Dimase’s homes and property- and interfere with the use of their homes and their privacy. Their proximity to the project puts them at risk for exposure to environmental contamination.

Holly Clarke and her family live at 1652 Central Avenue. Their home abuts Temple Aliyah, the direct abutter to 1688 Central Avenue.

This family is aggrieved by the lack of a landscape plan to provide sight buffers to screen the commercial use of the property with its proposed all day pick up and drop offs, as well as by the lack of a lighting plan to control the glare from the proposed lighting. The planned siting of the buildings impacts the view from their home. The traffic implications of the project will seriously impact this family and will impede their ability to enter and exit their driveway. Cars headed toward Dover will cause a line up which will negatively impact this family’s ability to head south on Central Avenue especially during the morning rush hour when the family must turn left and cross the heavy northbound traffic. Their proximity to the project puts them at risk for exposure to environmental contamination.

Gregg Darish lives with his family at 34 Country Way. Their home is a direct abutter to 1688 Central Avenue on the south side of the lot.

This family is seriously aggrieved by the project's impact on their view, privacy and ability to enjoy their property. The siting of the buildings, permitting the barn and failure of the proposal to provide sight and sound buffers through a landscape plan all harm this family. The absence of traffic mitigation seriously impacts this family as their entry onto Central Avenue from Country way is impacted by the delays which will come from the siting of the new project.

This family is particularly aggrieved by failure to address the potential environmental contamination because any contaminated dust and water run off may reach their home and yard. An abandoned oil drum was found near this property in November, 2021 during the course of the hearings before the Planning Board. The stormwater and erosion control measures are especially important to this family because of the potential for water running onto their property.

All the families above are aggrieved by the increased density of the project and how it changes the open space and the character of their neighborhood. They also are aggrieved by the safety concerns of walking or biking past a commercial driveway wider than the street. Everyone is impacted by the need to prevent any offsite parking to preserve the ability to safely enter and drive on Central Avenue, either by pulling out of their driveway or Country Way. Although they affect many others, these conditions particularly aggrieve these families because they are unable to avoid the site. A map displaying the locations of each of these homes, and a chart showing their setback and size in comparison to the proposed project are found at [Exhibit 1](#) and [Exhibit 2](#).

Procedural History Of The Project

Needham Enterprises LLC, a commercial developer, seeks to construct a 10,045 sf building for use as a commercial childcare facility, in this residential district. The plan also seeks to keep a 4,800 sf barn, build parking for 30 cars, a thirty foot wide driveway/drop off zone, and a playground. The new building is larger than any of the homes within sight and is more than six times larger than the Heideman's home next door. The plan proposes raising the front grade of the lot by six feet and would prominently place the new building closer to the street than any of the abutting homes or any building within sight.

The developer initially filed for a building permit in January 2021, stating that the project did not need Planning Board approval. A stop was placed on the application because even at its original 9,966 sf and 24 parking spaces, it required at least Minor Site Plan Review. The developer filed an application for Minor Site Plan Review and filed for review by the Design Review Board. When the developer acknowledged the need for more than 25 parking spaces, the project required Major Project Site Plan Review and a Special Permit, to which the developer objected. The developer and Town Counsel on behalf of the Planning Board negotiated and entered into an agreement- solely for this project- to limit the Planning Board's action to Major Project Site Plan Review subject to the limitations of MGL c. 40A, §3.

The Planning Board noticed a Hearing for "Major Project Site Plan Review," and held hearings pursuant to the agreement, stating explicitly that the Board could not deny this application because of MGL c. 40A, §3 (the so-called "Dover Amendment"). The neighbors participated in the hearings as directed by the Board.

On March 1, 2022, the Board issued its Major Project Site Plan Decision approving the submitted plans, with conditions to protect the town and the neighbors' interests. The Board allowed the exact building requested for the childcare facility. It allowed more than the original requested capacity of 100 children. The Decision required the building to be set back at 120 feet back from the road, consistent with the recommendations of the Design Review Board. It required the removal of the barn, and called for an amendment of the site plan if the owner of the land sought subdivision in the future as that would change the site upon which approval was granted. It required landscaping and it required that parking be only on site and not on the neighborhood streets. The Decision also included conditions which formalized representations by the developer or agreements reached during the hearings. Conditions addressing the increase in traffic on the already over-congested Central Avenue, including the use of a detail officer at the driveway for at least some period of time, the changing of the timing of the traffic light at Central Avenue and Charles River Street, and the conducting of a post opening traffic review by the developer were all agreed to by the developer.

While the Decision was not all the neighbor's requested or hoped for, on balance it allowed the project while protecting both the town and the neighbors, at least enough that the neighbors did not appeal.

The developer, however, appealed the decision. The neighbors immediately sought to intervene to protect their interests in the decision being upheld, but their motion was denied with the Court saying their interests were adequately represented by the Planning Board. The motion to intervene was renewed as soon as the neighbors learned the Planning Board attempted to settle the litigation, and again as soon as they learned of the Board's intention to abandon conditions important to the interests of the neighbors. These motions were denied and currently are on appeal. After the land court issued its opinion and judgment annulling the Decision, the Select Board met in executive session with the Planning Board, and, in an unexpected turn, the adverse judgment was not appealed.

The neighbors' appeal from the denial of their motions to intervene are pending.

The developer applied for a new building permit on August 22, 2023. The Building Permit was issued on September 19, 2023 and this ZBA appeal was timely filed on October 16, 2023.

PART I - Preliminary Issues

(1) The Issuance of the Building Permit Was Premature Because the Appeal of the Land Court Decision Is Still Pending in the Massachusetts Appeals Court.

As a threshold matter, the Planning Board's March 1, 2022 Site Plan Review Decision for the project is still under appeal by abutters to the project and is pending at the Massachusetts Appeals Court. See Appeals Court Docket 2023-P-0838. Accordingly, the decision to issue the Building Permit was premature; the abutters' appeal of the denial of a motion to participate in the Land Court proceedings may yet result in a retrial over the Site Plan Review Decision, one outcome of which could be a judgment affirming the Site Plan Review Decision with all, or one or more, of its original conditions. Indeed, a Single Justice of the Appeals Court has expressly said that "*the Appeals Court may order a retrial in the event the abutters succeed in their appeal from the denial of their motion to intervene.*" See: Appeals Court Order dated April 24, 2023, Docket No. 2023-J-0227. ([Exhibit 3](#)).

The Abutter's stand in the shoes of the Planning Board on this matter. Just as a building permit would not have been issued if the Planning Board had appealed the Land Court decision, a

building permit should not have been issued here because the Planning Board's decision is still active - it is under appeal and being defended by the Abutters. This is not a typical case in which the Planning Board approves a project and the abutters appeal to block that approval. Here, the Planning Board approved the project with conditions, the developer appealed to block the conditioned approval, and the abutters did everything they could to participate in the Land Court matter to ensure the conditions of the Decision would stand. In these circumstances, the Board's actions do not extinguish the site plan review decision and its conditions. The Abutters' timely exercise of their right to defend and enforce the Decision preserves it. The building permit was prematurely issued and should be revoked pending the resolution of the abutters' appeals. Cf: *Berkshire Power Development, Inc. v. Zoning Board of Appeals of Agawam*, 43 Mass. App. Ct. 828 (1997) (allowing abutters to proceed with appeal from trial court judgment after ZBA declines to do so, and upholding the denial of the special permit and refusal to grant permission to build), *Stevens v. Zoning Board of Appeals of Bourne*, 97 Mass. App. Ct. 713 (2020).

(2) The Zoning Board Of Appeals Has Authority to Revoke the Building Permit even after the Land Court Decision.

The Zoning Board of Appeals retains its authority to review this appeal. The residents requesting this review were not parties to the Land Court case, and the decision is not *res judicata* as to their claims. In fact, the Planning Board specifically acknowledged on the record during the May 6, 2022 hearing on the Abutters' Motion to Intervene that they were not representing the interests of the abutters in the case.

In *Stevens v. Zoning Board of Appeals of Bourne*, 97 Mass. App. Ct. 713 (2020) , the trial court denied a motion to intervene, yet recognized the abutter's potential interests in the resolution of the case and instructed the building commissioner to give the abutters notice of any decision affecting the cease and desist order at issue. This made clear the authority of the ZBA to hear the abutter's appeal (at 718). Here, too, the abutters were without a voice in the Land Court. Additionally, the trial court in both cases indicated its belief that the abutters would have the opportunity to be heard by the ZBA. See: Denial of Intervention ruling ([Exhibit 4](#)). The Land Court decision between Needham Enterprises and the Planning Board simply did not resolve the abutters' claims nor remove the authority of the ZBA to fully consider this appeal.

Further, the Land Court here *specifically preserved* the building commissioner's authority to review the application, and thus the ZBA's authority to fully consider any appeal. After issuing its decision, the Land Court held a hearing on August 22, 2023 to discuss the exact parameters of the court's order. The court stated that it did *not* want to make its judgment an order for the Building Commissioner to **issue** a building permit because the court did not know what review, beyond dimensional requirements, the Building Commissioner conducts for building permit applications. The Land Court made clear it did not want to preclude the Building Commissioner from (1) conducting a full review of the application (except for the dimensional regulations) or (2) issuing conditions on the permit, to address any issues other than dimensional regulations. Counsel for the Planning Board made clear that conditions on the permit could be required. The Court specifically rejected the request by Needham Enterprises for wording to the effect that Needham Enterprises was entitled to a building permit, or wording that the Building Commissioner could not issue any condition on the Building Permit that was in the Planning Board Decision. The court refused to make a blanket finding that every condition in the Planning Board decision was not permissible under the Dover Amendment and therefore could not be put on the building permit by the Building Commissioner. Instead, the Court stated that the question of whether any particular condition (other than regarding dimensional aspects) that the Building Commissioner puts in the building permit could be raised in an appeal if Needham Enterprises felt that the condition was not permitted by the Dover Amendment.

Finally, the Land Court did not have jurisdiction to hear Needham Enterprises' claims because Needham Enterprises did not first seek an appeal from the ZBA. Needham Enterprises was obligated to exhaust its administrative remedies before filing suit in Land Court. Neither Needham's bylaws nor MGL c. 40A, §3 gives a party the right to appeal directly to court from a site plan review. The ZBA should have been given the opportunity to interpret Needham's bylaws before any court review.

For these reasons, the building permit must be revoked until the application is in full compliance with the bylaws of the town and the zoning bylaws just as any other project would be. The current building permit was issued despite the plan's noncompliance with the town and zoning bylaws.

**(3) Projects Claiming Protected Status Under Ch 40A, § 3, the “Dover Amendment,”
Are Still Subject to Local Zoning By-Laws.**

All building projects proposed in Needham, including this one, are subject to the town’s by-laws. MGL c. 40A, §3 is not a blanket exemption from local zoning by-laws. It was never intended as such and has never been interpreted to be such. The language of §3, together with the terms of MGL c. 40A, §4, (the Uniformity Statute), declares every town’s ability to reasonably regulate building projects even when intended for protected uses. Section 3 provides protection for the **use** as a childcare facility, while still preserving local zoning authority. Section 3 does not automatically override any of Needham’s By-Laws.

The application of § 3 to this project is unique because the applicant is not a childcare operator. The applicant is a builder, developer, and owner of the land. The applicant seeks to lease this building to a childcare operator when it is complete. In the appellate case law regarding Section 3 for childcare uses, the applicant is the childcare operator itself. This makes a difference; because when the applicant is the operator, the interests it seeks to protect are solely those of the childcare operation. Here, that is not the case. Here, a developer has its own business interests separate and apart from the childcare operator, who is not an applicant, but to whom the property may be leased. Any analysis of what is allowed or not allowed in this unique case must separate out objections claiming a hinderance to the operation of a childcare use versus objections based on a claimed hindrance to a developer’s business interests and desire to maximize profit. It is the childcare use that Section 3 protects. It does not protect a developer’s interest in maximizing profit and a developer cannot use the shield of Section 3 to protect anything other than the childcare use. See e.g. *Regis College v. Weston*, 462 Mass. 280 (2012) (Dover Amendment may preempt the uniform application of zoning laws only where those laws impede the use of land for protected uses and not where their primary effect is on other concerns).

Massachusetts General Laws Ch 40A, §3 provides:

...No zoning ordinance or By-Law in any city or town shall prohibit, or require a special permit for, the **use** of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a childcare facility; provided, **however, that such land or**

structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "childcare facility" shall mean a childcare center or a school-aged childcare program, as defined in section 1A of chapter 15D. (Emphasis added).

By its plain terms, Section 3 protects the ability to **use** land or structures as a childcare facility by disallowing an outright prohibition of childcare use or the requirement of a special permit for that use, while still specifically providing that, “**land and structures are subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.**” (Emphasis added.) The statute specifically endorses the application of local zoning by-laws intended to protect legitimate municipal interests even with respect to childcare centers. Put another way, the statute enumerates the levers a town can use to regulate a proposed childcare facility in order to protect its municipal interests.

Court decisions interpreting §3 make clear that **all** by-laws, even those of general applicability apply to protected uses. It does not matter if a by-law is addressed specifically to childcare facilities or not. The Supreme Judicial Court in *Trustees of Tufts College v. Medford*, 415 Mass. 753, 760, (1993) explicitly affirmed the authority of municipalities to apply zoning requirements to protected uses and rejected the claim that only by-laws specifically addressing a protected use can be applied to such uses. In considering educational uses, the Court stated:

Local zoning requirements adopted under the proviso to the Dover Amendment which serve legitimate municipal purposes sought to be achieved by local zoning, such as promoting public health or safety, preserving the character of an adjacent neighborhood, or one of the other purposes sought to be achieved by local zoning as enunciated in St. 1975, c. 808, § 2A, see *MacNeil v. Avon*, 386 Mass. 339, 341 (1982), may be permissibly enforced, consistent with the Dover Amendment, against an educational use.

...We reject the suggestion that only local zoning requirements drafted specifically for application to educational uses are reasonable within the scope of the Dover Amendment. Nothing in that statute mandates the adoption of local zoning laws which are tailored specifically to educational uses. See Report, *supra* at 26 (observing that *ideally* regulations should be specifically adapted to educational uses). Similarly, proof that a local zoning law could accomplish its purpose if it were drafted in terms other than those chosen will

not suffice to establish that the municipality's choice of regulation is unreasonable.¹⁰ See *Moss v. Winchester*, 365 Mass. 297, 299 (1974).

Because local zoning laws are intended to be uniformly applied, an educational institution making challenges similar to those made by Tufts will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project.

The test for determining whether a by-law complies with the requirements of section 3 is set out in *Tufts* regarding educational uses and in *Rogers v. Norfolk*, 432 Mass. 374 (2000), regarding day care facilities. In *Rogers*, the Supreme Judicial Court upheld the validity of a town bylaw that flatly limited day care facilities in residential districts to no more than 2500 sf. In rejecting the claim that the bylaw was invalid on its face, the Court stated:

A challenged provision in a zoning by-law is presumptively valid, and a challenger bears the burden to prove otherwise. See *Johnson v. Edgartown*, 425 Mass. 117, 121 (1997).

“The proper test for determining whether the provision at issue contradicts the purpose of MGL c. 40A, § 3, third par., is to ask, first: whether the ‘(by-law...) restriction furthers a legitimate municipal interest, and its application rationally relates to that interest, or: whether it acts impermissibly to restrict the establishment of childcare facilities in the town, and so is unreasonable.’” (432 Mass. 379-380.)

Simply put, the test presumes a by-law’s validity, and the burden of proving otherwise is on the by-law’s challenger. If the by-law is rationally related to the preservation of a legitimate municipal interest, it is valid. The valid by-law is then applied to each particular project, a process that requires a fact-based inquiry to determine whether compliance would substantially diminish or detract from the protected use of that particular project **without** furthering a municipal interest.

“[T]he question of the reasonableness of a local zoning requirement, as applied to a proposed [exempt] use, will depend on the particular facts of each case. Because local zoning laws are intended to be uniformly applied, an [applicant] will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project. The [applicant] might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the [applicant's property], without appreciably advancing the municipality's legitimate concerns. Excessive cost of compliance with a requirement imposed [by the zoning ordinance] without significant gain in terms of municipal

concerns, might also qualify as unreasonable regulation of an [exempt] use.” Id. at 759-760. In addition, in determining the reasonableness of a zoning provision, we may inquire whether “the requirement[] sought to be applied take[s] into account the special characteristics of [the exempt] use.” *Tufts*. at 758-759 n. 6, cited by *Rogers*.

In *Rogers*, the Court upheld the bylaw, noting that childcare facilities are commercial enterprises, “...with a greater potential than residential uses to disrupt, or detract from, the town's tranquility. A childcare facility of larger dimensions will likely generate more traffic and create more noise, all of which may have a greater impact on a town composed mainly of single-family homes.” *Rogers* at 380. After applying the test to the particular pre-existing building, the court determined the project could go forward because applying the bylaw to the unique circumstances of that particular, already existing building would not further a municipal interest.

The proposed project must comply with **all** of Needham’s town and zoning bylaws, subject to the application Chapter 40A, § 3.

PART II – Zoning Bylaws and Town Bylaws

(1) The Building Permit Should Be Revoked Because the Submitted Plans Do Not Comply with the Town Zoning Bylaws and the Town Bylaws.

The Zoning Bylaw §3.1 provides that “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 and as permitted and set forth in Section 3.2.”

Section 7.2.1 requires that:

No building or structure shall be constructed, relocated, added to or demolished without a permit having been issued by the Building Inspector. No such permit shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with the provisions of this By-Law or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plot plan in triplicate, drawn to a scale of one (1) inch = forty (40) feet, showing the actual shape, area and

dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings or structures to be constructed, together with the distance from said areas to the nearest point of the proposed structure, the existing and intended use of each building or structure and all streets and ways on, and adjacent to, the lot.

This bylaw specifically requires that the project must comply with the bylaws as proposed before the issuance of a building permit. The bylaws do not leave room for the Building Department to make a judgment that the specific applicant is capable and trustworthy and does not need to meet all the requirements of the bylaws.

(A) The Submitted Plans Do Not Show the Intended Use of Each Building or Structure.

The Building Commissioner is required to make a determination whether each building or structure on the lot is used for a purpose or manner that is permitted by the zoning bylaws. The plot plan submitted for this application does not show the expected use of the barn. Having demolished the house, the barn is no longer an accessory to a residence as it was originally permitted. Without identifying the intended use of the barn on the plan, the application does not comply with our zoning bylaws and the building permit must be revoked.

(B) The Submitted Plan Violates NZBL § 3.2.1 By Proposing More Than One Nonresidential Building on the Lot.

NZBL § 3.2.1 clearly prohibits more than one non-residential building on this lot. The submitted plans propose a project with two non-residential buildings on this lot and plainly violate this provision. The bylaw is both valid on its face and when applied to this particular project under *Rogers*. Therefore, the building permit should be revoked.

(i.) Section 3.2.1 is Valid on its Face under the Dover Amendment.

The Planning Board specifically held that the submitted plan violated § 3.2.1 of the zoning bylaws. In its site plan review decision, the Planning Board determined:

1.18: The Petitioner's proposal includes a new one-story building of 10,034 square feet that will house a childcare facility and an existing two-story 4,800 square foot barn that will be retained and used for accessory storage by the childcare 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 childcare building on this lot, the barn would be a second non-residential building on the lot. See: Planning Board Site Plan Review Decision, March 1, 2023, p.24.

Section 3.2.1 easily passes the test set forth in *Rogers*. The section is use neutral and places no requirements on childcare facilities different from any other non-residential use. It does not prohibit the establishment of childcare facilities on any lot, nor does it limit the use of any building or land by a childcare facility. It merely controls the configuration of the buildings permitted. Controlling the number of nonresidential buildings on a single residential lot protects well recognized municipal interests. It preserves the residential character of the neighborhood. It addresses aesthetics and privacy. It conserves open space, limits density and prevents the overcrowding of land. It addresses noise, traffic, and access to light. It is beyond question that the protection of these interests is a legitimate goal of municipal zoning, and the means chosen by the town- limiting the number of separate nonresidential buildings on a residential lot- rationally relates to the interests protected.

In fact, Needham's bylaws present a comprehensive and deliberate statutory scheme to control the number of non-residential buildings permitted on single lots throughout the town's

districts. The town's zoning bylaws specifically address the prospect of more than one non-residential building or use in each district. In contrast to the complete prohibition in residential districts, Needham allows by special permit more than one non-residential building on single lots in institutional and industrial districts (NZBL § 3.2.1), as well as in the Business, Chestnut Street Business, Center Business, Avery Square Business, Hillside Avenue Business (NZBL § 3.2.2), and the Neighborhood Business District (NZBL § 3.2.3.1). Needham permits as of right more than one building on a single lot in the New England Business Center District (NZBL § 3.2.4), the Highland Commercial-128 District (NZBL § 3.2.4), and Mixed Use-128 District (NZBL § 3.2.6.1(o)). The thoroughness of Needham's bylaws underscores the importance of the municipal interests protected by these provisions to the town.

Furthermore, the By-Law is a regulation concerning bulk, open space and building coverage, all matters specifically subject to reasonable regulation under MGL c. 40A, § 3. Needham has legitimately chosen to protect the town's interests by limiting the number of non-residential uses and buildings on single residential lots. The bylaw only addresses the configuration of the commercial buildings in this residential zone. It has not diminished the ability of child care centers to establish themselves in Needham. In fact, Needham has more large childcare facilities per capita than a sampling of twenty nearby towns. See: Table ([Exhibit 5](#)).

(ii.) Section 3.2.1 is Valid as Applied to this Project.

The second part of the *Rogers* test requires the proponent to prove By-law § 3.2.1 **impedes the childcare use without furthering municipal goals** when applied to this particular project. In this instance, the proposed childcare use is not at all impeded by the requirement that only one non-residential building or use be located on this single residential lot. A permissible childcare facility would simply be limited to one building. The Planning Board addressed this issue in its site plan review decision:

1.22. ...Where the Petitioner proposing a childcare 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 childcare facility; indeed, the Petitioner planned to exclude the barn from the lease entirely. Now, however, the Board is told that the childcare 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 6](#)) 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 childcare storage. While NCC now professes a need for storage, the Petitioner has not shown any reason for the childcare 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 childcare facility. There is no need for storage to be separate and apart from the childcare 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 childcare facility, particularly when the childcare 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. See: Needham Planning Board Decision- 1688 Central Avenue, March 1, 2022, p. 26.

The history of this project makes clear § 3.2.1 does not substantially diminish or detract from the use of the property for a childcare facility, much less outweigh the municipal interests protected by the bylaw. The proponent's original application did not ask to use the barn as part of a childcare facility, and the plans submitted for review did not include the barn in any way as part of a childcare facility. The current site plans are no different. Throughout the site plan review process, even when specifically asked, the proponent repeatedly stated that the barn had no connection to the childcare facility. It was only after the requirements of § 3.2.1 were discovered that an attempt was made to ascribe a childcare use to the barn. Proponent's counsel explicitly admitted that it only made the change in its statements about the barn "in order to save it." In other words, the driving motivation in ascribing a childcare use to the barn was to prevent the building from being demolished; no integral need of the childcare facility necessitated the change in the claimed childcare use of the barn. The proponent's own words and presentations make clear that the barn's connection to the

childcare use is at most an afterthought designed to preserve the barn by inappropriately leveraging the protection of §3 in an attempt to nullify the valid requirements of By-Law 3.2.1.

On March 22, 2021, the Design Review Board (“DRB”) repeatedly asked about the purpose of the barn. The following exchange took place:

DRB Member William Dermody: (53:14) Is the barn going to be renovated, repainted, revised, refurbished in any way?

Proponent’s Attorney Evans Huber: The barn is not going to be in use as part of this project.

See: Video of DRB Hearing of March 22, 2021 at 53:13: <https://youtu.be/4K1Ad1TK3l8?t=3193>

The DRB comments on its March 22 review reinforce this exchange. “The applicant’s representative stated that the barn would be retained without any renovation, there is no intended use for the time being, and that it is being retained because it is ‘historic’.” The DRB comments from its May 5 meeting also reflect the proponent’s representation that the barn was not included in the childcare facility. “As there was no further clarification regarding the intention for the barn, the option of removing it for the benefit of other site issues could still be considered.” See: DRB comments attached at 10.

At the July 20, 2021 hearing, the Planning Board asked about the barn. The proponent reiterated that the barn was not part of the childcare facility and would not even be leased to the daycare operator. He suggested the barn could be used for storage, and the parties may have an informal agreement to do so. When specifically questioned, the proponent stated the day care operator would not have control of the barn, the parking lot or the entire property. The Planning Board Chair subsequently questioned that any property which is not under the childcare operator’s control for the children’s center is not subject to the protections of Chapter 40A section 3. It was only after this statement that the proponent began to suggest that the barn might be used by the childcare facility for storage or other purposes. See: Video of Planning Board Hearing July 20, 2021 at 1:29:34: Link: [Planning Board 07/20/2021](#).

At the September 8, 2021 Planning Board hearing, the proponent for the first time stated the Barn had been intended for another use, but now “would be used as part of the childcare center if required.” The proponent’s own words and presentations at this meeting make clear that the barn is far from integral to the operation of the childcare facility; it’s connection is at most an afterthought designed to preserve the barn by inappropriately leveraging section 3. The proponent’s frankly admitted this:

Mr. Alpert: (2:51:49)...We reached out to the building inspector, the Building Commissioner, Mr. Roach and he agreed...that our bylaw provides that you cannot have two non-residential uses- two non-residential structures on one lot - on one residential lot. And so if the daycare center is built the barn has to go...

Mr. Huber you have represented to us that the use of the barn is not for the child center use...

(3:09:33) I understand your position-that you now want to fit the barn into the use of the childcare facility in order to save it, but that’s what I see is happening here.

Attorney Huber: That’s absolutely what’s happening. We- I did not-I’m not pretending otherwise. You are correct. Originally we did not understand or see that we had this limitation on what we could use the barn for. Now that this issue has been raised, we recognize that we do have to, in order to get the protection of Chapter 40A, § 3. We have to do what Chapter 40A § 3 says, which is we have to use it for purposes, **and by the way, not just- not just necessarily accessory purposes** for the childcare facility. So, you know we can’t use it for something else. What the by-law says is you can’t have more than one use there, and so we understand that it’s going to need to be related to the childcare... (Emphasis added).

See: Video of Needham Planning Board full meeting September 8, 2021:
https://youtu.be/xQC5SO_rcSk?t=11377

At the same meeting, Planning Board Member Adam Block commented on the barn, and suggested that it be incorporated into the childcare facility. The proposed childcare operator commented that she “loved that idea.”

(3:05:11) **Mr. Block:** Pat I don't know if you can hear this or not the only way that I see the barn staying is if it really becomes part- if you're saying the structure is so valuable that it needs to stay, Evans, which I regard as a valid argument-the only way that thing stays is when you include it in the design of the structure. And for me what I love about that- thinking about all of the times I've

stopped on the highway to look at farms and barns with my now nine-year-old who at the time was six he still builds with legos he still builds uh uh farms I would I would I would love to call it, uh, you know you know the barnyard center and you can actually include that as part of the marketing and that would be fun and it's an homage to the geography as being farmland from yesteryear and I see that as the only way in which this thing is going to be included. To move it makes no sense and either it's demolished or it's incorporated as part of the facility. Even if that became you know even if that became a bit of the of the play space area in conjunction with some other additional use once it's incorporated into the envelope of the structure that that the applicant is preparing I think that's a great idea but that's the only way I would ever support keeping the barn...

(3:12:38) **Mrs. Day:** I don't want to talk too much, this is a busy night, but I love that idea. It would take research because there are state guidelines we have to follow, you know, and I - you know it would be great, wouldn't it, if you could even attach it. but that's you know it would still be only for that same amount of kids...

At that meeting, Mr. Block also revealed his intention to require a greater setback than in the proposed plan, a condition which also impacts the siting of the building around the barn.

In a letter dated September 30, 2021, the proponent's attorney writes of possible uses of the barn, including installing solar panels, storing equipment to maintain the property or other "future uses which can be imagined that might be beneficial to a childcare facility." ([Exhibit 7](#)).

At the October 5, 2021 Planning Board hearing, the proponent again acknowledged that the intention had been to use the barn for uses completely unrelated to the childcare facility, but was now changing that intention.

(59:57) **Mr. Huber:** I would like to try to address (the barn) as clearly as I can right now. It is true and I will acknowledge that originally when we submitted this application we anticipated using a portion of the barn for storage and a portion of the barn for other uses including my client Mr. Borelli's personal use to store automobiles and uh you know boats and stuff in there...

I acknowledged that what we are now saying is different than what we were originally saying that we were going to use it partially for the childcare facility....

See: Video of Planning Board Meeting of October 5, 2021 at 58:59. Link: [Planning Board 10/05/2021](#)

The developer did not provide the Planning Board with a copy of any lease, letter of intent or other documents related to the lease of the property. In fact, his attorney pointedly told the Board on September 8, 2021 that the developer did not have a lease and while they obviously wanted

Needham Children's Center (NCC) to be the tenant, NCC had no legal obligations and could walk away. See <https://youtu.be/KCOiqTXoOvA?si=esqd3c3epw6TZX6b&t=1872> at 31:12. A draft lease prepared by the attorney for Needham Enterprises dated January 22, 2021 provided NCC would only lease a portion of the premises at 1688 Central Avenue, and Needham Enterprises ("the landlord") expressly reserved the barn ("the existing structure") for its exclusive use. See: Letter of Intent and Draft Lease produced in Land Court discovery ([Exhibit 8](#) & [Exhibit 9](#)) Further, the answer to interrogatories and testimony at the trial established that storage in the barn was not essential to NCC, and in fact the preferred storage would be near the childcare rooms, rather than in a separate building. As summarized in the Planning Board's post-trial submission:

Initially, as represented by the Plaintiff to the Board, [Exhibit 15](#), Decision, at 26, §1.22 [Exhibit 18](#), Needham Enterprises Ans. to Int. 12, at 12-13, and as noted by the Plaintiff at the initial DRB meeting, Trial Transcript, Vol. III, at 55:10-18, there was to be no storage for childcare purposes in the barn. Later, the Plaintiff suggested that the barn be shared by the Plaintiff and NCC, as noted in the Plaintiff's answers to interrogatories. See [Exhibit 18](#), Needham Enterprises' Ans. to Int. 10, at 10 (noting intention to seek determination on whether "it is permissible for the barn to be used for storage for both NCC and Needham Enterprises."). At trial, the Plaintiff's position changed once again, when its principal declared that NCC could use the entire barn if it wanted to. Trial Transcript, Vol. II, at 44:8-24. However, no formal design for storage in the barn was ever presented. Furthermore, aside from the storage of a few large items to be used in outdoor spaces, Ms. Day testified that preferred storage will be in or adjacent to classrooms in the primary childcare facility. Trial Transcript, Vol. I, 92:4-94:4. To that end, Ms. Day clarified her initial direct testimony by testifying on cross examination that her input on design did not include storage. Trial Transcript, Vol. I, at 95:9-24. Nor did Ms. Day ever testify that storage within the barn was essential in any manner for her to operate a childcare facility on the Property. Planning Board Post Trial Brief, p.9-10 ([Exhibit 10](#)).

The facts in this case make clear that the barn is not integral to the operation of the childcare facility. In fact, it was never even intended to be included under the childcare facility's control at all until the developer realized his proposal was not in compliance with § 3.2.1. The proponent's change in the claimed use of the barn, far from satisfying his burden, proves that the barn- a second nonresidential building- is not at all necessary to the use of the property as a childcare facility. Section 3.2.1 does nothing to impede the use of the property as the site of a childcare facility. It is

a reasonable regulation concerning bulk, open space and building coverage which protects the town's municipal interests by requiring the plan to involve only one commercial building in this residential site. It is completely up to the developer to design a proposal in compliance with the bylaw. Not only has the developer failed to establish that the barn is integral to the childcare facility, he has also failed to present anything at all to counter, much less outweigh, the importance of the town's interests.. The proponent simply cannot meet his burden of proof under *Rogers* and § 3.2.1 must be applied.

To the extent the proponent attempts to limit By-Law § 3.2.1 to a prohibition on two non-residential **uses**, he misreads the By-Law. The section prohibits two non-residential **buildings or uses** on the site. Either the barn or the new building would be the second, prohibited non-residential building.

(C) The Barn is not Permissible as an “Accessory Building or Use.”

(i.) Non-Residential Projects May Not Include Accessory Buildings in this District.

By-Law § 3.2.1 is straightforward. It prohibits, “more than one non-residential building or use where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law” on this lot. The section could have permitted accessory buildings. It did not. Instead, the section specifically prohibits even buildings “which are not detrimental to each other and are in compliance with other requirements of the by-laws” in residential districts, even while allowing such buildings subject to granting of a special permit in industrial districts. In fact, the language used in s. 3.2.1 stands in sharp contrast to that in § 3.2.2, which addresses multiple buildings on single lots in commercial districts. Section 3.2.2, the explicitly permits, “Other accessory uses incidental to lawful principle uses.” The sharp difference in the treatment of commercial and residential zones reflects the deliberate choice to preserve and protect the character of residential districts by prohibiting more than one non-residential building on residential lots.

The bylaw permitting accessory buildings for residential projects simply has no application to this project. The allowance of accessory buildings for “Other customary and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas” for residences has no application in this case. Section 3.2.1 specific prohibition against more than one nonresidential

building on lots in this district is the applicable part of the bylaw. Even if there was an ambiguity within the bylaw section – which there is not – the bylaws contain a Variation Provision at NZBL § 1.5,

Where this By-Law imposes a greater restriction upon the use of buildings or premises than is imposed by existing provisions of law or other by-laws, the provisions of the By-Law shall control. Where a provision of this By-Law may be in conflict with any other provision or provisions of this By-Law, the more stringent or greater requirement shall control. More particularly, if a lot is located in more than one zoning district, the minimum area, frontage and all other dimensional requirements of the district in which fifty (50) percent or more of the lot is located shall apply throughout.

Section 1.5 requires that the prohibition of two non-residential buildings on a single residential lot override the permitting of residential accessory buildings in this district. The proponent, a commercial enterprise, may not claim the right to a secondary accessory building, a right given only to residential projects in this residential zone.

(ii.) The Barn Does Not Fit the Bylaw’s Definition of an Accessory Building.

Finally, even if the bylaw permitted accessory buildings, the barn does not meet the by-law’s definition of an “accessory building.” The Supreme Judicial Court analyzed the definition of “accessory building” and “accessory use” as a use “subordinate to and customarily incidental to the principal use” (which is the same as Needham’s definition) in *Harvard v. Maxant*, 360 Mass. 432 (1971):

The word ‘incidental’ as employed in a definition of ‘accessory use’ incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is **subordinate** and **minor** in significance. Indeed, we find the word ‘subordinate’ included in the definition in the ordinance under consideration. But ‘**incidental**,’ when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; **it must also be attendant or concomitant**. To ignore this latter aspect of ‘incidental’ would be to permit any use which is not primary, no matter how unrelated it is to the primary use.

The word 'customarily' is even more difficult to apply. Although it is used in this and many other ordinances as a modifier of 'incidental,' it should be applied as a separate and distinct test. Courts have often held that use of the word '**customarily**' places a duty on the board or court to determine **whether it is usual to maintain the use in question in connection with the primary use of the land.** See: 1 Anderson, [American Law of Zoning § 8.26] loc. cit. In examining the use in question, it is not enough to determine that it is incidental in the two meanings of that word as discussed above. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use....

"In applying the test of custom, we feel that some of the factors which should be taken into consideration are the size of the lot in question, the nature of the primary use, the use made of the adjacent lots by neighbors and the economic structure of the area. As for the actual incidence of similar uses on other properties, geographical differences should be taken into account, and the use should be more than unique or rare, even though it is not necessarily found on a majority of similarly situated properties." (Emphasis added.)

The proponent's attempt to classify the barn as an accessory use fails this test. First, the accessory use of the building must be subordinate to the primary use of the main building as a childcare facility. Here, the proponent's counsel stated just the opposite on September 8 when he said that the barn would "not necessarily be used just for accessory uses." Further, each of the other suggested uses, the establishment of solar panels, storage of maintenance equipment and even general storage, are not "incidental" to the use of the primary building as a childcare facility. They are not uses which are attendant or related to or concomitant with a childcare facility. Finally, it is not customary for childcare facilities to have second buildings, much less two-story second buildings with footprints exceeding 2600 sf and an overall size of 4800 sf in residential districts. The original filed plans did not ask for one. The Massachusetts building requirements for childcare facilities call for none. See: 606 CMR 7.07. The barn alone is larger than the total 2500 sf limit for childcare facilities in residential zones upheld in *Rogers v. Norfolk*. It is larger than the Heideman's home next door. The Planning Board's decision noted that the barn is twice the size of the average home in Needham (1.22, p.26). A review of the GIS images of childcare centers in Needham show no other facility with one, or with any second building at all. A review of 20 childcare facilities in surrounding towns comparably sized to this project show none with such a second building. See: November 21, 2021 submission to the Planning Board. ([Exhibit 11](#)). It is simply fiction to classify a second building, especially one of this size, as "customary" to a childcare facility. In short, even if the by-laws did permit accessory buildings on this lot, the

project's proposal for the barn simply does not meet the by-law's definition of an accessory building and the building cannot be permitted as such.

The Planning Board correctly applied the law in its decision:

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... 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 childcare 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 childcare 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 childcare facility itself. The Petitioner has not provided evidence of any other childcare 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 childcare facilities. In fact, a review of twenty childcare 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 Needham Children's Center, even if not situated in stand-alone commercial space, and fifteen childcare 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 childcare facilities do not call for such accessory buildings (See: 606 CMR 7.07) (Planning Board March 1, 2022 Decision at 1.18 b., p.24).

The Board's February 1, 2022 decision was correct. The abutters' rights to seek enforcement of § 3.2.1 is simply unaffected by the Planning Board's later willingness to revise the condition in an attempt to settle the Land Court case. In sum, By-Law § 3.2.1 protects legitimate municipal interests through rationally related means. The proponent has not and cannot meet his

burden of showing the application of this by-law to this property would impede the use or operation of a childcare facility. The plan as submitted violates the Needham By-Laws, and the building permit should be revoked.

(D) Landscaping is Required

The importance of landscaping as a screen to mitigate the bulk of this project should be beyond question. Sight and sound buffers are critical to protect the surrounding homes. Plantings help absorb stormwater. The Board decision requiring compliance with a landscape plan, maintenance of landscaping and the replacement of trees removed from the property should be enforced. Any claim that landscaping is somehow not permitted by § 3 is simply incorrect. Courts specifically consider the impact of landscaping as a factor to be considered in evaluating proposed projects. See: *Rogers v. Norfolk*, 432 Mass. 374 (2000), specifically considering the screening provided by trees in evaluating the application of § 3.

(E) As far as the Appealing Residents Can Determine, the Submitted Plans Do Not Comply With Zoning Bylaw § 4.2.14 Requiring Screening for Institutional Uses in this Residential District.

Section 4.2.14 specifically protects abutters and the character of residential districts from the consequences of institutional projects. The section commands, “a landscaped transition and screening area shall be provided along those segments of the lot lines necessary to screen the public, semi-public or institutional use from buildings located on abutting lots. The transition area shall be at least twenty-five (25) feet wide, as measured at its narrowest point, and shall be suitably landscaped as specified at Section 4.2.14.3.” Section 4.2.14.2 specifically limits the use of the transition areas so that it will serve as a year-round screen: “Only necessary driveways or interior drives shall be located across a required transition area. No building, structure, parking area, play area or interior street may be located in this transition area. A transition area may be used for passive recreation; it may contain pedestrian, bike or equestrian trails, provided they do not reduce the effectiveness of the transition area as a year-round visual screen. No other uses are permitted in a transition area.” Section 4.2.14.3 sets forth specific, detailed standards and requirements for

the landscape material required. The screening must be at least six feet tall at the time of installation, trees must have a minimum caliper of three inches when planted, and a mixed planting must provide an effective 12-month visual screen.

The submitted plans do not comply with this bylaw section. No landscape plan appears to have been filed.¹

The bylaw passes the *Rogers* test. It is use neutral, and rationally related to a legitimate municipal interest. It regulates concerns of bulk, open space and building coverage. It has no negative impact on a childcare facility at all. *Rogers* itself discussed the appropriateness of trees and screening in the consideration of a site (at 304). Indeed, the transition area would benefit the childcare center by achieving the desire expressed by Mrs. Day for privacy and a complimentary presence in the neighborhood.

(F) The Submitted Plans do not Comply with Parking Requirements of the Amended Zoning Bylaw § 5.1.1.1.

Parking is governed by Section 5 of the Needham Zoning bylaws which provide, “Paved off-street parking spaces shall be provided for all uses and structures (excluding single- and two-family structures) as described in Section 5.1.2 in accordance with the provisions of this Section.” NZB § 5.1.1.1.

Section 5.1.2 includes a schedule of uses and associated parking requirements. Daycares are not listed in that schedule. The bylaw states that when a use is not listed, the Building Commissioner should use the requirements for the most similar use, or the Planning Board should designate the required number of spots according to the most recent edition of the ITE parking manual or a different technical manual determined by the Planning Board to be equally or more applicable. (Section 5.1.2 of NZBL, as amended by Town Meeting in May 2023.² ([Exhibit 12](#)).

¹ The submitted plans do not appear to even have included the DRB recommendation to replace the proposed white vinyl fence with a wooden fence.

² The bylaw has changed since the applicant appeared before the Planning Board so the Planning Board finding on the adequacy of parking does not apply to this August 22, 2023 building permit. Under M.G.L. 40A, s.5, a zoning bylaw amendment goes into effect on the date it was passed by Town Meeting.

The most recent edition of the parking manual calculates parking based upon the square footage of the building. This makes sense since a daycare will have different configurations of enrollment throughout the lifespan of the building and therefore enrollment alone is not suitable as a measure of parking needs. The ITE manual specifies daycare facilities require 3.7 spots for every 1000 square feet of building to meet requirements at the industry standard of 85% occupancy. See traffic engineer John Gillan response to Paragraph 4 of Peer Review Engineer John Diaz. ([Exhibit 13](#)). For the proposed 10,034 square foot building, that comes out to 38 parking spaces. If the applicant keeps the barn, the square footage is 14,834, which requires 55 parking spaces. That the ITE parking manual should be used, and exactly what that manual requires, is not arbitrary or unreasonable. The ITE parking manual is recognized as the industry standard. The applicant's traffic engineer John Gillan did not have any difficulty figuring out what the manual required for the industry standard 85% parking capacity.

Parking should also be explicitly limited to parking on site.

The building permit should be revoked because the submitted plan shows only 30 parking spaces, which is not in compliance with the relevant edition of the zoning bylaws.

(G) The Submitted Plans do not Comply with the General Design Requirements of Zoning Bylaw § 5.3.

These include: (i.) a stormwater management plan, as required by § 5.3.2; (ii). measures to mitigate threats to water quality and soil stability both during and after construction, as required by § 5.3.3; and/or (iii.) measures to control or mitigate off-site glare and off-site light spill-over, as required by § 5.3.4.

Section 5.3.4 protects the health and welfare of surrounding neighbors by protecting them from the impacts from light spillover. The section requires, "Off-site glare from headlights **shall** be controlled through arrangement, grading, fences, and planting. Off-site light over-spill from exterior lighting **shall** be controlled through luminaries selection, positioning, and mounting height so as to not add more than one foot candle to illumination levels at any point off-site" (emphasis added).

The filed plan places the driveway entrance and exit directly opposite the family homes of Pete and Ann Lyons and Rob DiMasi. No proposal has been included to manage the glare from

headlights which will intrude on to these homes. No lighting plan appears to have been filed with the plans for the building permit. The DRB noted the original plan included lighting poles that were too high and not in keeping with a residential neighborhood. The bylaws have a legitimate municipal goal- limiting the negative impact of lighting of a commercial building when sited in a residential neighborhood- and are rationally related to that goal. The regulation is permissible under *Rogers* as it addresses considerations created by the project's bulk, as the size of the building influences the number of cars coming and going and the need for exterior lighting.

(H) There is no Stormwater Management and Erosion Control Plan.

The Town Bylaw § 7.1. provides that “[a] Stormwater Management and Erosion Control plan shall be required for any construction activity.” The Bylaw further requires that “all persons required to obtain a Building Permit for new construction and/or additions greater than 25% of the existing building footprint shall be subject to the requirements of the [Stormwater] Bylaw.”

The Building Commissioner has asserted that he views page 4 of the site development plan as a stormwater plan. The Engineering Department has indicated that there is no erosion control plan.

The single page stormwater “plan” is not sufficient because it does not include any of the detailed information required by Needham’s stormwater bylaw and regulations. Further, the single page “plan” is insufficient because it does not account for the installation of a septic system. That page of the plan shows a connection to the Town sewer.

The absence of an approved stormwater management and erosion control plan is a critical and substantive omission. Abutters to the project are very much exposed and at risk both from construction site stormwater runoff and from stormwater runoff from an inadequately designed stormwater management system at the completed project. The risk is further heightened by the potential and as yet unassessed presence of hazardous materials at the site – the historical unlicensed uses of which include a junkyard, race car building and repair shop, excavation business and lawn care business operation -- exposing neighbors and the Charles River to runoff and migration of potentially hazardous substances, during construction and especially during storm events. The plan must account for any remedy for the potential contamination of the site, which even the developer acknowledges warrants some sort of mitigation (he suggested that fill be placed on parts of the site post construction as a precaution).

The Land Court decision and judgment in no way prohibit the Building Commissioner or the Town from enforcing the stormwater management requirements of the Town Bylaw. Stormwater management bylaw was not the subject of the Land Court decision, and it is not a zoning issue that is in any way exempted from local regulation by Mass. Gen. L. c. 40A, § 3. See: *Southern New England Conference of Seventh Day Adventists v. Burlington*, 21 Mass. App. Ct. 701 (1986) (holding that state statute and local bylaws on wetlands remain in force on Section 3 religious users.)

- (I) There is no Construction Management Plan, detailing how construction at the site will be managed to minimize and mitigate adverse impacts – including from construction traffic, stormwater runoff, dust, noise and hazardous materials – on abutters and the neighborhood.**

The ZBA should require the applicant to file a Construction Management Plan. No building permit should have been issued until an approved, comprehensive construction management plan prior to the issuance of a Building Permit. has been filed, reviewed, and approved. This should include covering and management of the piles of dirt produced during the construction process- especially considering the likelihood of environmental contamination acknowledged by the developer’s submission to the Board of Health.

PART III – Site Plan Review

(1) Site Plan Review is Necessary for Issuance of a Building Permit.

(A) Special Permit versus Site Plan Review.

The Needham Zoning Bylaws require Major Projects such as this one to obtain both site plan review and special permit. These are two separate requirements.

**(B) The ZBA Need Not Decide Whether Needham Can Require a Special Permit
for Childcare Uses under MGL c. 40A, § 3.**

NZBL 7.2.3 provides, “A *special permit* shall be required for every Major Project, regardless of whether the contemplated use thereof is designated as permissible, as of right or by *special permit*, under the table of uses set forth in Section 3.2 of this bylaw.” The two distinct references to “*special permit*” in this section underscore that the special permit required for Major Projects is separate and different from special permits required for use, which would be impermissible under MGL c. 40A, § 3. However, regardless of whether it would have been proper for the Planning Board to require a Special Permit in addition to site plan review for the daycare center as a Major Project, the Planning Board did not in fact require a special permit in this matter.

The applicant first applied as a Minor Project and provided all the material it thought satisfied all the aspects of site plan review. When it became clear that the applicant needed to submit as a Major Project because of its bulk, the applicant asserted that the town did not have any right to require a special permit in addition to the site plan review, regardless of Major Project status, due to MGL c. 40A, § 3.

Instead of litigating that point to determine the correct review procedure, the Town and the Applicant came to a negotiated agreement. Under that agreement, the Planning Board would not deny the application and it would require only site plan review permitted by MGL c. 40A, § 3, and, in exchange, the Applicant would agree to be subject to Major Project procedures such as notice and a hearing. They called this “Major Project Site Plan Review”. The “Major Project Site Plan Review” procedures for this individual case were created and agreed to by the Applicant, Town Counsel and the Planning Department, approved by vote and utilized by the full Planning Board. See: Letter of Evans Huber to the Planning Board outlining agreement dated May 14, 2021 ([Exhibit 14](#)); Email of Lee Newman dated May 17, 2021 explaining to neighbor the procedure that had been negotiated for this application. ([Exhibit 15](#)).

Pursuant to this agreement, the Planning Board conducted only site plan review. This is further evidenced by the fact that the Planning Board’s official notice for the hearing specified that it was Major Project Site Plan Review. Also, the Planning Board declared from the start that the Planning Board did not possess the authority to deny the application (as it would under Special

Permit). See Notice of Hearing dated May 27 and June 3, 2021 ([Exhibit 16](#)); Video of July 20, 2021 Planning Board Hearing, at 21:15. Link: [Planning Board 07/20/2021](#)

Having agreed to this Major Project Site Plan Review, the applicant cannot now disavow it. *Berkshire v. Agawam ZBA*, 43 Mass. App. Ct. 828, 834 (1997) (Disavowal by unsatisfied developer of the procedure used for a matter, rejected: “Having carefully and deliberately led the board, and those who opposed its application, down the road toward a special permit ... Berkshire may not now abandon an analysis that it induced the board and others to adopt, in favor of an opposing theory it hopes will produce a satisfactory result.”).

For these reasons, the question of whether Needham can require a Special Permit is not relevant to this case, cannot be asserted by the applicant, and it need not be reached by this Board.

(C) Site Plan Review is Required for this Project

NZBL 7.4.3 provides “A Site Plan Review shall be performed by the Planning Board for each major and minor project prior to the filing of an application for a building permit.” This is separate and distinct from the bylaw’s Special Permit requirements for Major Projects.

(i.) The Project Does Not Comply with Major Project Site Plan Review Decision of March 1, 2022

The Land Court decision treated the March 1, 2022 Site Plan Decision as if it were a decision on a Special Permit. The residents appealing herein contend that this was error, and, in any event, the residents appealing herein were denied the opportunity to participate in the Land Court litigation and accordingly they are not bound by that judgment.

Additionally, the Land Court decision held that Section 3 prohibited the imposition of a setback greater than the minimum dimensional requirement of the zoning bylaw. The residents appealing herein content that this was error.

In *White v. Armour*, 16 LCR 748 (MA, 2008) ([Exhibit 17](#)), the Court hearing a case under a different provision of Section 3 made clear that the goals of a site plan review bylaw allow a Planning Board to exceed minimum dimensional requirements set forth in other sections of the bylaws. The Court reasoned:

The plaintiffs also contend that the site plan approval requirement for buildings with an RGFA greater than 6,000 square feet cannot validly regulate bulk and density because other provisions in the Bylaw specifically deal with bulk and density considerations (height, setback, parking, etc.) and the planning board would be bound to follow them. As *Muldoon v. Planning Board of Marblehead* makes clear, however, that argument fails as well. 72 Mass. App. Ct. 37. Where, as here, the goals of site plan approval include minimizing the impacts to neighboring properties and the community, the site plan approval bylaw allows the planning board to impose reasonable conditions on site plan approval in order to achieve those goals even where those conditions impose dimensional requirements stricter than the minimum required by the applicable zoning by-law." *Id.* at 376. Stricter requirements in such circumstances do not violate the uniformity requirements of G.L. c. 40A, § 4. *Id.* at 375. As a result, the fact that the planning board evaluates the impacts of bulk and density for homes with an RGFA in excess of 6,000 square feet under the Bylaw's general site plan approval provisions rather than simply requiring those homes to meet the specific dimensional requirements in other sections does not invalidate the site plan approval requirement for those homes.

For the childcare center here, the Planning Board used reasoned findings to require a setback of at least 120 feet. It found that municipal interests which it characterized as "extremely important," required the greater setback. The greater setback for this building serves multiple purposes. It aligns the building in keeping with the surrounding neighborhood. It prevents the Heideman's home from being completely overwhelmed by the project, which as proposed will be closer to the road and built after raising the grade six feet. It mitigates the sheer size and bulk of the project, which surpasses all of the surrounding homes and approaches the Temple's bulk. The setback creates a longer driveway, increasing the site's ability to handle the all day stream of traffic, including drop off and pick up. It moves cars and the live drop off lane further from the sidewalk and street, increasing pedestrian and vehicle safety and lowering the risk of cars queuing on Central Avenue. It mitigates the commercial appearance of the building, a design the DRB found not to be in harmony with the surrounding neighborhood. These concerns impact the daily lives of the residents appealing this decision. These families and their children walk and bike in this area. Their homes and lives will be impacted by this project every day and forever. The Planning Board's decision was correct and should be enforced.

This is an area where close scrutiny of the concerns reveals that it is the developer's interest, and not the childcare center's interest, that seeks to use Section 3 to gain relief from the condition requiring a greater setback. The childcare operator testified at trial that she did not want to "call attention to the building." Trial Transcript, Vol. 1, at 41. ([Exhibit 18](#)) She testified that it was her

intent that the building “mesh into the surrounding area” and not “stand out as a childcare facility.” *Id.* The applicant’s answers to interrogatories corroborate the benefits of the main entrance being as far away from Central Avenue as possible were “for safety and aesthetic reasons.” Needham Enterprises’ Ans. to Int. 9, at 8. ([Exhibit 19](#)).

It is the developer who does not wish to have the building set further from Central Avenue or the barn removed because the developer is seeking to maximize the amount of land he will be able to sell or further develop behind this building, to minimize what it costs him to build the childcare center and thereby maximize the profit he can make from this land. Section 3 cannot be used as a cover to advance the developer’s own separate commercial interests. *Regis College v. Weston*, 462 Mass. 280 (2012) (Court refuses to allow Regis to invoke the Dover Amendment by tacking a minimal educational component onto its project because the true purpose of the project was to build profitable luxury apartments, an interest that is not protected by the Dover Amendment).

For these reasons, to the extent that the proposed plans do not comply with the setback and the rest of the March 1, 2022 Major Project Site Plan Review Decision, the residents appealing herein assert the building permit should be revoked.

(ii.) The Building Permit Should Be Revoked Because if the Planning Board Decision is Annulled, This Project does not have Site Plan Review as Required.

The March 1, 2022 Major Site Plan Review Decision issued after following the site plan review process is a valid exercise of municipal zoning authority consistent with MGL c. 40A, § 3, p. 3. Nothing in the language of MGL c. 40A, § 3 precludes site plan review of childcare facilities and, in any event, Needham Enterprises entered into a binding agreement with the Planning Board about the process for this application and, therefore, cannot now contest that the appropriate process was used.

If the March 1, 2022 Major Project Site Plan Decision is annulled, this project does not have site plan review and therefore is out of compliance with NZBL § 7.4.3. For this reason, the Building Permit should be revoked by this Board.

(iii.) Needham's Site Plan Review Bylaw is Valid on its Face under § 3.

Needham complies with MGL c. 40A, § 3 by designating childcare facilities a use by right throughout the town. See NZBL § 3. Childcare operators simply are not required to obtain a special **use** permit in order to use a property to operate a childcare facility in Needham.³ The bylaws permit as of right the establishment of childcare facilities on virtually any lot throughout the town, making clear that Needham does not impermissibly restrict the establishment of childcare facilities. See: *Rogers v. Norfolk* (upholding a childcare specific bylaw limiting facility building size to 2500 sf finding the bylaw permitted the establishment of childcare centers in 95% of the town's buildings), *Tracer Lane II Realty, LLC v City of Waltham*, 489 Mass 775 (2022) (holding impermissible a bylaw limiting the establishment of large scale solar powered systems to only 1 to 2% of the town's parcels). That Needham's bylaws do not impermissibly limit the establishment of childcare facilities and the reasonableness of its regulations is reflected by the fact that the town has the most large group childcare facilities per capita from a list of surrounding cities and towns. See [Exhibit 5](#).

Having complied with the requirements of section 3 by designating childcare facilities as a permitted use throughout the town, Needham retains its ability to regulate specific construction proposals for childcare facilities through its Site Plan Review process. The process regulates all construction projects over specific bulk benchmarks to protect designated, established and well recognized legitimate municipal interests.

Site Plan Review in NZBL section 7.4 is a reasonable regulation of bulk, aimed at assessing the potential consequences created by larger construction projects on legitimate municipal concerns. Review is not based on the eventual use of the building. Section 7.4.2 provides the definitions applicable to site plan review:

³ The applicant in this case is a real estate developer rather than a child care operator. The protections of section 3 run to the operation of a child care program, not to the financial interests of a real estate developer. Therefore, it is only the interests of the child care facility that are protected by Section 3, and only conditions which inhibit a building's use as a child care center that are subject to the *Rogers* test. The developer-applicant's interest in protecting his own distinct interests, such as his interest in maintaining space at the back of the property for further development or sale, are not protected by Section 3. See: *Campbell v City Council of Lynn*, 415 Mass 772, 777 & n.6, and *Needham Pastoral Center, Inc. v Board of Appeals of Needham*, 29 Mass. App. Ct. 31 (1990).

...For the purposes of this Section the following definition of terms should apply to **any construction project** excluding single and two family homes.

MAJOR PROJECT – Any **construction** project which involves: the **construction** of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces...

MINOR PROJECT – Any **construction** project which involves: the **construction** of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project. (Emphasis added).

By its plain terms, Needham's site plan review bylaw is a regulation concerning the bulk of construction projects, a topic specifically subject to reasonable regulation under MGL c. 40A, § 3. It is use-neutral, and applies to all construction projects, including proposed childcare facilities, over definite thresholds, to assure the protection of legitimate municipal zoning objectives. The site plan review bylaws come into play only when a project is of such bulk that it merits review beyond the application of the usual zoning bylaw requirements. The square footage of new construction, the total change in a project's resulting gross floor area, or the need for additional parking require site plan review; the building's proposed use is not even considered in triggering this process. Site plan review simply provides the means for the town to identify and impose reasonable conditions to mitigate the impacts resulting from the bulk of a proposed construction project in its particular location if necessary to protect legitimate municipal interests. Put simply, NZBL § 7 is a "reasonable regulation" of the bulk, open space and building coverage of new construction projects permitted under MGL c. 40A, § 3.

Courts have long recognized the appropriateness of site plan review and conditions imposed thereunder as a means for the reasonable regulation of permitted uses in order to protect municipal interests delineated in the bylaws. "Although not expressly provided by statute, site plan review is recognized as a permissible regulatory tool and a means for communities to control the aesthetics and environmental impacts of land use under their zoning bylaw." *Muldoon v. Planning Board of Marblehead*, 72 Mass.App.Ct. 372 (2008). Because childcare facilities remain subject to the requirements of the Uniformity Statute MGL c. 40A, § 4, they are subject to all of the requirements of a town's bylaws- including the provisions requiring site plan review.

Cities and towns throughout the Commonwealth utilize site plan review as the means to apply reasonable regulation to childcare facilities. Municipal bylaws- all approved by the Attorney General's office- use site plan review either on its own or in addition to childcare specific bylaws, to regulate childcare facilities. For example, Westwood allows day care facilities in existing buildings as of right but requires facilities in new buildings to get special permits. Brookline's administrative site review requires applicants to provide the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground); employee and drop-off/pick-up parking, and a site plan showing the location of outdoor play space and parking. Newton's site review provides notice to the Ward Councilors and abutters, and addresses convenience and safety of streets, driveways, screening and avoidance of major topographical changes. Wayland's Planning Board conducts site plan review of section 3 uses "consistent with that section." Framingham differentiates between the sizes of proposed projects, using a more limited site plan review for minor projects and full site plan review when a project's size qualifies as a major project. The widespread practice of using site plan approval to regulate childcare facilities throughout the Commonwealth belies any claim that site plan review is not permissible for this purpose. See: List of Childcare Facilities in Cities and Towns. ([Exhibit 5](#)).

The Needham bylaws stand in sharp contrast to those considered in *The Bible Speaks vs. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19 (1979). The Lenox bylaws explicitly made all educational users subject to both the grant of a discretionary special permit, and an elaborate site review for proposed changes in any use of existing buildings or structures. The Court noted the Lenox bylaw "would enable the board to exercise its preference as to what kind of educational or religious denominations it will welcome, whether very kind of restrictive attitude which with the Dover amendment was intended to foreclose." 8 Mass. App. Ct. at 33. Taken together, the Court held that the combination of bylaws nullified the protections intended by section 3 for educational users. Needham does none of these things. Where Lenox applied a discretionary special permit to the use by an educational user and site review for changes in existing structures, Needham makes childcare facilities a use as of right throughout the town and only applies site plan review process to new construction projects when the proposed projects exceed a specified bulk. Lenox denied a permit to allow a change in existing buildings and the erection of lighting for a softball field; Needham permitted the exact building requested for the childcare facility with conditions to protect legitimate municipal interests implicated by the large bulk of the project.

Needham's bylaw permits larger facilities than the bylaw explicitly affirmed by the Supreme Judicial Court in *Rogers v. Norfolk*, 432 Mass. 374 (2000). In *Rogers*, the Court upheld the validity of a bylaw which specifically limited childcare facilities in residential districts to no more than 2500 square feet, even when the bylaw applied to existing buildings. After stating the burden to establish the invalidity of a bylaw falls to the challenger, the Court stated:

...Nothing in the language of G.L. c. 40A, § 3, third par., requires local officials to treat a childcare facility the same as a residential use, or makes unlawful the adoption of a provision in a zoning bylaw that differentiates between building coverage requirements applicable to childcare facilities and other uses. Indeed, there is indication that the Legislature, in enacting G.L. c. 40A, § 3, second par., authorized municipalities to impose regulatory measures on educational and religious uses, in order to protect the character and well-being of established neighborhoods, as long as "the regulation will not seriously jeopardize the mission of the protected institutions." 1972 House Doc. No. 5009. See *Trustees of Tufts College v. Medford*, supra at 770, (Appendix).

Needham permissibly exercises its authority to reasonably regulate concerns with the bulk, open space, and building coverage requirements of proposed construction projects of childcare facilities through the site review process, and its bylaws are in fact more nuanced and more accommodating to childcare facilities than the bylaw approved in *Rogers*. Needham only applies its § 7.4 site plan review to new construction projects at least twice the size of the 2500 sf limit approved in *Rogers*. In the Residential A zoning district at issue, only construction projects involving more than 10,000 sf of new construction, or with a total size at completion of more than 5,000 gross floor area, or requiring more than 25 parking spaces are subject to major site plan review. Needham's process is tailored to address legitimate municipal interests implicated by the concerns created by the bulk of new large construction projects.

In *White v. Armour*, 16 LCR 748 (MA, 2008) ([Exhibit 17](#)), the Court upheld a town bylaw which required site plan review of single family residences (also a protected use under section 3 and subject to a similar proviso)- with a gross floor area of 6,000 sf as an appropriate regulation of bulk permitted under MGL c. 40A, § 3. In words applicable here, "The Bylaw's purpose for this requirement is clear. In the town's judgment, size matters." The Court recognized the legitimacy of municipalities using square footage thresholds as a means to regulate uses, even when those uses are protected under section 3.

...a municipality is entitled to draw reasonable regulatory distinctions based on size. The line drawn by the Bylaw (requiring site plan approval for homes greater than 6,000 square feet) is not only a reasonable distinction, but also a reasonable approach to addressing the consequences of such size. *See Y.D. Dugout, Inc. v. Bd. of Appeals of Canton*, 357 Mass. 25, 31 (1970) (towns may adopt "reasonably flexible methods . . . allowing [their] boards . . . to adjust zoning regulation to the public interest in accordance with sufficiently stated standards"); *Andrews v. Town of Amherst*, 68 Mass. App. Ct. 365, 367-368 (2007) (Municipalities have "broad legislative powers" under the Home Rule Amendment, Art. 89 of the amendments to the Massachusetts Constitution, and the Zoning Enabling Act, G.L. c. 40A, to regulate land use within their boundaries. Standards will be upheld so long as they serve allowable zoning objectives, § 2A of St. 1975, c. 808, and are neither in violation of any provision of the Zoning Enabling Act nor "an arbitrary or unreasonable exercise of the police power having no substantial relationship to the public health, safety or general welfare.").

The Court further noted that the site plan review bylaw did not create unfettered discretion.

...The ZBA has simply said that the permit's issuance in this case was premature because site plan review was never sought, obtained, or formally waived by the planning board. The law prohibits the planning board from acting arbitrarily or capriciously. After reviewing the situation, the planning board might very well decide that the site need not be altered in any way. At most, it can only impose reasonable terms and conditions unless no such terms could resolve the site's problems, if any. *Prudential Ins. Co. of America*, 23 Mass. App. Ct. at 283 n.9 ("In some cases, the site plan, although proper in form, may be so intrusive on the interests of the public in one regulated aspect or another that rejection by the board would be tenable.").

The *White* Court's reasoning is instructive in the instant case. "Size matters" and as long as concerns that arise from the bulk of the project are what the conditions are regulating, site plan review and the resulting conditions are permissible subject to the *Rogers* test.

(iv.) Needham's Site Plan Review Bylaw is Valid as Applied to this Project.

Requesting the construction of a commercial 10,034 sf building, while keeping a 4800 sf building, 30 parking spaces, a parking lot, playground, 30 foot wide driveway in a single family residential zone triggers site plan review in Needham. The impact of such a large commercial

project proposed for a residential lot surrounded by smaller single-family homes and Temple Aliyah on an already overburdened Central Avenue is properly conditioned to protect the town's interests, which include the interests of neighbors whose homes are also used as of right. Front loading the project - despite the space to set the exact project requested further back in accordance with the character of the neighborhood and all of the other municipal interests served **and** in accordance with the childcare operator's stated interest in having the children entering the building as far away from Central Avenue as possible - may be in the developer's interest in preserving as much of the lot as possible for further development or sale, but the developer's interest is not protected by § 3.⁴

The Planning Board applied the site plan review bylaw to the project and allowed the exact building requested for the childcare facility, and even agreed to increase the number of children allowed to attend. The decision properly included conditions necessary to protect the town's clear interests after conducting a public hearing. In fact, many of the conditions simply formally committed the developer to measures he himself suggested or explicitly agreed to during the hearings as antidotes to the detrimental effects caused by constructing a large commercial daycare center on this road in this residential neighborhood. These suggestions included capping enrollment at 115 children, paying to change the timing for the Charles River Street and Central Avenue traffic light, committing to conduct a follow up traffic study after the childcare facility is open and operational to at least 80%, and hiring a detail officer for at least some period of time to direct traffic during the morning and evening rush hours. Planning Board Meeting November 18, 2021 at 3:34. https://youtu.be/_yqpyz980NY?si=p6B97kcun9hYsFKn&t=12845 Having satisfied the Board's concerns with these offerings, which then were made conditions, he cannot now contest the legality of those conditions. None of the conditions can be shown to interfere with the operation of a childcare facility, much less to outweigh the protection of legitimate municipal interests. Indeed, many of the conditions *benefit* the childcare center by achieving its design goals, and making it safer and easier for children to arrive and depart the facility.

For these reasons, the Abutters maintain that Section 3 did not prohibit the site plan review that was conducted by the Planning Board.

⁴ Mr. Borrelli did not disclose his plans for the rear of the lot during the Planning Board hearings, but at trial he admitted that he wanted to preserve the ability to subdivide the land for further development or sale. Trial Transcript, Vol II, p. 55-56. (Exhibit 20).

(2) Even if the Major Project Site Plan Review was Properly Annulled, Conditions Should Still be Placed on the Permit by the Building Commissioner or the ZBA.

As discussed previously, the Land Court decision did not preclude the issuance of conditions on the Building Permit, even conditions originally in the Major Project Site Plan Review decision, beyond the minimum dimensional requirements. Even in the absence of the site plan review decision, conditions required to protect the goals of the zoning bylaws should still be included in the Building Permit.

NZBL at section 1.1 state the purpose of the zoning bylaws:

The purpose of this By-Law is to promote the health, safety, convenience, morals or welfare of the inhabitants of Needham; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities under the provisions of General Laws, Chapter 40A.

The following conditions should be placed on the building permit because they are vital to the health and safety of Needham's residents.

(A) Environmental Safety Conditions

The property at 1688 Central Avenue has a storied past. There is a well documented history of decades long unlicensed uses of the site, including as a junkyard for abandoned vehicles and equipment, a race car-building, maintenance and repair shop, the operation of an excavation business including equipment storage, maintenance and repair, and a lawn care business storing equipment, related materials and refuse. Additionally, there were prior complaints to the Town and the Massachusetts Department of Environmental Protection, a seller's condition that the property be sold "as is" and without any environmental due diligence and/or soil testing by any

potential buyer, and the addition of fill to the property after the Board of Health identified the need for appropriate environmental testing. See Board of Health Submissions ([Exhibit 21](#)).

During the Planning Board site plan review process, the Board of Health weighed in on what was needed in order to protect the health and safety of Needham's residents and the eventual users of the daycare center. The Board of Health reviewed the evidence regarding environmental safety at this site and issued the following:

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.

See Email of Tara Gurge to Alex Clee dated March 24, 2021. ([Exhibit 22](#)).

The Board of Health also issued the following:

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 childcare facility.

See Memo from Tara Gurge to Lee Newman dated December 16, 2021. ([Exhibit 23](#)).

The Building Department sought input from all the Town departments with regard to this building permit. The Health Department's response to the Building Department did not indicate it intended to rescind its prior feedback on this project. It did not indicate that the Board of Health recalled its request for these conditions. The Board's concern and its desire for measures to be taken to address the environmental concerns was discussed as recently as September 8, 2023.

There is nothing within the purpose or history of MGL c. 40A, § 3 to suggest that section exempts childcare facilities from health, safety or environmental protections. See: *Campbell v. City Council of Lynn*, 415 Mass. 772, 777, n.9 (1993) (Local zoning officials properly could refuse a building permit for alterations to a nonconforming structure where, for example, the failure to meet local zoning requirements raised safety concerns), *Southern New England Conference of Seventh Day Adventists v. Burlington*, 21 Mass. App. Ct. 701 (1986) (holding state statute and local bylaws regulating wetlands remain in force on Section 3 religious users).

The Board of Health's requirements are in no way a zoning issue that is in any way precluded from local regulation by the Dover Amendment. The environmental condition of the site concerns both the health and safety of the site for its proposed and intended use – a childcare facility – and the impact that the proposed construction or similar future activities at the site may have on neighboring properties from stormwater runoff, dust and disturbed soil.

For these reasons, the Building Permit should include the environmental conditions.

(B) Traffic Safety Conditions

Traffic is an undeniable concern at this location. The impact of adding even more vehicles to this already saturated Central Avenue area is a prime safety concern. The Planning Board received input from residents, traffic engineers and the Police Chief. A letter signed by nearly 500 Needham residents explained the reality of traffic in this area. ([Exhibit 24](#)). Neighbors explained the daily impacts of traffic and the difficulty of entering Central Avenue from side streets or driveways peak times, which extend to well more than an hour during both the morning and evening commutes. John Diaz, a traffic engineer, confirmed that entering Central Avenue from side streets is known to be at a level of service F, which signifies streets are operating over capacity, traffic is stop and go, driver frustration is high and accidents are more likely. See: Planning Board Meeting of October 5, 2021 at 3:21:24. Link: [Planning Board 10/05/2021](#). Vehicles waiting at the Charles River Street traffic light already back up past the driveway at 1688 Central. The addition of vehicles headed to the childcare facility will cause even greater traffic jams and safety issues.

NZBL 5.3.5 requires projects to provide for traffic safety. Entitled, "Safety" the section provides: "Pedestrian and vehicular movement shall be protected, both within the site and egressing from it, through selection of egress points and provisions for adequate sight distances."

The conditions calling for traffic mitigations were specifically fashioned to address the egress to the site and should be included with this building permit. The conditions require the developer to manage parking and traffic flow – **consistent with the presentations he made with the application and suggestions by the traffic experts which he explicitly agreed with** – to avoid backups from the site onto Central Avenue and to address the fact that traffic already backs up beyond the 1688 driveway from the traffic signal at Central and Charles River Street. It memorialized the agreed offer to provide optimized traffic signal timing to the DPW before the issuance of the building permit. It required a detail officer during prime commuting times for a minimum of 45 days. See: 3.12- 3.17. Similar conditions have been imposed to protect neighborhoods in cases involving other childcare facilities.⁵

In this case, the greater setback was also included as a safety measure to address traffic concerns created by the project. As the evidence at the trial on this matter demonstrated, a further setback increases safety. As the Planning Board wrote in its post-trial brief, even in “(the developer’s) own answers to interrogatories and subsequent testimony thereon, where he confirmed that placing the building footprint as far away from Central Avenue as possible would provide both “aesthetic and safety” benefits. Needham Enterprises Ans. to Int. 9, at 8; Trial Transcript, Vol. II, at 100:13-20. ([Exhibit 19](#)). A condition increasing the setback should be included, and, as previously discussed, would be completely consistent with the protections of section 3. The Building Permit should contain these conditions for the health and safety of Needham residents.

⁵ See: *Primrose School Franchising Co. v. Town of Natick*, Misc. 12-459243 (June 17, 2013), *Walker v. Acton* Misc 12-459564 (Nov. 25, 2014) <http://masscases.com/cases/land/2014/2014-12-459564-DECISION.html>.

Exhibits

1. Map showing Residents' Homes
2. Chart showing sizes and setbacks of residents' homes and 1688 Central Avenue
3. Appeals Court Order dated April 24, 2023, Docket no. 2023-J-0227.
4. Denial of Intervention Decision by J. Roberts.
5. Table of Nearby Communities: Population, Child Care Facilities and Regulatory Bylaws
6. DRB comments
7. September 30, 2021 letter to Planning Board from Attorney Evans Huber
8. Letter of Intent Between Needham Enterprises and Needham Children's Center
9. Draft Lease Between Needham Enterprises and Needham Children's Center
10. Excerpts from Post Trial Brief of Needham Planning Board, Regarding Use of the Barn and Storage, pp.9-10.
11. November 21, 2021 Submission to the Planning Board, re: no area child care centers with two buildings
12. NZBL s. 5.1.2 Parking Bylaw as amended by Town Meeting in May, 2023.
13. 8.21.21 Traffic Engineer John Gillan response to Paragraph 4 of Peer Review Engineer John Diaz.
14. May 14, 2021 letter to Planning Board from Attorney Evans Huber
15. May 17, 2021 Memorandum from Lee Newman to Resident Sharon Cohen Gold
16. Notice of Hearing May 27 and June 3, 2021
17. White v Amour, 16 LCR 748 (MA, 2008).
18. Trial Transcript - Ms. Day
19. Excerpts from Post Trial Brief of Needham Planning Board, pp. 13-14. RE: Setback improves safety.
20. Trial Transcript - Mr. Borrelli
21. Submissions to the Board of Health
22. Email of Tara Gurge to Alex Clee dated March 24, 2021
23. Memo from Tara Gurge to Lee Newman dated December 16, 2021
24. Signed Letter from Residents to Planning Board

Exhibit 1

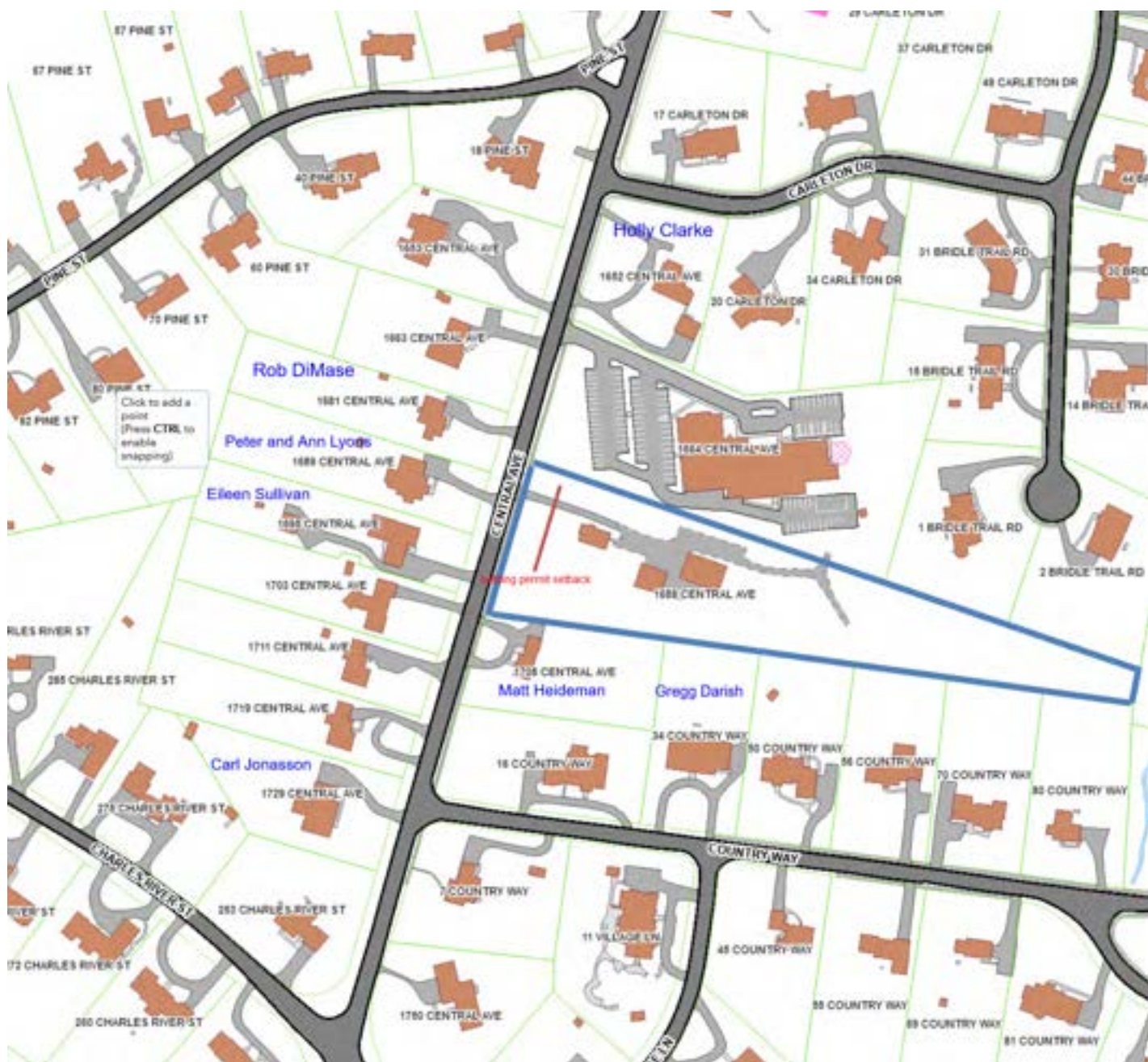


Exhibit 2

Comparison of Needham and Other Cities and Towns.

City/Town	Population *	Number of Child Care Facilities Licens ed by EEC*	Number of Large Chi ld Care Facilities	Local Zoning By La ws Citation	Type of bylaw Regulation
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Framingha m	74,416	115	25	s. IV,B, s.VI, F.2.a	Minor and major site plan review
Brookline	59,121	53	40	Art. IV, s. 603/4, s. 9.12	Administrati ve review May include comments to “mitigate any negative impacts to the surrounding area”
Lexington	33,132	32	25	s. 9.5.6	Site plan review With “limited standards” Specific to day care
Natick	33,012	46	20	s. III-A.2 49, 11.7.2	Site plan and special permit,

					differences if in existing building
Needham	31,388	36	26	7.4.2	Site Plan Review and Special Permit for construction only
Norwood	29,725	36	13	s. 10.5	Site plan
Wellesley	28,670	30	21	S.II.3A, s.16	Day care specific bylaw
Belmont	26,116	34	21	s. 7.3	Site plan review for any new building, or by bulk
Dedham	25,219	45	11	Table 3, 7 s. 280-9.5.3	Minor site plan review limited to reasonable conditions per s 3 Notice to abutters and a meeting required.
Walpole	25,200	37	10	s. 13	Site plan review
Concord	18,918	14	13	s. 4.3.2, s.11.8.7	Site plan review
Hopkinton	18,470	22	10	S, 210-124, 210-165, 210-133	Site plan review: specifically includes s.3 uses if meet criteria

Westwood	16,400	11	7	s.4.1.4.3	New building: special permit Existing: Permitted
Acton	23,662	10	5	S. 5.3.9	Specific dimension
Amesbury	17,535	16	8	S. VD	Site plan
Burlington	28,627	32 (5 public school)	15	5.1.4 9.3.1	Specific dimension, buffer and Site plan review
Canton	23,805	33	16	10.5	Site plan review
Bridgewater	27,619	9	6	10.7	Site plan review- no standards beyond reasonable
Norfolk	12,003	6	4	3.10	2500 sf limit
Holliston	14,939	14	5	s.III,A,VI I	Site plan review
Wayland	13,835	9	9	S. 603.3	Site plan
Medfield	12,995	12	10	S. 5	Site plan
Weston	12,112	10	10	s.V.A.3, s.XI.K	Site plan review for child care
Dover	6127	4	4	S 185-10	Site plan

*Population as reported in Massachusetts Census Data for 2019, malegislature.gov.

** Large Group Child Care Facilities as defined by the EEC.

Exhibit 3

APPEALS COURT

Single Justice

Case Docket

NEEDHAM ENTERPRISES, LLC vs. GREGG DARISH & others
2023-J-0227

CASE HEADER

Case Status	Disposed: Case Closed
Status Date	04/24/2023
Nature	Motion for MRAP 6(a) stay
Entry Date	04/21/2023
Pet Role Below	Defendant
Single Justice	Vuono, J.
Brief Status	
Brief Due	
Case Type	Civil
Lower Ct Number	22MISC000158
Lower Court	Land Court
Lower Court Judge	Jennifer S.D. Roberts, J.

INVOLVED PARTY

Needham Enterprises, LLC
Plaintiff/Respondent

Gregg Darish
Defendant/Petitioner

Matthew Heideman
Defendant/Petitioner

Nicole Heideman
Defendant/Petitioner

Peter Lyons
Defendant/Petitioner

Ann Lyons
Defendant/Petitioner

Robert DiMase
Defendant/Petitioner

Eileen Sullivan
Defendant/Petitioner

Carl Jonasson
Defendant/Petitioner

Holly Clarke
Defendant/Petitioner

Natasha Espada
Defendant

Jeanne McKnight
Defendant

Martin Jacobs
Defendant

Adam Block
Defendant

ATTORNEY APPEARANCE

[Evans Huber, Esquire](#)

[Joseph L. Bierwirth, Esquire](#)
[Donna Ackermann Mizrahi, Esquire](#)

[Joseph L. Bierwirth, Esquire](#)
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[Matthew David Provencher, Esquire](#)
[Jason R. Talerma, Esquire](#)
[Brian J. Winner, Esquire](#)

[Elizabeth Gloria Lydon, Esquire](#)
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[Elizabeth Gloria Lydon, Esquire](#)
[Matthew David Provencher, Esquire](#)
[Jason R. Talerma, Esquire](#)
[Brian J. Winner, Esquire](#)

Paul Alpert
Defendant

[Elizabeth Gloria Lydon, Esquire](#)
[Matthew David Provencher, Esquire](#)
[Jason R. Talerman, Esquire](#)
[Brian J. Winner, Esquire](#)

Needham Planning Board
Defendant

[Elizabeth Gloria Lydon, Esquire](#)
[Matthew David Provencher, Esquire](#)
[Jason R. Talerman, Esquire](#)
[Brian J. Winner, Esquire](#)

Needham Childrens Center
Other/respondent

[Valerie A. Moore, Esquire](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
04/21/2023	#1	Motion for stay under M.R.A.P. 6(a) filed for Gregg Darish, Matthew Heideman, Nicole Heideman, Peter Lyons, Ann Lyons, Robert DiMase, Eileen Sullivan, Carl Jonasson and Holly Clarke by Attorney Joseph Bierwirth.
04/21/2023	#2	Appendix filed for Gregg Darish, Matthew Heideman, Nicole Heideman, Peter Lyons, Ann Lyons, Robert DiMase, Eileen Sullivan, Carl Jonasson and Holly Clarke by Attorney Joseph Bierwirth.
04/24/2023	#3	Copy of Docket Sheets, received from Land Court.
04/24/2023	#4	Response filed for Needham Enterprises, LLC by Attorney Evans Huber.
04/24/2023		ORDER: The proposed intervenor-defendants have filed a motion, pursuant to Mass. R.A.P. 6(a), seeking an order staying a trial scheduled to commence tomorrow in the Land Court. The proposed intervenors are a group of landowners whose property abuts a proposed development (abutters). The developer filed the underlying suit in the Land Court to challenge conditions attached to the special permit issued by the planning board. The abutters sought to intervene, and the Land Court judge denied their motion without prejudice. After reviewing the developer's and the board's pretrial memoranda, the abutters renewed their motion to intervene. The renewed motion was denied, and the abutters appealed pursuant to the doctrine of present execution. The abutters filed a motion, in the Land Court, asking that court to stay the trial pending the resolution of the abutter's appeal. After the judge denied the abutter's motion to stay, they filed the motion now pending before me. The developer has filed an opposition and cross-moved for an award of attorney's fees. To obtain a stay or other injunctive relieve pending appeal, the moving party must demonstrate, among other things, that there is a risk of irreparable harm if the injunction pending appeal is not granted. See <u>C.E. v. J.E.</u>, 472 Mass. 1016, 1017 (2015). Only irreparable harm, that is harm that cannot be fully remediated following the conclusion of the appeal, may form the basis for granting relief pursuant to Mass. R.A.P. 6(a). Cf. <u>Packaging Indus. Grp., Inc. v. Cheney</u>, 380 Mass. 609, 616 (1980) ("On the basis of this record, the moving party must show that, without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits"). Because the appellate court may order a retrial in the event that the abutters succeed in their appeal from the denial of their motion to intervene, the harm to the abutters caused by allowing the trial to proceed tomorrow without their participation is not irreparable. For this reason, the abutter's motion is denied. The developer's cross-motion for attorney's fees and costs is denied. So ordered. (Vuono, J.). *Notice/Attest/Roberts, J.
06/02/2023		Returned eMail: Notice of ORDER sent to Brian J. Winner returned as undeliverable. Notice re-sent to updated email address on file (Inadvertently not docketed when received on 04/24/2023).

As of 06/02/2023 3:15pm

Exhibit 4

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

NORFOLK, ss.

22 MISC 000158 (JSDR)

NEEDHAM ENTERPRISES, LLC,

Plaintiff,

v.

NEEDHAM PLANNING BOARD,

And

PAUL ALPERT, ADAM BLOCK, MARTIN
JACOBS, and JEANNE McKNIGHT, in their
capacity as members of the NEEDHAM
PLANNING BOARD,

Defendants.

**ORDER DENYING ABUTTERS’
RENEWED MOTION TO INTERVENE**

In this action, commenced on March 23, 2022, plaintiff Needham Enterprises, LLC (“the LLC”) appeals from the grant of a special permit with conditions issued by defendant Needham Planning Board (“the Board”) pursuant to a zoning provision requiring a Major Project Site Plan Review Special Permit for projects of a certain size. The special permit was issued with respect to a proposed childcare facility (“the Project”), which is governed in part by G. L. c. 40A, § 3, the Dover Amendment. The LLC challenges the application of the Major Site Plan Review Special Permit process to the Project, and also challenges a number of the particular conditions imposed by the Board. Presently before the court is the Abutters’ Renewed Motion To Intervene (the “Renewed Motion”).

On April 12, 2022, certain abutters to the Project¹ filed Abutters’ Motion To Intervene. That motion was denied after hearing by order dated May 6, 2022, the court concluding (1) that under current circumstances, the interests of the Abutters were adequately represented by the Board and (2) that it was not anticipated that any modifications would be made to the Board’s decision without the matter first being remanded to the Board for public hearing thereon. The Abutters were informed that they could renew their motion if circumstances changed. The Board filed a motion to dismiss the LLC’s complaint on June 21, 2022, which was denied after hearing by order dated August 16, 2022. The parties reporting that discovery was substantially complete on January 19, 2023, the court scheduled a pretrial conference for April 4, 2023 and a trial for

¹ Gregg Darish, Matthew Heideman, Nicole Heideman, Peter Lyons, Ann Lyons, Robert DiMase, Eileen Sullivan, Carl Jonasson, and Holly Clarke (“the Abutters”).

April 25 and 26, 2023. The Board filed a motion on March 1, 2023 seeking to preclude evidence related to the LLC's proposed tenant, a childcare provider, or to join the proposed tenant as a party and continue the trial. At the hearing on that motion on March 16, 2023, the court raised the issue of whether the Project could properly be the subject of a site plan review special permit under the teaching of *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19 (1979) and its progeny. The parties were requested to brief the issue and, ultimately, further discussion of it was deferred to the pretrial conference, which was rescheduled to April 11, 2023.

On April 4, 2023, the Abutters filed the Renewed Motion and supporting memorandum of law, arguing that the following changed circumstances existed: (1) the LLC and the Board had allegedly had substantive settlement discussions without the Abutters' involvement; and (2) the court had raised a potentially dispositive legal issue under *The Bible Speaks*. On April 5, 2023, the Abutters filed a supplemental memorandum in support of the Renewed Motion, in which they argued, based on discussion at the status conference held on April 4, 2023 (regarding whether to proceed to determine the legal issue first or proceed to trial), that the Abutters would be seriously prejudiced if the matter proceeded to trial and to a final judgment issued without an order of remand. On April 10, 2023, the Abutters filed their second supplemental memorandum in support of the Renewed Motion, in which they argued, based on the contents of the LLC's and the Board's joint pretrial memorandum, that the Board no longer intended to defend certain conditions that were important to the Abutters, including (1) complying with a bylaw provision permitting only one non-residential building on a lot, (2) requiring the LLC to comply with requirements of the Board of Health, and (3) requiring the LLC to construct an ADA compliant sidewalk. In this second supplemental memorandum, the Abutters further requested that the court continue the trial in this matter for 90 days.

The Renewed Motion is DENIED for the reasons stated on the record at the hearing on April 11, 2023, as further elaborated on herein. First, as set forth in *Prudential Ins. Co. of Am. V. Board of Appeals of Westwood*, 18 Mass. App. Ct. 632, 633-634 (1984), because the Abutters are not aggrieved by the decision of the Board, they are not "aggrieved" for purposes of G. L. c. 40A, § 17, and not able to claim a cognizable "interest" under Mass. R. Civ. P. 24(a)(2). Second, the LLC and the Board confirmed at the hearing that there had been no settlement discussions between them since late February, and no settlement had been reached. This distinguishes this case from *Cotton Tree Serv. v. Planning Bd. of Westhampton*, 2019 Mass. App. Unpub. LEXIS 273, at *9 (allowing intervention where an agreement for judgment between the applicant and the local board "predestined the outcome of a public hearing on remand, caused the board's actual decision (denying the special permit) resulting from the public hearing to be disregarded, and placed the court-ordered special permit beyond the scope of any judicial review under § 17"), and *Berkshire Power Dev., Inc. v. Zoning Bd. of Appeals of Agawam*, 43 Mass. App. Ct. 828, 831 (1997) (allowing intervention after the entry of judgment where the abutters' interest were inadequately represented, the board having failed to offer evidence that had a "pivotal bearing" on the application for a special permit). Third, there is no reason to think that the Board cannot adequately address the legal issue raised by the court. Fourth, the court interprets the Board's recent decision not to defend certain conditions imposed by it as an acknowledgment that those conditions would likely not survive a Dover Amendment analysis. Finally, whatever happens here (and, as noted by the court at the April 11, 2023 hearing, it remains to be seen how this case will be resolved, whether by final appealable judgment or by remand to the Board for

further proceedings), the court anticipates that the Abutters will have the opportunity to raise their objections should the Project go forward, either on remand to the Board or upon the issuance of a building permit to the LLC.

SO ORDERED.

By the Court (Roberts, J.)
/s/ Jennifer S. D. Roberts

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: April 12, 2023.

Exhibit 5

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** Large Group Child Care Facilities as defined by the EEC.

Exhibit 6



TOWN OF NEEDHAM

TOWN HALL
1471 Highland Avenue
Needham, MA 02492-2669

Design Review Board

Memo: Project Site Plan Review, 1688 Central Ave., Needham Enterprises LLC

Meeting Date: August 9, 2021

Memo Date: August 13, 2021

By: Deborah Robinson

The Board reviewed the design drawings for the new building proposed for this site, and the project was discussed at the DRB meetings on March 22 and May 10. Since that time this project has been discussed at Planning Board meetings, and there was a peer review of the documents by Greenman-Petersen, Inc. (GPI) that focused on traffic issues.

Representing and presenting for the Applicant was Evans Huber, the attorney for the project. Present for the Design Review board were Deborah Robinson (vice-chair), Bob Dermody, Len Karan and Chad Reilly. Mark Gluesing (chair) recused himself due to his involvement as architect for the project.

The proposed building is a day care facility of 9,966 SF to be located on a 146,003 SF lot in a residential neighborhood. The site plan for the proposed one-story building would be set back 64 FT (increased from 50 FT and the originally submitted 35 FT) from the street. The site would include 30 parking spaces (increased from 24). While the existing residential building on the site and smaller out-building (garage) would be demolished, the barn structure is shown to remain. The project application indicated that the new building will be “designed to look like a large single-family home...”.

The materials submitted with the application for this meeting included a revised drawing set. The revised colored site plan was dated 7/28/21 and architectural drawings were dated 5.30.21. The package also include a memorandum from Evans Huber, Esq., dated August 4, 2021, summarizing the changes included. On August 9 the Planning Board forwarded to DRB members a copy of the GPI review document as well as a letter (dated August 9, 2021) from Holly Clarke that included comments from neighbors.

The following are the previous comments from our memos of March 26, 2021 and May 14, 2021 (now in *italics*), with updated comments in **bold**:

Site Plan

The Board has concerns regarding the siting of the building so close to the street. This is not in keeping with the character of Central Ave. We understand the parking and building access requirements, but those could be retained while adjusting the building away from central avenue, either by reconfiguring the building footprint or by demolishing the barn and moving the proposed building and parking further to the east. There is unused area to the east.

The Board appreciates that the site plan was adjusted to move the building back some, and this involved reconfiguring parking as well as adding spaces. It is an improvement, and the parking layout looks acceptable from a circulation standpoint.

There is still some concern that a relatively large building is sited closer to the street than other buildings in the neighborhood. An option to be considered still could be the removal of the barn and moving the building and site design elements further to the east of the property.

The Applicant did not include a site plan or street-view renderings to show the relationship of the proposed building to the street, to adjacent houses and to the synagogue next door. Those drawings would be helpful moving forward as the site plan and building issues are reviewed.

It is an improvement that the building has moved back some, to align with the house to the south. Nevertheless, as the relative change is fairly minimal in the context of Central Ave., our comments regarding the proposed building placement relative to the rest of the neighborhood remain.

While we appreciate the effort that went into the “setback ratio” narrative and table included in the neighbors’ comments, our thought is that for this site the most critical factors are the setback at the street and the street-facing façade, and the overall footprint is not a critical factor for this site.

The Applicant could look at alternate site plans (building location and shape, attaching to the barn or removing it, outdoor space, parking, etc.), even if only to show how other options would be infeasible. We do not know why that has not been done, particularly given the nature of the ongoing discussions.

Building Design

The Board has concerns regarding the building exterior. The building is not residential in appearance. The west façade is the most important façade, and is too institutional in design. It is very flat. A residential-looking building would have more modulation of the massing, possibly including more three-dimensional window areas, a porch or overhang, etc. While the Applicant responded to this by indicating that the truss system for the roof structure is a limiting factor for the massing, we do not agree that that is a driving force for the architecture.

The Applicant’s screenshare presentation included a 3-D drawing of the building that was not in the package submitted to the Design Review Board.

The rendered elevations received just prior to the meeting showed a minor change to the windows on the west façade. As described by the Applicant, this involved having the windows now project 8” from the façade, with an overhang of 5” beyond that. The Applicant did not include the drawings from the previous meeting to show the change more clearly. The Board had little comment on this change. While one member (someone who had not been present at the March meeting) indicated the design of the building in general “looks good”, that was not a specific acknowledgement that the comments at the previous meeting had been successfully addressed. To some, a lack of comment was a response to a lack of changes to the overall massing, and the initial comments from 3/22/21 stand. Members of the Board do not

necessarily have the same reaction to the building design and its suitability for this location. As this was not a vote, there was no “yes” or “no” required from each member.

The change to the west façade in the updated documents, with the addition of more residentially-scaled gable elements, is definitely an improvement over the previous drawings. As the projections are only two feet in depth, however, the façade is still overall without overhangs, porches, etc. that would have made the street-facing façade even more residential in scale. We do appreciate the fact that the building presents itself as a single story.

There has been no change to the plan of the building. When this has come up a few times, the Applicant’s response implied the only option would be to take the plan as designed and turn 90 degrees, thus presenting an even longer façade to Central Ave. The intent of our comments has been to ask if other plan options were or could be considered. We did not intend to imply that room sizes and amenities for the facility should be compromised.

Barn

The applicant’s representative stated that the barn would be retained without any renovation, there is no intended use for the time being, and that it is being retained because it is “historic”. As noted above, the Board questioned whether keeping the barn is the best solution given the site plan issues. The Applicant did not know if the barn has any local or other historic designation that might affect a decision to retain or not retain the barn.

As there was no further clarification regarding the intentions for the barn, the option of removing it for the benefit of other site plan issues could still be considered. The Applicant did not comment when this was brought up again.

We now understand that the Applicant’s evaluation is that the barn is in good condition, and that it will be used for needed storage and potential future “accessory” use. This seems to be quite a large volume for storage use, though we have no knowledge of the specific program needs of the facility for which the building is being designed.

Previously there was an explanation related to historic value. Assuming now that the 1989 date for the barn’s construction as identified in the Holly Clarke document is correct, the building is not “historic”. If the building is in good condition, why was it not incorporated into one larger new building, for example, as part of the overall plan? Another option could be to move it on site. The DRB did not state that we think it “should” be torn down, and we are not advocating any particular approach. The intent for the barn still is a question.

Lighting

The 24’ high lights at the north side of the proposed driveway have a long distance between them, which would result in bright and dim spots. Better would be four rather than three pole lights at the north side, with 20’ high poles. Lower fixtures would create less light trespass onto Temple property.

The site plan presented did not show lighting at the entry, as required by code. The applicant did clarify that there would be lighting at the entry canopy.

The lighting at the north does not look to have been addressed, so that comment stands.

As long as exterior lighting complies with building code and zoning requirements, and the original comment about height and spacing of poles at the north side is addressed, we see no issue. As noted, the facility will shut down and site lights will be off in the early evening.

Fence

The fence at the south of the building is intended to be white vinyl. The Board comment was that this is very bright relative to the rest of the built elements, and another color would be preferable so as to not be as visible. Vinyl is also available in tan and gray, or another material could be used.

Another suggestion is a dark green vinyl, which would look more “natural”.

Wood is preferable from an aesthetic standpoint. Vinyl fencing looks shiny, regardless of the color. We do understand the maintenance issues, so our prior comments were trying to work with that.

Trees

The north edge of the site, at the Temple Aliyah side, will indeed benefit from trees to screen the site, but the 15' spacing of white pines will not be satisfactory to form a true screen for several (5-10) years. The Board's recommendation is that additional species be added in this area, located in groupings of different species and staggered. The front (west) of the site would benefit from foundation plantings/trees at the building as well.

The sidewalk at the south of the building shows some trees very close to the walk. These would be too low and conflict with people. Either provide bigger/taller trees or move them away from the sidewalk.

Arborvitae are an acceptable selection as shown to the north of the parking.

The white pines shown to the south of the proposed building would also benefit from the same treatment as commented on for the north.

The addition of more trees is definitely helpful to the design, and the Applicant has addressed the items brought up at the first meeting. The added trees at the southeast will help screen the building massing for vehicles and others approaching from the south. The suggestion is that evergreen trees at the west would help with screening the building in a way that could offset the perceived negative aspects of the building size and proximity to the street.

The Applicant should look more closely at the expected size of trees that are adjacent to the walks and the building as the design is developed. It was noted, for example, that the Legacy Maple at the far left of the row is too close to the building and would grow into the building in five years.

Another comment was that plants adjacent to parking stalls should be durable enough to withstand people stepping, etc. Prostrate Juniper instead of the Azeleas that are shown was one suggestion.

Retaining the large maple tree would be desirable. We understand this is just outside the building footprint, so this should be looked at relative to building footing issues. The Applicant agreed to look at this and retain the tree is possible.

Parking

The dumpster enclosure at the east end of the parking limits the ability of the user of the end parking space to easily back out. Moving the dumpster enclosure to the east could easily provide more turning space for that vehicle.

There was some confusion due to the presented documents not matching what the DRB had received. This parking item is another example of a discrepancy.

The increased number of parking spaces and added length to the drive (fitting 10 cars) will help with potential congestion on the site. As noted above, the revised circulation around to the east looks acceptable.

It was noted that 3 1/2 FT width is required for accessibility at sidewalks, and the 5 ft sidewalk as shown adjacent to parking spaces might not be adequate once cars park. The sidewalk could be made wider, or a grass strip added. Simply adding tire stops would be less desirable as that limits maneuverability.

The Board cannot comment on whether or not the number of parking spaces is adequate, more than adequate, etc. for this proposed use and occupancy.

The added drop-off lane looks to be something that will help with the potential issue of cars backed up and spilling onto Central Ave. We consider this a positive addition to the scheme. We defer to others for the traffic volume issues.

Car-management with the assistance of staff will help with this layout. We note that consideration should be given to how people will walk from the east parking to the building. A monitored crosswalk at the east of the building might be a good idea if the expectation that people will use the perimeter sidewalk is not realistic.

The Board presents these comments for Planning Board consideration. These comments summarize and are limited to the comments made at the meeting, and are intended to relay the Board's thoughts in seeing this project for the first time. This is not intended to be minutes of the meeting. These comments do not document comments and explanations made by the Applicant in response to the Board's comments and questions. Any lack of comment on the Board's part in response to the Applicant's justifications or in response to comments made by the public does not constitute agreement.

These comments on the revised information show improvement relative to what was presented in March. We understand this project will continue to be reviewed, next at a Planning Board meeting on May 18. The Board is available to review this project again, if additional design development is done, at future meetings.

We hope our comment are useful to the Planning Board. There has been significant progress since the first review by the DRB in March. We understand the Planning Board

will proceed per the Needham Zoning By-Laws. We are available for further review and discussion if there are changes to the proposed project.

End of Notes

Exhibit 7

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

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

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

September 30, 2021

Via Electronic Mail
Members of the
Needham Planning Board

And

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

Re: 1688 Central Avenue, Needham

Dear Planning Board Members and Ms. Newman:

I am writing on behalf of Needham Enterprises LLC, to address certain issues that have been raised at the most recent hearing on this matter. We recognize that the process has, at times, become contentious and has raised a number of questions about the impact of M.G.L. c. 40A, Section 3 (the so-called "Dover Amendment") on the Town's zoning procedures and Bylaws that might otherwise be applicable to this project. We appreciate the Board's careful attention to these matters, but we feel it is important to keep in mind, throughout the remainder of this hearing process, that this project falls squarely within the protections afforded to child care facilities by the Dover Amendment, which, as this Board has previously acknowledged, limits this Board's ability to impose conditions on the project.

In particular, we would like to draw the Board's attention to the following:

1. Allegations of Violations of the State Ethics Law.

There are obviously strongly differing views on (1) whether there have been violations of M.G. L. c. 268A in connection with this application; and, (2) if any such violations are found to exist, what the appropriate consequences, if any, should be. It is not the purpose of this letter to attempt to persuade the Planning Board of the merits of the Applicant's position on those two issues.

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What is abundantly clear, however, is that it is not within the jurisdiction or expertise of the Planning Board to consider, much less resolve, these alleged violations of M.G.L. c. 268A. As stated on the Planning Board's page on the Town website, "the Board is legally mandated to carry out certain provisions of the Subdivision Control Law (M.G.L., c. 41, s. 81K-81GG) and of the Zoning Act (M.G.L., c. 40A)." Nothing in either of those statutes even discusses potential violations of M.G.L. c. 268A, much less suggests that the Planning Board has the authority and jurisdiction to consider and resolve such issues.

On the contrary, the statute establishing the State Ethics Commission, M.G.L. c. 268B, specifically states in Section 3(i) that the State Ethics Commission "shall . . . act as the primary civil enforcement agency for violations of all sections of chapter two hundred and sixty-eight A and of this chapter." Indeed, even the Needham residents actively pursuing this issue have, citing the Board, Commission and Committee Member Handbook for the Town of Needham, argued to the *Select Board* that it is the *Select Board* that has the authority and responsibility to address this issue ("The Select Board is an overseeing entity for the Town of Needham. It has general supervision *over all matters that are not specifically delegated by law or vote to some other officer or board.*" (emphasis added)). Whatever the merits of that argument may be as applied to the facts of this case (and the Select Board has taken no action in response to the assertion that it has the authority and responsibility to address these alleged violations), this argument by the opponents of the application is a clear acknowledgement that the responsibility for addressing this issue has *not* been "*specifically delegated by law or vote to some other officer or board,*" i.e., the Planning Board.

It is not surprising, then, that by email dated July 16, 2021, Town Counsel, attorney Christopher Heep, advised this Board that "as previously discussed, I don't believe that Mrs. Abruzese's arguments relative to the *State Ethics Law* provide a basis for the Board to stop, or postpone, its hearing on a zoning application." And while the Board has nominally allowed the hearing to move forward on the merits, at the last hearing an inordinate amount of time was spent listening to and discussing these allegations, and then concluding that the Board needed to hire outside counsel to further advise it on these issues.

It is unfortunate that by the time of the last hearing, the Board did not have the benefit of the written opinion of attorney Heep issued pursuant to M.G.L. c. 268A section 22, to Mr. Borrelli (on the same date as the hearing) to the effect that Mr. Borrelli's ongoing connection to the Applicant, Needham Enterprises LLC, did not mean that Mr. Borrelli was "acting as an agent of Needham Enterprises LLC," and that, based on the facts recited in that letter, by continuing to pursue this application, Mr. Borrelli is "not acting in violation of M.G.L. c. 268A, section 17(c)." Perhaps having that written opinion would have expedited discussion of this issue at the last hearing.

In any event, for the reasons stated above, this is not a topic that the Board should be spending any additional time on, particularly where the hearing on this application has been rescheduled/postponed, and continued multiple times already.

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Furthermore, as the Board is well aware, certain opponents of this project continue to insist that, while it may not be this Board's responsibility to address the merits of these allegations, this Board should nevertheless suspend this hearing while it awaits resolution of these allegations before the State Ethics Commission, and/or further opinions from outside counsel. The applicant wishes to clearly state its position on this point, that any further delay in the hearing(s) as a result of, or for reasons related to, this issue, including but not limited to spending any meaningful time discussing it during the remainder of the hearing; continuances or delays to await the results of the opinion of outside counsel; or suspending the hearing to await the outcome of action by the State Ethics Commission, will constitute an unreasonable delay in the completion of the hearing, raising the possibility of constructive grant of the Special Permit pursuant to M.G.L. c. 40A, section 9. See, e.g., *Merrimac Plan. Bd. v. Moran*, 2009 WL 191840 (Mass. Land Ct. Jan. 28, 2009), in which the Land Court affirmed the decision of the local Zoning Board of Appeals, which had ruled that the failure of the local Planning Board to act within the time required resulted in constructive approval of the application for Site Plan Review. In doing so, the Court specifically rejected the argument that the necessity of seeking an opinion of counsel on an issue raised by the applicant justified an extension of the time within which the Planning Board had to act:

It is clear that the application was constructively approved. Accordingly, I rule that the decision of the Merrimac Zoning Board of Appeals is affirmed. Plaintiffs argue that the circumstances surrounding the Planning Board's review of the application merit an extension of time set for review. Specifically, plaintiffs argue that applicant's consulting engineer informed the Planning Board that the town's designated consulting engineer had a conflict of interest. The Planning Board, therefore, had to seek a new engineering firm for consultation. Plaintiffs also argue that because Defendant L.T. was questioning whether a special permit was required, the Town sought legal counsel. These matters not having been resolved in time for a public hearing scheduled for September 26, 2006, the Planning Board continued the hearing. The Court is not persuaded by these excuses for inaction. The timing requirements of town bylaws for municipal action on review applications are strict and stringently adhered to by the Courts.

Merrimac Plan. Bd., *supra*, 2009 WL 191840, at 6. See also *Pheasant Ridge Assocs. Ltd. P'ship v. Town of Burlington*, 399 Mass. 771, 783 (1987)(the period within which the Board must act "runs from the date of the last session at which interested persons presented information and argument. [citations omitted] The date may be even earlier if a board of appeals has not conducted the public hearing expeditiously, scheduling adjourned sessions at reasonable intervals in the circumstances.")

Accordingly, we urge the Board to forego any further discussion of the alleged ethical violations, and to conduct and complete the remainder of the hearing "expeditiously," focusing only on the remaining issues that relate to the project itself.

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2. The Existing Barn.

Several arguments have recently been raised to support the idea that the applicant should be required to take down the existing barn and move the proposed new building to the location where the barn used to be. First, it has been argued that Section 3.2.1 of the Town Bylaw prohibits more than one non-residential structure on a lot in this zoning district, and that the barn, even if used solely for purposes relating to the child care facility, is prohibited by this portion of the Bylaw.¹ This argument is incorrect, and was explicitly rejected by the Appeals Court in *Petrucci v. Bd. of Appeals of Westwood*, 45 Mass. App. Ct. 818 (1998). In that case, the property had an existing residence and a separate barn that the applicant sought to convert to a child care facility. The application was rejected on the grounds, among others, that the town Bylaw prohibited more than one primary use on a lot. The Appeals Court stated: "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. Similarly, in this case the portion of the Needham Bylaw that prohibits more than one non-residential structure on a lot is overridden by M.G.L. c. 40A, section 3, which states:

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. (emphasis added).

In sum, this Board cannot prohibit the Applicant from using the barn for purposes relating to the child care facility, on the grounds that Section 3.2.1 of the Town Bylaw prohibits more than one non-residential structure or use on a lot in the SRA district.

Second, it has been suggested that the Board has the authority to require the applicant to demolish the barn because (a) demolishing the barn will allow the main building to be moved further back from Central Ave; and/or (b) the barn is "too big" to be used as a storage facility. Again, this is incorrect. The statutory language quoted above clearly prevents the Town from "prohibit[ing], or requir[ing] a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility." Particularly given that the statute repeatedly refers to the use of *structures* (plural), it is hard to think of a more clear example of violating that statutory prohibition than if the Town were to say "we will give you a special permit to operate a child care facility in structure A, but only if you demolish structure B and locate structure A where

¹ As a preliminary matter, before even considering the argument that follows this footnote, this Board would have to conclude that the prohibition against "more than one non-residential structure or use on a lot" found in Section 3.2.1 applies to accessory structures. In this context, the barn would meet the definition of an accessory structure, and the proponents of this argument would need to demonstrate that the Bylaw has been interpreted to prohibit non-residential accessory structures in this zoning district.

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B was previously located” (where structure B is also intended to be use for accessory purposes relating to operating a child care facility).

In addition, with respect to the barn, it is worth noting that it has been argued to this Board that because the main building will be new construction, the Board has the authority to require the Applicant to apply for a Special Permit, notwithstanding the language of M.G.L. c. 40A, Section 3 quoted above. This argument clearly does not apply to the use of *existing* structures for purposes relating to a child care facility, meaning that with respect to the barn, the Board does not even have the authority to require a Special Permit in order for the Applicant (or the tenant) to use the barn for purposes relating to the child care facility, much less require the Applicant to demolish it.

Nor is the view that the barn is “too big” to be used as a storage facility a valid basis to require the Applicant to tear it down. *Rogers v. Town of Norfolk*, 432 Mass. 374 (2000) is instructive on this point. In *Rogers*, the applicant proposed to use a 3200 s.f. home as a child care facility, even though the town had a Bylaw limiting child care facilities to 2500 s.f.. The SJC held that while the 2500 s.f. limitation might be “facially valid,” it was invalid as applied to that case, because there was no practical way to use the house as a child care facility if the 2500 s.f. limit on child care facilities were to be enforced. The *Rogers* Court even noted that it would be possible to make the structure comply with the 2500 s.f. limit set forth in that town’s bylaw, by demolishing certain portions of the building, but that doing so would weaken the structure, and serve no valid municipal interest. Accordingly, the applicant in that case was not required to comply with the town’s “facially valid” limit of 2500 s.f. for child care facilities.

In this case, Needham does not even have a Bylaw limitation on the size of child care facilities (much less for accessory structures used for child care facilities) but even if such a limitation existed, and the barn exceeded it, there is no practical way to make the barn smaller without destroying it. As applied to the facts of this case, then, *Rogers* stands for the proposition that this Board cannot require the demolition of the barn on the grounds that it is “too big” for storage for the proposed facility.

Furthermore, “storage” is only one of the uses relating to operating a child care facility to which the barn can be put. The roof provides a good platform for the installation of solar panels. Equipment used to maintain the property could also be stored there. In the future, other uses relating to operating the child care facility can be imagined. As long as the barn is used solely for purposes relating to operating the child care facility, it is protected by M.G.L. c. 40A, section 3, and this Board cannot require the applicant to take it down.

3. Moving Forward With This Application

This process began with the Applicant’s initial request for Minor Project Site Plan Review in March of this year. Since that time, the applicant has made multiple revisions to the project in an effort to address concerns that have been raised by this Board, by the Design Review Board, by neighbors, and by the peer reviewer hired by the town, whose services the

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applicant has agreed to pay for, even though there is clear authority for the proposition that that traffic and vehicular access are not among the matters as to which this Board may issue "reasonable regulations." See *Primrose Sch. Franchising Co. v. Town of Natick*, 2015 WL 3477072, at 9 (Mass. Land Ct. May 29, 2015) ("Based upon the clear language of G.L. c. 40A, § 3, ¶ 3, this court, in Land Court Decision 1, noted that imposing reasonable frontage and lot size requirements was within the authority of the ZBA. **However, G.L. c. 40A, § 3, ¶ 3 is silent as to issues relating to site access and vehicular traffic.** Moreover, the statute is clear that such regulations may apply only to the "land and structures" to be used in connection with the Dover Amendment facility. *Id.* Thus, Defendants' broad suggestion that this court "endorsed the imposition of access related conditions under the aegis of the Dover Amendment" is mistaken" (emphasis added)).

The revisions that the applicant has made to the initial proposal, in order to address the concerns raised by various interested parties, include:

1. Increasing the setback from Central Ave twice, from 40 feet to 50 feet, and then to 64 feet;
2. Making the landscaping plan significantly more robust;
3. Increasing the number of parking spaces from 24 to 30;
4. Adding a new parking area behind the barn;
5. Redesigning and widening the access drive to include a drop-off and pick-up lane;
6. Redesigning, while retaining, the pick-up and drop-off area adjacent to the main entrance to the building, to maximize the smooth flow of traffic into and out of the site;
7. Changing the design of the side of the building facing Central Ave to include multiple gabled and projecting front surfaces and bayed windows, in order to break up the overall façade and provide more architectural interest; and
8. Agreeing to accommodate other changes suggested by the Design Review Board.

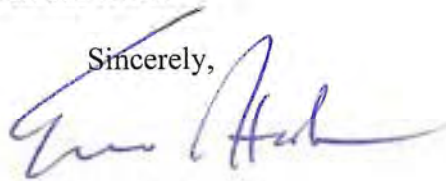
As noted above, the applicant has also agreed to pay for the peer review process, and has spent considerable time, effort, and money to address the concerns and issues raised by the town's peer reviewer, John Diaz of GPL. The applicant has also agreed to a cap on the number of children at the facility (115) even though (1) under applicable Massachusetts regulations the size of the proposed building would allow a higher number of children at this facility, and (2) it is our position that this Board does not have the authority to impose any limit on the number of children at the facility. See *Primrose Sch. Franchising Co. v. Town of Natick*, *supra* ("While local zoning authorities may apply limited restrictions to the "land and structures" used in connection with a Dover Amendment facility, authority to regulate the actual use of said facility is vested in the Massachusetts Department of Early Education Care ("MassEEC"). See G.L. c. 15D, §§ 2(c), 6(a). . . . 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.").

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In sum, we believe that throughout this process the Applicant has acted in good faith in an effort to address neighborhood and Board concerns, and, as part of addressing those concerns, has agreed to things that it is not legally obligated to agree to, and which this Board does not, in light of M.G.L. c. 40A, section 3, have the authority to require. These changes and accommodations have significantly lengthened this process, which is now in its seventh month. In light of the foregoing points, we ask that the Board make every effort to conduct the upcoming hearing as expeditiously as possible, and, if possible, complete the public hearing portion of this process at the upcoming meeting on October 5.

I appreciate your attention to the points raised in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Evans Huber", written over a light blue horizontal line.

Evans Huber

Exhibit 8

NEEDHAM CHILDREN'S CENTER

Effective Date: March ____ 2020

RE: Intent to Lease New Child Care Facility at 1688 Central Avenue

I. The Lessee: Needham Children's Center (the "Lessee").

II. The Lessor: Needham Enterprises, LLC (the "Lessor").

III. Address of Premises: 1688 Central Avenue, Needham, MA (the "Premises").

IV. Lease Term: The term of the lease shall be for a period of 20 years commencing on January 1, 2022 and expiring on the 1st day of January, 2042.

V. Use of Leased Premises: The Lessee intends to use the Premises for the following purpose: Child Care Facility for Needham Children's Center

VII. Expenses: The Lease shall be NNN with all expenses paid by the Lessee

IX. Lease Option: Lessee has the right to extend the lease for (2) Five Year Terms by giving written notice to the Lessor no less than 1 year prior to the expiration of the lease.

X. Rent Increase: The Rent Shall increase January 2027, January 2032, and January 2037

XI. Subletting: The Lessee may not sublet the Premises without first obtaining the prior written consent of the Lessor.

XII. Binding Effect: This Letter of Intent shall be considered non-binding. Therefore, the parties acknowledge that this Letter of Intent is not enforceable by any Party. The terms outlined herein are solely for the purposes of reaching a later agreement in the future, of which, the Lessee and Lessor are not bound.

XIII. Additional Provisions: None.

XV. Governing Law: This Letter of Intent shall be governed under the laws of the State of Massachusetts

LESSEE

Lessee's Signature _____ Date _____

Print Name _____

LESSOR

Lessor's Signature _____ Date _____

Print Name _____

Exhibit 9

1 22 21

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into this ____ day of _____ 2021, between Needham Enterprises, LLC a Massachusetts limited liability company ("Landlord") and Needham Children's Center, Inc., a Massachusetts corporation, d/b/a Needham Children's Center ("Tenant").

AGREEMENT

1. **Lease and Premises.** For valuable consideration, Landlord leases to Tenant and Tenant leases from Landlord, on the terms and conditions of this Lease, a portion of the premises commonly known as 1688 Central Avenue, Needham MA which leased premises is located on Parcel A as shown on Exhibit "A" (attached and incorporated by reference,) together with all improvements now existing or later placed ("**Improvements**") and any and all appurtenances, all being referred to as the "**Premises**". Landlord expressly reserves for its use and the use of any person or entity holding an interest under or through Landlord, to the exclusive use of the existing structure shown on Exhibit A and use in common with Tenant of all parking spaces as shall exist from time to time on the Premises.

2. **Term.** The Term of this Lease ("**Term**") shall be one hundred (180) months commencing on the date the Certificate of Occupancy is issued (**the "Commencement Date"**) for the operation of the Needham Children's Center on the Premises.

3. **Rent.** Tenant agrees to pay to Landlord, at the address referenced in paragraph 25, or at such other place as Landlord may from time to time designate in writing, rent for the Premises, payable monthly in advance in the amounts set forth in Exhibit "B" (attached and incorporated by reference) together with additional rent to be paid monthly pursuant to this Lease, beginning on the earlier of: (i) the date Tenant receives its license to operate as a child care center at the Premises or (ii) thirty (30) days after the Commencement Date (**the "Rent Commencement Date"**), and continuing on the first day of each calendar month of the Term, except that for the first and final calendar months (or portions of either) of the Term Tenant shall pay Landlord an amount

which bears the same ratio to the monthly rate specified in this Lease as the number of days Tenant occupies the Premises in such month bears to the total number of days in such month. Tenant, for itself, its successors and assigns, covenants and promises to pay rent without further notice and without demand, deduction, counterclaim or set-off of any kind. Any other sums payable to Landlord under this Lease shall be deemed to be additional rent.

4. Use of Premises.

(A) The Premises shall be used only for a child care center licensed by the Massachusetts Department of Early Education Care and for no other purpose whatsoever, which without limiting the foregoing, shall prohibit the operation of a private school at the Premises. Landlord and Tenant shall adhere to the approved plans and the Premises shall be constructed substantially in conformance to the plans.

(B) Tenant shall comply with all applicable laws, ordinances and regulations and shall not use or permit any unlawful use of the Premises and will operate Needham Children's Center in a first-class, clean, safe and sanitary manner. Tenant shall maintain and procure, at Tenant's expense, all licenses, permits or inspection certificates required by any governmental authority for the Intended Use. Tenant may, after giving Landlord ten (10) business days' written notice, contest any such law, ordinance or regulation in the name of Tenant or if necessary, Landlord (except if Landlord could be subject to criminal or contempt action due to such contest by Tenant) and, in any event, Tenant shall indemnify and hold Landlord harmless against any costs, penalties or reasonable attorney's fees incurred by or asserted against Landlord by reason of such contest.

(C) Landlord has provided Tenant with site and building plans and Tenant has reviewed and approved said concept plans. Within ninety (90) days after execution of this lease, Landlord shall file applications with all applicable boards, commissions in the Town of Needham to secure building permit and the necessary municipal approvals and permits ("Approvals and Permits"), if any, to construct per said plans. The final government-approved construction plans shall be attached to this Lease and incorporated by reference as Exhibit "C" and the building to be constructed shall substantially conform to Exhibit "C" (the "Plans").

Landlord acknowledges that any material floor plan and site plan modifications must be approved in writing by Tenant before completing the building plans for Approvals and Permits, which approval by Tenant shall not be unreasonably withheld, delayed or conditioned. Landlord shall, in good faith, diligently pursue the Approvals and Permits. In the event Landlord cannot obtain the Approvals and Permits within one hundred eighty (180) days, Landlord may extend the time for receipt for another ninety (90) days.

(D) Tenant is responsible for providing any and all personal property, furniture, playground equipment, fencing, security cameras, and any other equipment or any items described on the Plans as to be provided by Tenant or equivalent language.

(E) Increased construction costs resulting from compliance issues with licensing and/or other governmental agencies causing change orders to the Plans will be at Tenant's sole cost and expense. Tenant shall pay the increased construction costs in one lump sum payment for each change order no later than thirty (30) days after the date of each such change order.

(F) Upon substantial completion of all improvements, Landlord shall, in good faith, diligently pursue and obtain a Certificate of Occupancy for the Premises. Tenant shall promptly install all of its personal property in the Premises upon substantial completion of all improvements by Landlord so as to allow the Certificate of Occupancy to be issued.

5. Taxes, Insurance and Utilities.

(A) Tenant shall pay to Landlord each month as additional rent, in addition to the monthly minimum rent, one-twelfth ($1/12^{th}$) of all estimated real property taxes assessed annually for all improvements and ____percentage (____%) of the real estate taxes assessed for the land at 1688 Central Avenue in Needham, Massachusetts. The real property taxes as reasonably estimated by Landlord from time to time shall be the basis for the computation of the monthly tax installments. Upon receipt of the actual tax assessment invoice for each calendar year, any additional taxes owed to Landlord as a result of any increase in taxes shall be paid by Tenant immediately, and the monthly tax installments to be paid by Tenant for such tax year shall

be adjusted accordingly.

(B) Tenant shall not be obligated to pay local, state or federal net income taxes assessed against Landlord; local state or federal capital levy of Landlord; or sales, excise, franchise, gift, estate, succession, inheritance, transfer other taxes of Landlord, but shall pay any rent tax, or other tax partially in place of real estate taxes in place as of the execution of this Lease.

(C) Tenant shall obtain and maintain, at Tenant's expense, insurance covering the Premises and all improvements on the Premises in accordance with paragraph 7.

(D) Tenant shall pay directly for all water, gas, electricity and all other utilities serving the Premises commencing with its first occupancy of the Premises.

(E) Tenant shall be liable for and pay directly all business use and occupancy taxes and personal property taxes due for the Premises.

6. Landlord Access. With reasonable prior notice (except in the event of an emergency), Tenant shall permit Landlord and its agents, mortgagees and prospective purchasers to enter the Premises at reasonable times during normal business hours to inspect the Premises and at any time erect signage on the Premises for the purpose of advertising the availability of the Premises for sale. For a period of six (6) months before the termination of this Lease, Landlord may: (i) enter upon the Premises during normal business hours to show the Premises to prospective tenants provided that such entry and showing does not interfere with the conduct and operations of Tenant's business; and (ii) erect signage on the Premises for the purpose of advertising the availability of the Premises for lease.

7. Insurance by Tenant. During the Term and at any time that Tenant is in occupancy of any part of the Premises, Tenant shall at its expense, keep in force by advance payment of premiums the following insurance:

a. Commercial general liability insurance written on an occurrence basis in an amount then maintained by Tenant, but in no event less than \$2,000,000.00 combined single limit, and a \$5,000,000 umbrella policy against all liability costs and/or expenses arising out of or based upon any and all claims, accidents, injuries, and damages.

b. Statutory workman's compensation insurance and such other insurance

necessary to protect Landlord against any other liability to person or property arising hereunder by operation of law now in effect or subsequently adopted. Such policy shall cover all persons working at Tenant's direction in or about the Premises. Tenant shall provide Landlord certificates evidencing said insurance before occupying the Premises and at any later time required by Landlord.

c. Special Form or Special Extended Coverage (formerly known as "all-risks") property insurance with endorsements for debris removal, demolition and increased cost of construction, ordinance and law, vandalism, malicious mischief, in an amount at least equal to the replacement cost of all improvements within the Premises, as such replacement cost may from time to time be reasonably determined by Landlord with Landlord as loss payee for such coverage.

d. Special Form or Special Extended Coverage (formerly known as "all-risks"), in an amount at least equal to the replacement cost of Tenant's personal property at the Premises for the benefit of Tenant for which insurance coverage Tenant shall be loss payee.

e. Business income (so-called rental interruption) insurance protecting Landlord against the abatement or loss of rent in an amount equal to at least all rent and additional rent for one (1) year of which Landlord shall be loss payee of such insurance coverage.

f. Such other forms of insurance as Landlord, or its first mortgagee, may reasonably require from time to time, in form, amounts and for risks as so determined, including, without limitation, flood insurance, earthquake insurance or terrorism insurance.

g. Each Policy required to be maintained by Tenant pursuant to this Lease shall be issued by insurers fully licensed and authorized to do business in Massachusetts, with an AM Best or its successor's rating of at least A-, VIII (or equivalent ratings satisfactory to Landlord and its mortgagee, insuring Tenant and Landlord, and such other persons that are in privity of estate with Landlord as set out in writing and notice from time to time, as additional insureds, have a standard mortgagee clause, shall be non-cancelable and non-amendable with respect to Landlord and Landlord's designees without

thirty days prior notice to Landlord, and duplicate originals and/or certificates thereof shall be delivered to Landlord. Tenant does not maintain any or all of such insurance, Landlord may notify Tenant of such failure and if Tenant does not deliver to Landlord, within ten (10) days after such notice, certification showing all such insurance to be in effect, Landlord may obtain, at its option, the required insurance and pay the premiums on the items specified and Tenant covenants that it shall reimburse Landlord any amounts paid for such insurance, as additional rent, with interest at the rate from time to time published by the Wall Street Journal as the "prime rate", or if no longer so published, Landlord will reasonably designate a comparable reference rate, plus five percent (5%) per annum, but in no event more than the maximum rate permitted by applicable law (the Lease Interest Rate") from the date of the invoice by Landlord to Tenant for such payment by Landlord until such invoice is paid by Tenant.

8. Indemnity. Tenant shall indemnify and hold Landlord harmless from any and all costs pertaining to any claims of whatever nature, including, without limitation, reasonable attorney's fees to defend Landlord by counsel selected by Landlord, which claims are asserted against Landlord with respect to its ownership of the Premises during or after the Term and which are based on: (i) any act or omission of Tenant, including, but not limited to, any default in the performance of any obligation of Tenant under this Lease; or (ii) any injury to or death of any person, or damage to any property occurring in or around the Premises during the Term, if caused by the negligence or willful misconduct of Tenant, or any of its agents, licensees, business invitees or guests. The term "costs" means all costs of investigation and defenses or other expenses, reasonable attorney's and expert fees and all liabilities, judgments, penalties and fines and interest related to such claims.

9. **Mutual Waiver of Subrogation Rights.** To the extent available under standard policies of insurance without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost, each party hereby waives all liability and all rights to recovery and subrogation against, and agrees that neither it nor its insurers will sue, the other party for any loss of or damage to property arising out of fire or casualty, and each party agrees that all insurance policies relating to the Premises will contain waivers by the insurer of such liability, recovery, subrogation and suit. If extra cost is chargeable therefor, each party shall advise the other party of the amount of the extra cost and the other party, at its

election, may pay the same, but shall not be obligated to do so.

10. Damages to Premises.

(A) Damage - Insured. Subject to the provisions of paragraphs 10(D) and 10(E), if the Premises are damaged and such damage was caused by a casualty covered under an insurance policy required to be maintained under paragraph 8, Tenant hereby grants Landlord the right to participate in the adjustment, collection and compromise of all insurance claims involving the Premises, Tenant shall following prior review by Landlord, promptly submit proof of loss statements with the applicable insurance companies. Tenant shall use good faith efforts to maximize the amount of any insurance settlement. Landlord shall, using the insurance proceeds made available to Landlord from such insurance proceeds, commence to repair such damage after the later to occur of the settlement of the insurance claim or the issuance of permits for such restoration and this Lease shall continue in full effect; however Landlord shall not repair or replace Tenant's fixtures or equipment..

(B) Damage- Uninsured or Partially Uninsured. Subject to the provisions of paragraph 10(D) and 10(E), if at any time during the Term the Premises are damaged, except by a negligent or willful act of Tenant, and such damage was caused by a casualty not covered under an insurance policy required to be maintained pursuant to paragraph 8 or actually maintained by Tenant, Landlord shall, at Landlord's option either: (i) repair such damage at Landlord's expense after the later to occur settlement of the insurance claim or the issuance of permits for such restoration, in which event this Lease shall continue in full effect; or (ii) give written notice to Tenant, within thirty (30) days after the date of the occurrence of such damage, of Landlord's intention to terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to terminate this Lease, Tenant shall have the right, within thirty (30) days after the receipt of such notice, to give written notice to Landlord of Tenant's intention to fund all uninsured costs to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full effect, and Tenant shall pay to Landlord the amount of such uninsured costs to make such repairs promptly after the issuance of permits. . If Tenant does not give notice within such 30-day period, this Lease shall be terminated as of the date of the occurrence of such damage.

(C) If Landlord does not commence such repairs or restoration within ninety (90) days after the issuance of permits for such repairs or restorations, or complete such repairs or restorations within one (1) year after such damage or destruction, Tenant may, at Tenant's option, terminate this Lease by

giving Landlord written notice of Tenant's election to do so any time prior to the commencement of such repair or restoration. In such event, this Lease shall terminate as of the date of such damage.

(D) **Damage Near End of Term.** If the Premises are partially damaged or destroyed during the last twelve (12) months, including any previously exercised extension term of this Lease, Landlord may, at Landlord's option, terminate this Lease as of the date of the occurrence of such partial damage by giving written notice to Tenant of Landlord's election to do so within sixty (60) days after the date of

(E) **Abatement of Rent; Tenant's Remedies.** If the Premises are partially damaged and Landlord or Tenant repairs or restores them pursuant to the provisions of this paragraph 10, the rent payable for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired.

11. **Condemnation.**

(A) If during the Term all or a portion of the Premises ("**Parcel Taken**") shall be taken as a result of the exercise or threat of the power of eminent domain, upon delivery of possession to the condemnor of the Parcel Taken, without further action of the parties, this Lease shall be amended by deleting the Parcel Taken from the description of the Premises, and except as so amended or as set forth in paragraph 11(B), this Lease and Tenant's obligations, with the exception of the minimum rent obligations, which minimum rent obligations shall abate in proportion to the Parcel Taken as of the day on which the condemning authority takes possession, shall continue in full effect without change. In the event that the Parcel Taken does not materially affect Tenant's operation, there shall be no abatement of minimum rent.

(B) Notwithstanding anything to the contrary in paragraph 11 (A), if as a result of the exercise of the power of eminent domain, the Parcel Taken would render the Premises unsuitable for its Intended Use, this Lease shall be terminated as of the date on which legal title vests in the condemning authority or the date on which Landlord settles pursuant to a contract for the sale for public use or under the threat of condemnation, whichever first occurs, and all rental and other sums payable under this Lease shall be prorated to such date. The entire amount of any award for such taking shall belong to Landlord, and Tenant waives any other right it may have to any portion of such award.

(C) Tenant shall have the right to claim and recover from any condemning Authority such compensation as may be awarded or recoverable by Tenant in Tenant's own right on account of any and all damages to Tenant's business by reason of the acquisition or, condemnation, and for or on account of any loss, losses or expenses which Tenant may incur in removing Tenant's merchandise,

furniture, fixtures, equipment and leasehold improvements.

12. Maintenance and Repairs

(A) Except as set forth in paragraph 12(B), Tenant shall, at its sole expense, maintain the Premises and make repairs, restorations and replacements to the Premises, including without limitation, windows, doors, plate glass, sewer, mechanical, electrical and plumbing systems and all fixtures and appurtenances to the Premises as and when needed, to preserve them in good working order and condition and in compliance with all applicable laws, regulations, order, bylaw, permit or approval, decree or directive of any governmental authority having jurisdiction, regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital or the fault or not the fault of Tenant, its agents, employees, invitees, visitors or contractors. Tenant shall maintain, make repairs and restorations to the heating, ventilation and air conditioning systems, and maintain a preventive maintenance contract providing for regular inspections and maintenance of the heating, air conditioning and ventilation system by a licensed heating and air conditioning contractor which such contractor and the contract terms shall be satisfactory to Landlord from time to time. Tenant shall maintain and repair the parking area and driveways, including clearing ice and snow from the roof, sidewalks and parking lot, and maintain and repair the ground areas. All repairs, restorations and replacements will be in quality and class equal to the original work or installations. If Tenant fails (after 30 days notice, except that such period shall be extended if Tenant, within the 30 day period, has commenced and thereafter diligently continues to pursue to cure such failure) to maintain the Premises or make repairs, restorations, or replacements as required in this paragraph, Landlord may make them at the expense of Tenant and the expense will be collectible as additional rent to be paid by Tenant within fifteen (15) days after delivery of a statement for the expense. Tenant shall not permit or suffer to occur any physical waste, damage or injury to the Premises or any improvements thereon. Landlord shall assign to Tenant all warranties on equipment and systems installed in the Premises, which were issued to Landlord with respect to any portion or items in the Premises, which Tenant is required to maintain or replace. Tenant agrees to look first to any such warranty for the repair or replacement of any defect in the Premises or equipment and Landlord agrees to cooperate with Tenant in the enforcement of any warranty.

(B) Landlord shall be responsible until the first anniversary of the Commencement Date for (i) the replacement of the heating, air conditioning and ventilation systems of the building

provided that such systems were properly maintained as referenced in paragraph 12(A) and that replacement is due to normal wear and tear, (ii) structural walls, foundation and roof of the building on the Premises are a part, (iii) the wiring and other components of the electrical system serving the Premises, (iv) windows and doors in the Premises as to defects in materials or workmanship and (v) plumbing and sewer lines as to defects in materials or workmanship.

13. Environmental

(A) Landlord represents and warrants to the best of its knowledge and without independent verification that no substance or condition exists in or on the Premises that would support an environmental claim or cause of action and no action has been taken with respect to the Premises to remove or eliminate any such substance or condition. Landlord has not received any notice or other communication, written or oral, from any governmental or quasi-governmental authority regarding any such substance or condition.

(B) Tenant shall not permit any release, spill, emission, generation manufacture, storage, treatment, transportation, or disposal of "hazardous material", as defined in subparagraph (D) of this paragraph 13, on, in or from the Premises, except strictly in accordance with all Environmental Laws with respect to those hazardous materials that are necessary for the daily operation of Tenant's business. Tenant shall promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, discharged, disposed of or transported in violation of the foregoing, or stored on or in the Premises. If any hazardous material is found on the Premises, Tenant shall immediately notify Landlord, and Tenant, at its own cost and expense, shall immediately take such action as is necessary to contain the spread of and remove the hazardous material in accordance with applicable Environmental Laws, to the complete satisfaction of Landlord and appropriate governmental authorities.

(C) Tenant shall keep the Premises free of any lien imposed pursuant to any Environmental Laws.

(D) For purposes of this Lease, "hazardous material" means:

(1) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., and similar Massachusetts laws, each as amended to or after the date of this Lease;

(2) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act 42 U.S.C. §6902, et seq., and similar Massachusetts laws, each as amended to or after the date of this Lease; and

(3) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to or after the date of this Lease.

(E) The provisions of this Lease relating to hazardous material shall survive the expiration or termination of this Lease.

14. **Alterations.** Tenant shall not make any alterations, improvements or additions to the Premises without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, except as to the building's structure or its building systems. Landlord's prior written consent shall not be necessary for any alteration, addition or improvement which: (i) costs less than Five Thousand Dollars (\$5,000.00) including labor and materials; (ii) does not change the general character of the Premises or reduce the fair market value of the Premises; or (iii) is in compliance with the laws, ordinances, orders, rules, regulations, certificates of occupancy or other governmental requirements.

15. **Assignment and Subletting.**

This lease may not be assigned or the Premises sublet without the prior agreement by the Landlord.

16. **Signs and Fixtures.**

(A) Tenant shall have the right to erect signs for the purpose of identification and direction evidencing The Needham Children's Center services upon the prior approval of Landlord which shall not be unreasonably withheld, delayed or conditioned. The signs will at all times conform to any state and/or local restrictions.

(B) Tenant shall have the right to install in accordance with all governmental regulations any non-building system equipment or trade fixtures required in the operation of its business, which shall be deemed to be personal property of Tenant.

(C) Prior to the expiration or earlier termination of this Lease, Tenant shall remove all

signs and non-building system equipment, trade fixtures, improvements and property which it may have installed or placed on the Premises. Tenant shall repair any damage to the Premises caused by such removal and shall leave the building at the Premises secure if Tenant elects to remove the then existing security system. If Tenant fails to repair any damage caused by such removal, Landlord shall make such repairs at Tenant's expense. Tenant's obligations under Paragraph 16 shall survive the expiration or earlier termination of the Lease.

17. **Liens.** Tenant shall not create, permit or suffer for lien, encumbrance or claim against Landlord's title to the Premises, Tenant, shall promptly remove or release same by payment in full or obtaining and recording with Norfolk County Registry of Deeds a lien bond in sufficient amount to release the real estate or otherwise agreed to by Landlord to fully satisfy the lien. If the lien is not released within fifteen (15) days after written notice to Tenant to do so, Landlord may (but need not) pay or discharge any lien without inquiry as to its validity and Tenant shall, within ten (10) days after written demand pay Landlord all costs and expenses incurred Lease Interest Rate.

18. **Landlord's Right to Perform and Expenditures.**
If Tenant defaults in the payment or performance of any covenant of this Lease, then Landlord (a) without notice to Tenant after an Event of Default, or (b) without notice if there is no Event of Default if (i) in case of emergency or if such failure to perform, in Landlord's reasonable judgment, poses a material risk of injury to person or damage to or loss at the Premises or improvements thereon or a material risk of foreclosure under any mortgage on the Premises or (ii) Tenant has failed to perform its obligations with respect to insurance in Section 7, then in any such event, Landlord, may take such action as is commercially reasonable to cure the default. Landlord's expenditures and costs in connection curing the default plus the Lease Interest Rate shall be payable as additional rent from the date of invoice to Tenant until paid in full. Tenant shall also pay all of Landlord's reasonable cost and expenses, including reasonable attorneys', experts' and investigation fees, which may be incurred in enforcing Tenant's obligations. Landlord's election not to cure the default shall not be deemed a waiver of the default.

19. **Waivers.** No waiver by either party to this Lease of any provision or default whether in a single instance or repeatedly, shall be deemed a future waiver of such provision or default.

20. **Landlord's Representations.** Landlord represents and warrants that:
(A) it is legally empowered to execute this Lease and that the person signing this Lease on behalf of Landlord has full authority to do so; and

(B) On payment by Tenant of the rent and other sums due Landlord, and performance of all the covenants, terms and conditions on Tenant's part to be performed, Tenant shall hold and enjoy the Premises or the tenancy created under this Lease without interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject only to the terms of this Lease. Except as set expressly forth in this Lease, Landlord has made no representation or warranty regarding the Premises.

21. Option to Extend Term. Provided that Tenant has substantially complied with the terms of this Lease, and further provided no default by Tenant then exists under this Lease, Tenant may extend the Term by notice to Landlord no later than one year prior to the expiration of the initial Term for one (1) additional period of five (5) years upon the same terms, including but not limited to payment of additional rent, but at the rent determined as set forth in Exhibit "B"...

22.Defaults and Remedies.

(A) Each of the following events shall constitute an "Event of Default" by Tenant:

(1) the appointment of a receiver or trustee for Tenant in any court, which appointment is not vacated in thirty (30) days; the adjudication of Tenant as bankrupt or insolvent; or the assignment by Tenant for the benefit of creditors;

(2) Tenant's failure to pay any rent or other sums due Landlord when due, if the failure continues for a period of ten (10) days after Landlord gives written notice to Tenant;

(3) Tenant's failure to comply with any of its other obligations under this Lease if the failure continues for fourteen (14) days after Landlord gives written notice to Tenant; provided, however, that if the failure cannot reasonably be cured within fourteen (14) days after the date of Landlord's notice, Tenant may cure it if Tenant commences to cure within fourteen (14) days after the date of the notice and then diligently completes the cure within thirty (30) days of the notice; or

(4) Tenant abandons or vacates the Premises for six (6) or more

consecutive business days.

(B) Upon the occurrence of an Event of Default by Tenant, Landlord may, by giving written notice to Tenant either: (i) terminate this Lease; or (ii) re-enter the Premises by summary legal proceedings or otherwise, expel Tenant, remove all property and relet the Premises. If Landlord elects to terminate and/or reenter, it shall attempt to mitigate any damages by using commercially reasonable efforts to relet the Premises; however, Tenant shall remain liable for the equivalent of the amount of all rent payable pursuant to this Lease less the proceeds, if any, actually received by Landlord after deducting all reasonable costs of reletting.

(C) Landlord's failure to comply with any of its obligations under this Lease shall constitute an "Landlord Default" by Landlord if the failure continues for thirty (30) days after Tenant gives written notice to Landlord; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, Landlord may cure if Landlord commences to cure within thirty (30) days after the date of the notice and then diligently completes the cure within one hundred and twenty (120) days of the date of the notice.

Upon the occurrence of an Event of Default by Landlord, Tenant may, by giving written notice to Landlord either: (i) cure the Landlord Default and deduct the reasonable cost of doing so from future rent; or (ii) avail itself of any other remedies available to it under this Lease.

23. **Late Payment.** Any payment due under this Lease that is received ten (10) or more days after the due date, shall be subject to a late charge equal to five percent (5%) of the late amount for the increase cost of administration and if not paid for more than thirty (30) days after the due date, shall bear interest at the Lease Interest Rate from the due date until paid in full by Tenant.

24. **Subordination /Attornment.** Tenant agrees that this Lease is subordinate to the mortgage(s) encumbering the Premises. If the holder of any mortgage or deed of trust encumbering the Premises shall succeed to the rights of Landlord under this Lease, whether through repossession or foreclosure action, deed in lieu of foreclosure or otherwise, at the request of the party succeeding to Landlord's rights (sometimes called "Successor-Landlord") and upon delivery to Tenant of evidence reasonably sufficient to verify the succession and the Successor-Landlord's written agreement to accept

and shall be personally delivered or mailed by registered or certified mail to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notice to Landlord:

Needham Enterprises, LLC
105 Chestnut Street, Suite 28
Needham, MA 02492
Phone: 781-444-8060

Notice to Tenant:

26. **Security Deposit.** With its execution of this Lease, Tenant shall deposit with Landlord, a security deposit in the _____ ("Deposit") as security for the full and faithful and punctual performance by Tenant of any and all covenants, agreements, conditions, terms and provisions of this Lease. It is expressly covenanted and agreed between Landlord and Tenant that (a) the Deposit is not a measure of the damages that Landlord might suffer or a limit upon the damages Landlord may recover in the event of any failure or breach by Tenant with respect to any or all of said covenants, agreements, warranties, conditions, terms or provisions; (b) in the event of each and every such failure or breach by Tenant, Landlord may at Landlord's option at any time and from time to time apply any part or the whole of the Deposit to exonerate, indemnify or save harmless Landlord from any loss, cost, damage, liability or expense, that Landlord may have suffered, sustained, or become obligated to pay or may suffer, sustain or become obligated to pay because of such failure or breach by Tenant; Landlord shall in no way be precluded by such application from any of the remedies at law or in equity otherwise available to Landlord, or from recovering at any time the full, total amount of Landlord's actual loss, cost, damage, liability and expense, less the amount of any such application or applications of the Deposit; no such application of the Deposit by Landlord shall in any way excuse Tenant from, and from continuing, the full, faithful and punctual performance, fulfillment and observance of any and all of said covenants, agreements, warranties, conditions, terms and provisions pursuant to this Lease, If Landlord applies all or any portion of the Deposit, Tenant shall within ten (10) days after written demand, deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount stated in this paragraph and Tenant's failure to do so shall be a

Tenant's attornment, Tenant shall attorn to and recognize such Successor-Landlord as the Landlord and shall promptly execute and deliver any reasonable instrument the Successor-Landlord may request to evidence such attornment. On Tenant's attornment, this Lease shall continue in full effect as if it were a direct lease between Successor-Landlord and Tenant upon all of the terms of this Lease. Successor-Landlord shall provide Tenant a statement of non-disturbance recognizing Tenant's rights under this Lease in return for Tenant's execution of any attornment instrument.

On the request of Landlord, Tenant agrees to subordinate its rights under this Lease to the lien of any mortgage encumbering the Premises, and to attorn to the holder of the mortgage, provided that the holder of the mortgage agrees in writing that so long no Event of Default exists, Tenant's possession of the Premises and its interest under the Lease will not be disturbed by reason of a foreclosure of the mortgage or a conveyance in lieu of foreclosure, and Tenant will not be named as a party in any foreclosure proceeding except as required by the rules of the applicable court. This agreement shall be reasonably satisfactory to Tenant and the mortgage holder, but shall provide:

- (a) except to the extent the mortgagee holds or controls funds of Tenant or funds of Landlord held for the benefit of Tenant, liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord);
- (b) subject to any defense or offsets for which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord) which arise prior to the date such Mortgagee (or someone acquiring at a foreclosure sale related to the mortgagee's mortgage) acquires title to the Premises or any part thereof or interest therein;
- (c) bound by any payment of rent which Tenant might have paid for more than the current and prior months to any prior Landlord (including, without limitation, the then defaulting Landlord);
- (d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such Landlord succeeded to any prior Landlord's interest;
- (e) bound by any obligation to perform any work or to make improvements to the Premises; or
- (f) bound by any security deposit for Tenant's obligations under this Lease unless such deposit is actually received by mortgagee.

25. **Notices.** Any notices required or permitted under this Lease shall be in writing

material breach of this Lease. If Tenant performs all of Tenant's obligations under this Lease, the balance of the Deposit, without payment of interest shall be returned to Tenant within 30 (thirty) days after Tenant surrenders the Premises after the expiration or earlier termination of the Term, less any amounts required for the payment of damages to the Premises (or at Landlord's option, to the last assignee, if any, of Tenant's interest under this Lease). Any damages to the Premises not repaired by Tenant, will be repaired by Landlord, and the cost shall be deducted from the Deposit. No trust relationship is created between Landlord and Tenant with respect to the Deposit. The parties agree that no part of the Deposit is to be considered as the last payment of rent. Landlord shall have the right to commingle the Deposit with other funds of Landlord.

27. **Security.** Tenant shall be responsible for installing a security system for the Premises and shall secure the building with locks if Tenant removes the security system in accordance with Section 16.

28. **Termination and Holding Over.**
(A) If Tenant does not timely extend the Term, this Lease shall expire without notice at the end of the Term.

(B) If Tenant holds possession of the Premises after the expiration or earlier termination of the Term, Tenant shall be a tenant at sufferance on the same terms except that the monthly occupancy payment shall be equal to 150% of the monthly minimum rent payable in the month before expiration or earlier termination.

29. **Meaning of Words.** The words "Landlord" and "Tenant" shall mean respectively all parties of Landlord or Tenant, regardless of number, and the word "he" shall be synonymous with "she", "it" and "they", and the word "his" shall be synonymous with "her", "its" and "their". If the Term is extended the word "Term" shall mean the Term as so extended.

30. **Remedies Cumulative.** All remedies of the parties are cumulative. If any term or provision of this lease or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and enforced to the fullest extent permitted by law.

31. **Captions.** The captions of this Lease are for convenience only and shall not be construed as defining or modifying any of the provisions of this Lease.

32. **Governing Law.** This Lease shall be governed by the laws of the state in which the Premises are located.

33. **Binding Effect.** This Lease shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns.

34. **Entire Agreement.** This Lease and any Exhibits attached to this Lease shall constitute the entire integrated agreement between the parties with respect to the Premises and shall not be subject to change, modification, amendment or addition without the express written consent of all parties.

35. **Legal Fees.** In the event that it becomes necessary for Landlord to retain the services of legal counsel to enforce the terms of this Lease, Landlord shall be entitled to recover all costs and expenses, including reasonable attorney's, expert and investigative fees, incurred in enforcing the terms of this Lease.

36. **Contingencies.** This Lease is contingent upon: (i) Tenant receiving all governmental and quasi-governmental approvals for the use of the Premises as a child care center and if not received on or before _____, then thereafter Landlord may terminate the lease and if not received on or before _____, then thereafter may terminate the lease.

37. **Due Diligence.** Each party declares that the terms of this Lease have been completely read and are fully understood and voluntarily accepted by each party, after having a reasonable opportunity to confer with counsel. This Lease is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not contained in this Lease.

38. **No Broker.** Landlord and Tenant represent and warrant to each other that they have not dealt with any real estate agent or broker in connection with this transaction, and each agrees to indemnify from all liability, damage, loss, cost or expense incurred by reason of the indemnitor's breach of this representation and warranty.

21. **Limitations on Liability.** Tenant will not claim or attempt to enforce any right or remedy against any one or more of the managers, members, employees, agents, officers, directors, parents, subsidiaries or affiliates of Landlord, arising out of, or in any way based upon this Lease or

any act or omission of Landlord with respect to this Lease or all or any portion of the Premises. Tenant shall look solely to the estate and property of Landlord in the Premises for the satisfaction of any claim for the payment of money by Landlord by reason of any default or breach by Landlord of any of the terms and provisions of this lease to be performed, fulfilled or observed by Landlord, and no other property or assets of Landlord (or of those holding equity interests in Landlord) shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies for any such default or breach. As used herein, "Landlord" shall mean the owner from time to time of Landlord's estate and property in the Premises and if such estate and property be sold or transferred, the seller or transferor shall thereupon be relieved of all obligations and liabilities hereunder thereafter arising or occurring, and the purchaser or transferee shall thereupon be deemed to have assumed and agreed to perform and observe all obligations and liabilities hereunder thereafter arising or occurring or based on occurrences or situations thereafter arising or occurring.

38. Accord and Satisfaction. Tenant agrees that acceptance by Landlord of any partial payment of any item of rental due hereunder (whether denominated as Minimum Rent, additional rental or otherwise) shall not constitute an accord and satisfaction by Landlord of any of Tenant's obligations hereunder, and that Landlord shall be entitled to collect from Tenant the balance of any such item of rental remaining due.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

Landlord:

NEEDHAM ENTERPRISES, LLC

By: _____

Matt Borelli, its Manager

Tenant:

NEEDHAM CHILDREN'S CENTER, INC.

By: _____

Name:

Title:

Exhibit 10

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

LAND COURT DEPT.
OF THE TRIAL COURT
22 MISC 000158 (JSDR)

NEEDHAM ENTERPRISES, LLC.

Plaintiff,

v.

NEEDHAM PLANNING BOARD,
PAUL ALPERT, ADAM BLOCK,
MARTIN JACOBS, and
JEANNE McKNIGHT,
in their capacity as members of the
NEEDHAM PLANNING BOARD

Defendants.

DEFENDANT NEEDHAM PLANNING BOARD'S POST TRIAL BRIEF

INTRODUCTION

Now come the defendants, the Needham Planning Board and its Individual Members (the “Board”) and hereby submit this post-trial brief following trial. Based upon the evidence available to the Court, as well as the Court’s rulings to date on the same, this Court must find that the Plaintiff has failed to meet its burden of proof and, accordingly, judgment of dismissal is warranted.

This matter arises under protections afforded to licensed child care facilities under G.L. c. 40A, §3 (a/k/a the “Dover Amendment”). However, this matter presents an unusual situation because, unlike other childcare cases, the Board did not deny the project; nor did the Board impose conditions that would render the proposed project infeasible. Rather, the Board here approved the proposed childcare facility in its entirety and merely required that it be placed in a location that would ensure greater compatibility with the neighborhood, a goal that both parties share, and

neighborhood. Mr. Gluesing designed the building to be reflective of residential form and testified that his goal was to have the project reflect the residential development pattern. *Trial Transcript, Vol. III, at 57:1-20*. Ms. Day similarly testified that she wanted the building to be designed to “have a soft look to fit into the environment and not stick out.” *Trial Transcript, Vol. I, 41:16-17*.

As discussed more fully below, the setback from Central Avenue became a primary subject of discussion with the DRB and the Board. The Plaintiff was partially responsive to this concern by increasing the setback of the building from 40’ to 64’. *See Exhibit 22, May, 14, 2021 DRB Report, at 2, and Exhibit 23, Aug. 13, 2021 DRB Report at 2*. The Plaintiff also made several revisions to the project driveway so as to respond to potential conflicts with Central Avenue traffic (see, *infra*) and the safe and adequate loading and unloading of children at the facility. In addition to the driveway and drop-off/pick-up area, the parking was redesigned so as to accommodate the Plaintiff’s representation of a maximum of 115 children at the facility. *Exhibit 23, Aug. 13, 2021 DRB Report at 5*.

As plainly noted on the plan, Exhibit 3, at A 1.0, and the revised plan, Exhibit 6, at A 1.0, storage is included within the design of the childcare building. However, the issue of storage for the Project in the barn became an outsized issue in this matter. During trial, however, it became apparent that the Plaintiff’s proposal for storage has changed over time. Initially, as represented by the Plaintiff to the Board, Exhibit 15, Decision, at 26, § 1.22 Exhibit 18, Needham Enterprises Ans. to Int. 12, at 12-13, and as noted by the Plaintiff at the initial DRB meeting, Trial Transcript, Vol. III, at 55:10-18, there was to be no storage for child care purposes in the barn. Later, the Plaintiff suggested that the barn be shared by the Plaintiff and NCC, as noted in the Plaintiff’s answers to interrogatories. See Exhibit 18, Needham Enterprises’ Ans. to Int. 10, at 10 (noting intention to seek determination on whether “it is permissible for the barn to be used for storage for

both NCC and Needham Enterprises.”). At trial, the Plaintiff’s position changed once again, when its principal declared that NCC could use the entire barn if it wanted to. *Trial Transcript, Vol. II, at 44:8-24*. However, no formal design for storage in the barn was ever presented. Furthermore, aside from the storage of a few large items to be used in outdoor spaces, Ms. Day testified that preferred storage will be in or adjacent to classrooms in the primary childcare facility. *Trial Transcript, Vol. I, 92:4-94:4*. To that end, Ms. Day clarified her initial direct testimony by testifying on cross examination that her input on design did not include storage. *Trial Transcript, Vol. I, at 95:9-24*. Nor did Ms. Day ever testify that storage within the barn was essential in any manner for her to operate a childcare facility on the Property.⁴

With respect to the question of storage, the Board’s decision reflects the *moving target* that the Plaintiff presented on this topic:

Where the Petitioner proposing a child-care facility seeks exceptions from otherwise applicable zoning requirements, the 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 planned to exclude the barn from the lease entirely.⁵ 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 claims that unless the barn is allowed to remain on the site, the Board will have “defacto denied” a permit. The Petitioner has stated on the record that it is their desire 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

⁴ It may be inferred from the available evidence that the Plaintiff’s overarching goal was to retain a portion of storage of the barn for its own storage of boats, cars or other items but it is not necessary to reach any such conclusion when adjudicating this matter.

⁵ At trial, Mr. Borelli was presented with a draft lease that had been produced by NCC. Such lease plainly excluded use of the barn by NCC. Straining the bounds of credulity, Mr. Borelli suggested that he was unfamiliar with this draft and that his attorney must have sent it to NCC without his approval. *Trial Transcript, Vol. II, at 105:6-107:17*.

Exhibit 11

Commercial Child Care Facilities
Do Not Customarily Have Accessory Buildings

(Written and Submitted by Abutter Holly Clarke to the Planning Board on November 14, 2021)

Needham Zoning Bylaw 3.2.1, forbids two non-residential buildings or uses on one residential lot. The bylaw specifically excludes complimentary buildings (like accessory buildings). The bylaws' reference to accessory buildings in other sections makes clear that the town could have permitted accessory buildings, but deliberately chose not to do so.

Even if the bylaw permitted accessory buildings, the barn still does not qualify as one. The Needham by-laws defines- and limits- "accessory building" and "accessory use" to uses "subordinate to and customarily incidental to the principal use." In this case, the primary use of the proposed 10,000 sf main building is as a commercial stand-alone child care facility. The two story barn has a footprint of approximately 2600 square feet and overall square footage of approximately 4800 sf. To qualify the barn as an accessory building, the proponent must establish that it is "customary,"-more than unique or rare- for a commercial child care facility to have an accessory building the size of the barn.

A review of twenty child care programs sited in Needham and nearby towns makes clear that it is not customary for these facilities to have accessory buildings. All of these programs operate in a single building. None have accessory buildings- much less one approaching the size of the barn. The twenty programs considered include the five Needham programs comparably sized to that of the proposed tenant, even if not sited in stand-alone commercial space, and fifteen child care programs located in nearby towns. Each of the facilities was located through online mapping services to determine the building arrangements. All of these programs operate in a single building. None have accessory buildings, much less one two stories high with a total of 4800 sf.

The suggestion that the proposed tenant currently has access to the garage built as an accessory to the parsonage at the Baptist Church does not overcome the plain meaning of the bylaw. As Mrs. Day pointed out, the lot occupied by the Baptist Church originally included the Church, a parsonage for the minister and a garage for that residence. Both the house and the garage were classified as residential uses. The property card for the church address currently reflects its designation as "charitable-residential- other." The house was built in 1920. Assuming the bylaw predated construction, the garage was permitted and in accordance with the requirements of this bylaw when it was built. Here, the proponent is applying to build a commercial child care facility on a residential lot. The bylaws require the plan to be limited to only one non-residential building, and the proponent must comply with the bylaws. The decision of the Baptist Church to make a pre-existing and much smaller garage available to its tenant, the Needham Children's Center, may be fortuitous for the Center, but it does not establish accessory buildings as a customary use for child care facilities. Indeed, the fact that the building was designed at the direction and with the input of the proposed tenant and the leasing arrangements did not even include the barn as part of the child care facility belies the claim that the bylaw impacts the child care facility at all, much less so dramatically that it should not be applied. The bylaw protects legitimate, well recognized municipal interests and should be enforced.

The proponent suggests the Board need only look to Temple Aliyah to see an example of two non-residential uses on a single residential lot. This is factually incorrect. The Temple is a single building with a single religious use on its lot. The Gan Aliyah preschool operated within its building is directly related to its primary mission and is permitted and protected as part of the building's religious use. Further, MGL ch. 40A s. 3 requires a separate and independent analysis of the facts of each proposed project to determine the applicability of any bylaw. In this case, Bylaw 3.2.1 would have no impact on the ability of the property to be used for a child care facility. There can be no doubt about that as the proponent repeatedly declared the barn was not part of the child care facility.

The bylaw is a reasonable regulation enacted by the town to protect legitimate, well recognized municipal interests in preserving the character of residential districts, and should be enforced.

Child Care Centers Reviewed for Building Arrangements

Needham Comparably Sized Child Care Programs

Kindercare, 1000 Highland Ave

Club 1458, 1250 Great Plain Ave.

Carter Center for Children, 800 Highland Ave (Church)

Chestnut Children's Center, 167 Chestnut St

Knowledge Beginnings, 206 A St.

Goddard School Sites

332 Concord Avenue, Lexington

2 North Avenue, Weston

26 Chestnut St, Watertown

367 Commonwealth Rd, Wayland

20 Carematiel Dr., Dedham

90 N. Meadows Rd., Medfield

335 West St., Braintree

10 Davis Street, Northborough

KinderCare Sites

Wellesley Knowledge Beginnings, 204 Worcester Rd

Westwood Knowledge Beginnings, 200 Providence Highway

Walpole Kindercare, 29 Coney St

Cambridge Kindercare, 100 Cambridge Dr.* (inside a shared building)

Kindercare at Cochuite, 200 Cochuite, Framingham

Ashland Kindercare, 367 Pond St.

Little Sprouts

Little Sprouts, 260 Bridge St, Dedham

Exhibit 12



ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

SEP 15 10 50 AM
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 15, 2023

Theodora K. Eaton, Town Clerk
Town of Needham
1471 Highland Avenue
Needham, MA -2492

Re: Needham Annual Town Meeting of May 1, 2023 – Case # 11094
Warrant Articles # 18, 19, and 20 (Zoning)
Warrant Articles # 39 (General)

Dear Ms. Eaton:

Articles 19, 20, and 39 - We approve Articles 19, 20, and 39 from the May 1, 2023 Needham Annual Town Meeting.

Article 18 - The Attorney General's deadline for a decision on Article 18 is extended for an additional 60 days under the authority conferred by G.L. c. 40, § 32. The agreement with Town Counsel for a 60-day extension is attached. We will issue our decision on Article 18 on or before November 17, 2023.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Christopher H. Heep

RECEIVED
2023

TOWN CLERK
September 15, 2023

NEEDHAM
9:30 A.M.



Theodora K. Eaton, MMC
Town Clerk

TOWN OF NEEDHAM

Office of the Town Clerk

1471 Highland Avenue, Needham, MA 02492-0909

Telephone (781) 455-7500 x216

Fax (781) 449-1246

Email: Teaton@needhamma.gov

AT THE ANNUAL TOWN MEETING

HELD ON WEDNESDAY, MAY 3, 2023

UNDER ARTICLE 19

VOTED: That the Town will vote to amend the Needham Zoning By-Law as follows:

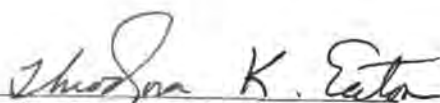
1. Amend the Needham Zoning By-Law by replacing all references to "Building Inspector" with "Building Commissioner" where it appears in the By-Law.
2. Amendment Section 3.15 Accessory Dwelling Units (ADUs) by renumbering the section as Section 3.16 Accessory Dwelling Units (ADUs) and by further renumbering the subsections numerically.
3. Amend Section 5.1.2 Required Parking, by deleting in the first sentence of the second paragraph the words ", 2nd Edition," and inserting the words "the most recent edition of" after the words "recommendations based on" so that sentence now reads as follows (new language underlined):

"In the event that the Building Inspector is unable to determine if a particular use relates to any use within the table of 'Required Parking' (Section 5.1.2), the Planning Board shall recommend to the Building Inspector 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 recommendations based on the most recent edition of the ITE Parking Generation Manual or an alternative technical source determined by the Planning Board to be equally or more applicable."

UNANIMOUS VOTE

A true copy

ATTEST:


Theodora K. Eaton, MMC, Town Clerk

Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham

This letter sets forth some of the concerns of the surrounding neighbors and neighborhoods to the proposed project at 1688 Central Avenue, Needham MA.

We learned in mid-January 2021 that Needham Town Selectman and Developer Mr. Matt Borrelli plans to build a 9,960 sq ft. building to use as a day care facility at 1688 Central Avenue. We have several concerns regarding the impact this will have on Central Avenue and the surrounding neighborhoods.

As the Town undertakes the required reviews, we ask that these serious safety and other issues be considered and addressed.

***This is a "Major Project." ***

First, we believe this project should be treated as a "Major Project" and undergo the full review required of Major Projects under Section 7.4.3 of the Needham Zoning ByLaws (NZBL).

That section requires that Major Projects receive a special permit and undergo the notice and hearing requirements of Chapter 40A.

The NZBL defines as a Major Project "[a]ny construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces."

The proponent obviously tried to design the project to fall outside the Major Project category by claiming to fall just short of these thresholds (9960 sq ft and 24 parking spaces). However, in reality, more than the threshold 25 parking spaces are likely to be needed.

The proponent's March 12, 2021 letter to the Planning Board notes that the Town's formula requires "8 spaces plus 1 space for each 40 children, plus one space for each staff member." The facility plans for the possibility of increasing to 120 children (according to its traffic study). With a staff of 13, the proponent claims its parking needs fall just under the 25-space threshold. We believe the Planning Board should conclude that the parking needs are, in fact, likely to be at least 25 spaces for several reasons.

First, with the traffic congestion in exiting the facility during morning rush hour, it is likely more parking spaces will be needed to accommodate drop offs, particularly if the facility is open to larger numbers of children.

Second, we do not believe that the childcare facility can effectively operate with only 13 staff members (to include administrative staff) with 120 children and the adult to children ratios required. The proponent must, at the very least, explain how 13 staff were arrived at.

Third, other childcare facilities in the area of similar sizes operate with more than 25 parking spaces (e.g., the Goddard School in Medfield, mentioned in the proponents traffic study, had 36 spaces per satellite imaging.

The Medfield Children's Center has 40 (smaller building but bigger student population)).

Finally, the significant change in use and impact of the proposal over existing use strongly suggests that the Planning Board treat the proposal with the full level of review.

Traffic Concerns

We are deeply concerned about the impact the project will have on safety and traffic on Central Avenue and the surrounding streets.

In normal, non-COVID, times, morning weekday traffic along Central Avenue in this area is extremely heavy and backed up. The morning rush hour extends from approximately 6:30 to 8:30 AM and regularly causes solid backups from the RTS to Temple Aliyah, and often from Newman School back to Temple Aliyah.

To be blunt, during the weekday morning commute, Central Avenue is often an intermittent parking lot all the way to Cedar Street. Evening traffic congestion begins with the release of school and extends through approximately 6:30. Adding the additional vehicles in and out of the facility parking lot --whether coming from the south and joining the backed up traffic before entering the facility's driveway or coming from the north and needing to make a left turn across the backed up northbound traffic and exiting the facility to again add to the backed up traffic -- will make a bad situation much worse and severely impact the ability of neighboring residents to get into and out of their homes and as pedestrians attempt to safely try and cross Central Avenue at Charles River Street and elsewhere.

In addition, Carleton Drive, Pine Street, Country Way, Charles River Street, Fisher Street, Village Lane, Russell Road, Walker Lane, and South Street will all be negatively impacted by the proposed facility, either trying to maneuver into an even denser traffic line on Central Avenue or trying to escape the traffic by cutting through roads not designed to handle heavy commuter traffic.

The ability of the fire department, ambulances and police to respond in a timely manner to an emergency in the neighborhood, especially during rush hours, could also well be impacted by traffic in and out of the facility.

Afterschool programming and mid-day drop offs, which may include the use of busses, must also be accounted for.

The current schedule of activities at Temple Aliyah includes preschool and after school programs, and the existing traffic patterns connected to these programs should be considered as the day care facility is reviewed.

With all of these concerns, we would have hoped to see a realistic, thorough traffic study by the proponents. Instead, we are deeply disappointed to see a wholly inadequate study which fails to address any of these concerns in a realistic manner.

- Unlike typical traffic studies, this one does not identify when the field work was done. We are told the study was conducted in February, 2021, during the Covid pandemic, when traffic on Central Avenue is a fraction of what it was before and will be after. So too, Needham public schools are remote-only on Wednesday -- if the study was done on a Wednesday it is entirely unreliable.

The Massachusetts Department of Transportation stated last April that “[t]raffic counts are currently at historic lows and may underrepresent a realistic existing condition” and issued guidance on how to correct for undercounting. <https://www.mass.gov/doc/massdot-guidance-on-traffic-count-data/download>. As far as we can tell, the proponent’s study takes none of this into consideration and instead reaches a conclusion that every resident and morning rush hour traveler on Central Avenue knows to be wrong -- that Central Avenue currently enjoys an “A” level of service.

- Given the traffic line that occurs during normal weekday rush hour, the level of service for a turn into or out of the facility driveway and along Central Avenue itself, is likely an “E” or “F” without the childcare facility and will be made even worse with it. We are not traffic experts, but a short google search of conditions defining different roadway levels of service, seems instructive: (Graphic source: https://policymanual.mdot.maryland.gov/mediawiki/index.php?title=Roadways:_Facility_Selection).

The illustration of Levels of Service E and F are what typifies the morning rush hour on Central Avenue in the vicinity of the facility during normal times.

We note also that the field work seems to consist of a single morning’s observation. No analysis has been offered of afternoon and evening traffic impact and no attempt has been made to provide the date or day of the week (or school schedule that day) when this data was obtained.

- The report assumes a traffic distribution of 70% from the south and 30% from the north without any explanation of this assumption. We understand the building will be occupied by a childcare operation currently operating in the center of Needham which would suggest that the traffic percentages should be reversed, with more users coming into the facility from the north, requiring more traffic to cut across the northbound lane to enter the driveway. However, It is important to note that each car will both enter and exit the driveway, doubling the number of trips impacting the neighborhood.

- The report relies on the proponent's description of the drop off and pick up practices of the facility used at its current location. There is no provision for what happens if the facility finds that the new location requires adjustments in its drop off procedure, nor is there any provision for changes should a different entity operate the facility. No explanation is given for the queuing this process will involve, especially if cars are delayed in returning to Central Avenue.
- The report wholly fails to examine the impact of the project on the adjacent streets or intersections (or, for that matter, traffic along Central Avenue itself). It focuses solely on the driveway entrance and exit from the proposed building.
- It does not consider the safety ramifications of the proposed increase in traffic. While traffic studies usually reference recent accidents in the area, this report does not. Just last week, a four car accident which happened at Pine Street and Central Avenue, approximately 350 feet from the site. Over the years, neighbors have repeatedly sought to increase the safety of Central Avenue.

Recently, residents of Oxbow Road asked for the installation of crosswalks to enable children to safely cross the street. Adding a commercial project to the area heightens these concerns. Pedestrian, as well as vehicular safety, is a critical issue and must be addressed (including the lack of sidewalks and how that impacts pedestrian options). Residents previously requested the Town provide sidewalks in the area and the dangers to pedestrians in this area have long been a topic of discussion. The town's Traffic Management Advisory Committee (TMAC) recently held a meeting with three community agenda items -- and all three related to this neighborhood. TMAC recommended a pedestrian system, including crosswalk, be added at the intersection of Charles River Street and Central Avenue (where none exists now) be added to the community plan but given other projects on the list in town, it is unlikely the project will be authorized or take place for decades.

The Planning Board's site review process must include consideration of "[c]onvenience and safety of vehicular movement within the site and on adjacent streets...." A real traffic study, using realistic traffic counts and addressing all the relevant issues should be completed and analyzed before allowing the project to proceed.

Setback Concerns

The proponent acknowledges that the site review process must address "[t]he relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area...." The proposal is for the main building to have a setback from Central Avenue of only 35 feet. The immediate south side abutter, at 1708 Central Avenue, has a set back of approximately 70 feet, Temple Aliyah is set back approximately 200 feet from the front corner of the building, and 1652 Central Avenue is set back approximately 109 feet. Every other home on this section of Central Avenue has a setback of at least 90 feet. At 35 feet from the road, this building will be completely inconsistent with the neighborhood.

There is no sound reason why the setback cannot be in accord with the existing buildings in the neighborhood. It is a commercial building proposed for a residential zone, and assuring that it is in harmony with the surrounding area is required by Section 7.4.1 of the Needham by laws. This may limit any potential further development of the other parts of the property (the proponent has not revealed whether that is his intention), but that is irrelevant to the requirements of site review.

Lighting Concerns

The proponent recognizes that the site review process must include “protection of adjoining premises against seriously detrimental uses by ... sound and sight buffers....” We request that the proposed plan include sound and sight buffers, as well as lighting measures which will limit the impact of the building and its operation on the surrounding homes.

The proponent notes that the lighting will be adjacent to Temple Aliyah, but does not address lighting impacts on the abutter at 1652 Central Ave, on the other side of the Temple parking lot and with a clear line of sight to the project parking lot and anticipated light poles, nor does the proponent address concerns of those across from the project. This lighting impact must be mitigated for all of the neighbors.

Road Reconstruction After Sewer Installation

We have been informed town sewer service will be extended from the tie in at Country Way down to 1688 Central Ave. Based upon what Needham has experienced with the South Street project, we ask that should the project be allowed to proceed, road repairs return the streets to the safest and most drivable condition in a timely manner.

Environmental and Conservation Concerns

Several neighbors have concerns about the potential of soil contamination at the site due to the previous uses of the property. We seek to make sure the property is safe for the proposed use and that any necessary mitigation measures be taken.

Conclusion

In sum, we request the following steps be taken:

- This letter be distributed to all Town bodies and officials who will consider this project. We ask that distribution include the Traffic Management Committee, which may have expertise to offer concerning the traffic conditions on Central Avenue.
- The project be treated as a Major Project, with the full review process required.
- The public be afforded a public and transparent process, including the ability to comment and be heard.

- A new traffic study be done, and full consideration be given to whether the traffic degradation and safety issues can be mitigated and, if so, how.
- If the project proceeds, the setback be increased.
- If the project proceeds, the lighting, road construction, sidewalk, crosswalk, landscape, and environmental concerns be mitigated.
- Finally, the Developer is a member of the Needham Select Board, which raises concerns about conflict of interest and ensuring that the process is without improper influence. For transparency sake, we ask that all project-related communications between the Developer and the Planning Board and the Developer and other members of the Select Board be fully disclosed.

Sincerely,

Neighbors & Neighborhoods of 1688 Central Avenue

(submitted electronically due to dangers due to COVID-19 of door-to-door canvassing)

Timestamp	Email Address	Name (please submit a Street Name and Town	Do you join in the above?	Do you live in 02492?	Do you live on Belle Lane	Are you registered to vote in Needham (useful information for town meeting Warrant requirement purposes)?
3/20/2021 13:13:57	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes
3/20/2021 13:17:22	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes
3/20/2021 13:17:27	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes
3/20/2021 13:24:02	macleod41@aol.com	Norman MacLeod	41 Pine St, Needham, M	Yes	Yes	Yes
3/20/2021 13:27:49	macleod41@aol.com	Janet MacLeod	41 Pine Street, Needham	Yes	Yes	Yes
3/20/2021 13:40:42	briano1055@yahoo.com	Brian O'Neill	149 Charles River St	Yes	Yes	Yes
3/20/2021 13:46:42	jurk@bafnfirm.com	Jeffrey Turk	312 Country way	Yes	Yes	Yes
3/20/2021 13:47:27	kevin@killeen@yahoo.com	Kevin Killeen	339 Country Way	Yes	Yes	Yes
3/20/2021 14:08:54	tkdavison@gmail.com	Timothy Davison	1011 South Street needh	Yes	Yes	Yes
3/20/2021 14:11:17	stankykeller@buckford.com	stanky keller	Country Way, Needham	Yes	Yes	Yes
3/20/2021 14:12:17	sandykell@aol.com	Sandra Keller	Country Way, Needham	Yes	Yes	Yes
3/20/2021 14:24:14	danieledarish@gmail.com	Danielle Darish	Country Way, Needham	Yes	Yes	Yes
3/20/2021 15:35:11	tkdavison@gmail.com	Timothy Davison	1011 South Street needh	Yes	Yes	Yes
3/20/2021 15:45:24	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes
3/20/2021 16:41:59	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes
3/20/2021 17:29:35	rachnjm@gmail.com	Rachel Flanagan	863 Webster Street	Yes	No	Yes
3/20/2021 18:01:34	jabruzese@yahoo.com	Joseph Abruzese	30 Bridge Trail Road, Need	Yes	Yes	Yes
3/20/2021 18:25:45	turky@yahoo.com	Barbara Turk	Country way Needham	Yes	Yes	Yes
3/20/2021 19:45:33	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes
3/20/2021 20:08:19	ericsockol@gmail.com	Eric Sockol	324 Country Way, Needh	Yes	Yes	Yes
3/20/2021 20:09:25	judysockol@gmail.com	Judy Sockol	324 Country Way, Needh	Yes	Yes	Yes
3/20/2021 20:31:47	seanimo22@yahoo.com	Sean Morris	48 Scott Rd, Needham	Yes	Yes	Not Sure
3/20/2021 20:32:26	marinamorris@gmail.com	Marina Morris	48 Scott Rd, Needham	Yes	Yes	Not Sure
3/20/2021 21:12:51	mshillback@aol.com	Marjorie S Hillback	34 Wilson Ln	Yes	No	Yes
3/20/2021 21:52:39	adamatti@gmail.com	Adam Patti	257 Country Way	Yes	Yes	Yes
3/20/2021 21:53:22	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes
3/20/2021 22:06:35	33hls@gmail.com	Hila Krikov	Fisher St, Needham	Yes	Yes	Yes
3/20/2021 22:09:17	nkrikov@gmail.com	Niv Krikov	Fisher St, Needham	Yes	Yes	Yes
3/20/2021 22:22:45	sjavaheri@mac.com	Stephaniejavaheri	1886 Central Ave	Yes	Yes	Yes
3/21/2021 0:21:05	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes
3/21/2021 0:27:17	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes
3/21/2021 6:27:56	petelyons26@gmail.com	Pete Lyons	1689 Central Ave, Needh	Yes	Yes	Yes
3/21/2021 7:51:22	brosen@thenorfolkcompa	Benjamin David Rosen	20 Stratford Rd,	Yes	Yes	Yes
3/21/2021 9:58:59	sbentsman@gmail.com	Sophia Bentsman	Country Way, Needham	Yes	Yes	Yes
3/21/2021 10:01:16	bentsman@gmail.com	Lev Bentsman	Country Way, Needham	Yes	Yes	Yes
3/21/2021 10:10:31	turky@yahoo.com	Barbara Turk	Country way Needham	Yes	Yes	Yes
3/21/2021 10:40:37	mikeg80pc@yahoo.com	Michael Gillespie	210 Stratford Road, Need	Yes	Yes	Yes
3/21/2021 11:41:21	crlintz22@gmail.com	Carol R Lintz	49 Carleton Dr	Yes	Yes	Yes
3/21/2021 13:07:54	elwallack@gmail.com	edward wallack	8 stratford road	Yes	Yes	Yes
3/21/2021 13:38:17	arvedon@verizon.net	ANDREW ARVEDON	29 PINE STREET	Yes	Yes	Yes
3/21/2021 14:01:17	alangsnr70@gmail.com	Alan Langsner	30 Windsor Road	Yes	Yes	Yes
3/21/2021 14:55:04	mhwallack@comcast.net	Margo Wallack	8 Stratford Rd	Yes	Yes	Yes
3/21/2021 17:05:32	taraleekilleen@yahoo.com	Tara Killeen	339 Country Way Needha	Yes	Yes	Yes
3/21/2021 17:30:36	ashleybrosen@gmail.com	Ashley Rosen	Stratford Road, Needham	Yes	Yes	Yes
3/21/2021 21:30:12	sallymck@mac.com	Sarah (Sally) McKechie	1703 Central Ave	Yes	Yes	Yes
3/21/2021 21:51:49	sarahbracken@gmail.co	Sarah Bracken	South street needham	Yes	Yes	Yes
3/21/2021 21:58:02	jonathanbracken@hotmail	Jonathan Bracken	South street, Needham	Yes	Yes	Yes
3/21/2021 22:20:01	sandyjordan@comcast.ne	Sandra Jordan	Stratford Road, Needham	Yes	Yes	Yes
3/22/2021 6:37:00	sarahbracken@gmail.co	Sarah Bracken	South street needham	Yes	Yes	Yes
3/22/2021 7:11:09	mtmkelly@yahoo.com	Tobin Kelly	Charles River Street, Need	Yes	Yes	Yes
3/22/2021 10:17:08	edhillback@aol.com	Elliott Hillback Jr	34 Wilson Lane	Yes	Yes	Yes
3/22/2021 11:04:46	egodes@comcast.net	Eric Godes	CEDAR SPRINGS LN, N	Yes	No	Yes
3/22/2021 11:38:14	vickikaufman@comcast.n	Vicki Kaufman	35 Starr Ridge Rd, Needh	Yes	Yes	Yes
3/22/2021 13:42:21	ginakbradley@gmail.com	Gina Bradley	Great Plain Ave., Needha	Yes	No	Yes
3/22/2021 14:07:25	pgazmuri@comcast.net	Paolo Gazmuri	Stratford Rd., Needham	Yes	Yes	Yes
3/22/2021 15:14:10	noah_n_carp@gmail.com	Noah Carp	169 Fairfield Street, Need	Yes	No	Yes
3/22/2021 15:59:18	robertlonofrey@gmail.com	Robert J Onofrey	49 Pine Street	Yes	Yes	Yes
3/22/2021 19:29:23	pbschatz@gmail.com	Paula Schatz	37 White Pine Rd., Need	Yes	Yes	Yes
3/22/2021 20:09:56	ruthlangsner1@msn.com	Ruth Langsner	Otis St, Needham	No	No	Yes
3/23/2021 0:03:50	debby@catsystdg.com	Debby chaoman	1843 Central Ave Needha	Yes	Yes	Yes
3/23/2021 4:49:04	evanrauch@msn.com	Evan Rauch	224 Country Way	Yes	Yes	Yes
3/23/2021 13:39:28	pfalcao@rcn.com	Patricia Rose FALCAO	19 Pine St	Yes	Yes	Yes
3/24/2021 8:18:54	divyadas@yahoo.com	Divya Das	92 Pine Street	Yes	Yes	Yes
3/24/2021 8:20:04	anuragkdas@yahoo.com	Anurag Das	Pine St, Needham Ma	Yes	Yes	Yes
3/24/2021 21:39:48	bowebetty@gmail.com	Betty Bowe	Central Ave NEEDHAM	Yes	No	Yes
3/25/2021 15:53:42	kailynv2@gmail.com	Kaillyn Lew	Central Avenue, Needham	Yes	Yes	Yes
3/25/2021 18:11:14	kailynv2@gmail.com	Kaillyn Lew	Central Avenue, Needham	Yes	Yes	Yes
3/25/2021 22:39:35	kailynv2@gmail.com	Kaillyn Lew	Central Avenue, Needham	Yes	Yes	Yes
3/27/2021 12:08:26	jesskadar@gmail.com	Jess Kadar	102 Pine Street	Yes	Yes	Yes
3/27/2021 12:09:08	aran.kadar@gmail.com	Aran Kadar	Pine Street, Needham	Yes	Yes	Yes
3/27/2021 12:14:04	ldeponte1@yahoo.com	Tammie Kukolea	Pine Street, Needham	Yes	Yes	Yes
3/27/2021 12:14:58	mjkuk03@yahoo.com	Michael Kukolea	Pine Street, Needham	Yes	Yes	Yes
3/27/2021 12:47:00	mabruzese@gmail.com	Margaret Abruzese	30 Bridge Trail Rd, Needh	Yes	Yes	Yes
3/28/2021 8:56:21	elysepark@yahoo.com	Elyse Park	19 Walker Lane	Yes	Yes	Yes
3/28/2021 14:59:18	KrissyWolf1@gmail.com	Krissy Wolf	76 oxbow road, needham	Yes	Yes	Yes
3/29/2021 7:17:48	sjavaheri@mac.com	Stephaniejavaheri	1886 Central Ave	Yes	Yes	Yes
3/30/2021 15:54:25	bobfitz13@gmail.com	Robert Fitzgerald	145 Stratford Rd	Yes	Yes	Yes
3/30/2021 15:55:16	bkfitz13@gmail.com	Kerry Spence	145 Stratford Rd	Yes	Yes	Yes
3/30/2021 15:57:28	hoopsftr@gmail.com	Jack Fitzgerald	145 Stratford Rd	Yes	Yes	No
3/31/2021 6:37:06	evanbg@rcn.com	Evan Gold	253 Charles River St, Ne	Yes	Yes	Yes
3/31/2021 17:20:06	rebeccab177@gmail.com	Rebecca Friedman	177 bridge trail road Need	Yes	Yes	Yes
3/31/2021 17:21:11	michaeb177@gmail.com	Michael Friedman	177 bridge trail road need?	Yes	Yes	Yes
3/31/2021 17:22:16	hannahbfriedman@gmail	Hannah	177 bridge trail road Need	Yes	Yes	Yes
3/31/2021 17:23:23	jessicafriedman7@gmail	Jessica	177 bridge trail road Need?	Yes	Yes	Yes
3/31/2021 17:25:07	friedman177@gmail.com	Jacob Friedman	Bridge Trail Road, Needha	Yes	Yes	Yes
4/1/2021 17:56:34	kajikango@yahoo.com	Kajindi Kango	81 country Way	Yes	Yes	Yes
4/1/2021 17:57:41	kikango@yahoo.com	Sujay Kango	81 country Way	Yes	Yes	Yes
4/1/2021 20:03:20	preethy_thomas@yahoo	Preethy Thomas	Barrett st., Needham	Yes	No	Yes
4/1/2021 21:28:24	vasu@post.com	Yasodhara paruchuru	Jarvis st., needham	Yes	No	Yes
4/1/2021 21:32:58	therostroot@yahoo.com	Jennifer Sannon	Jarvis circle, Needham	Yes	No	Yes
4/2/2021 8:39:32	laura@votrmail.com	Laura Gere	Stratford road, needham	Yes	Yes	Yes
4/2/2021 11:15:40	usantamburlock@gmail.c	Susan Murdock	66 Rolling Lane Needham	Yes	No	Yes
4/2/2021 11:18:29	meredithb1@gmail.com	Meredith Berger	Savoy Rd, Needham	Yes	No	Yes
4/2/2021 12:21:27	mellisak1124@gmail.com	Melissa Stein	Bonwood Rd Needham	Yes	No	Yes
4/2/2021 11:37:49	burenzalexander@hotmail	Lauren Alexander	Mayflower Rd, Needham	Yes	No	Yes
4/2/2021 11:40:09	jason.hemming@gmail.co	Jason Hemming	Deerfield Needham	Yes	No	Yes
4/2/2021 11:43:23	cathyynrtz61@gmail.com	Cathy White	Rybury Hillway, Needham	Yes	No	Yes
4/2/2021 11:51:43	sdornbusch27@gmail.co	Steve Dornbusch	51 Damon Road	No, but irregularly travel	No	No
4/2/2021 11:52:22	mikrags@yahoo.com	Michelle Hoffman	Paul Revere Road Needh	No, but irregularly travel	No	No
4/2/2021 11:58:54	rainbowow@verizon.net	Caryn F Schwartz	Forest St Needham	Yes	No	Yes
4/2/2021 11:59:45	caroline.valentini@gmail	Caroline Valentini	Webster Street, Needham	No, but as a community n	No	No
4/2/2021 12:02:41	ebs28@yahoo.com	Elizabeth Stanton	Needham	Yes	Yes	Yes
4/2/2021 12:25:55	bethmarcus@verizon.net	Beth Marcus	Meredith Circle Needham	Yes	No	Yes
4/2/2021 12:32:53	butter418@gmail.com	Kathy Butters	50 Audrey Ave., Needham	Yes	No	Yes
4/2/2021 12:42:45	robbyn.fink@me.com	Robyn Fink	128b Hillside Ave 02494	No, but I work in 02492	No	No
4/2/2021 12:46:50	robbyn1020@gmail.com	Robyn Stanley	Maple, Franklin	No, but I work in 02492	No	No
4/2/2021 12:54:24	onjan@aol.com	Jennifer Lehman	Oakland Ave, Needham	Yes	No	Yes
4/2/2021 12:58:03	goodnightgracey@gmail.c	Grace Scott	15 Mercer Rd	No, but irregularly travel	No	No
4/2/2021 12:58:23	tsugarman@comcast.net	Lesley Sugarman	111 Stratford Rd Needham	Yes	Yes	Yes
4/2/2021 13:02:14	jessiebellachou@hotmail	Jessie Chou	Mary Chilton Road, Need	Yes	No	Yes
4/2/2021 13:17:17	alexisstjames@gmail.com	Alexisstjames@gmail.com	529 High Rock St, Needh	Yes	No	Yes
4/2/2021 13:32:41	hmcgroddy@gmail.com	Heather McGroddy	Bonwood Needham	Yes	No	Yes
4/2/2021 13:37:00	adreaan@hotmail.com	Jennifer Adreani	Gayland rd, needham	Yes	No	Yes
4/2/2021 13:46:13	Laodolafarb@gmail.com	Laura Goldfarb	Valley Rd, Needham	Yes	No	Yes

Timestamp	Email Address	Name (please submit a set of Street Name and Town	Do you join in the above?	Do you live in 02492?	Do you live on Belle Lane	Are you registered to vote in Needham (useful information for town meeting Warrant requirement purposes)?
4/3/2021 10:18:11	sbentsman@gmail.com	Sophia Bentsman	Country Way, Needham	Yes	Yes	Yes
4/3/2021 10:20:13	lbentsman@gmail.com	Lev Bentsman	Country Way	Yes	Yes	Yes
4/3/2021 10:29:20	jodiegruen@gmail.com	Jodie Gruen	20 Fairview Rd Needham	Yes	Yes	No
4/3/2021 10:32:41	mlleibowitz@gmail.com	Matthew Leibowitz	65 Whitman Rd, Needham	Yes	Yes	Yes
4/3/2021 10:51:54	matttarlin@yahoo.com	Matt Tarlin	Gould St	Yes	Yes	No
4/3/2021 10:54:06	kdet1327@gmail.com	Deborah Bassett	South Street Needham	Yes	Yes	Yes
4/3/2021 10:55:35	kbassett33@gmail.com	Ken Bassett	South Street Needham	Yes	Yes	Yes
4/3/2021 11:07:12	amysnelling@yahoo.com	Amy Snelling	Hoover rd, Needham	Yes	Yes	No
4/3/2021 11:23:31	jillianerdos@gmail.com	Jillian Erdos	Sunset Road Needham	Yes	No, but as a community n	No
4/3/2021 11:26:47	lppy6730@gmail.com	Owen Lipchitz	Sunset road, Needham	Yes	No, but I regularly travel to	No
4/3/2021 11:29:56	scohen601@rcn.com	Sharon Cohen Gold	Charles River Street, Needham	Yes	Yes	Yes
4/3/2021 11:52:06	flecknershopping@comcast.net	Sarah Fleckner	Locust Lane, Needham, MA	Yes	Yes	No
4/3/2021 12:03:33	kerryhurwitch72@gmail.com	Kerry Hirwitch	Edgewater Drive - Needham	Yes	Yes	No
4/3/2021 12:09:54	jgraffman@gmail.com	Jennifer Graffman	Country Way, Needham	Yes	Yes	Yes
4/3/2021 12:15:18	vanessajones694@icloud.com	Vanessa Jones	55 Nardone Road	Yes	Yes	No
4/3/2021 12:19:17	mncjc@comcast.net	Cornelius Coughlin	22 Grasmere Needham	Yes	No, but as a community n	No
4/3/2021 12:33:16	acupuncdoc@gmail.com	Lauren Dore	1018 Central Ave	Yes	Yes	Yes
4/3/2021 12:44:09	almu@comcast.net	A. Mukherjee	46 Horace Street	Yes	No, but as a community n	No
4/3/2021 12:48:25	jdlipchitz@gmail.com	Joseph D Lipchitz	3 Sunset RD	Yes	Yes	No

Exhibit 13

July 15, 2021

NEX-2021238.00

Town of Needham Planning Board
Town Hall
1471 Highland Avenue
Needham, MA 02492

SUBJECT: 1688 Central Avenue
Proposed Child Care Facility – Peer Review

Dear Ms. Newman:

The Town of Needham has retained Greenman-Pedersen, Inc. (GPI) to perform an independent review of the proposed Child Care Facility to be located at 1688 Central Avenue in Needham, MA. The following items have been reviewed:

- Traffic Impact Assessment prepared by Gillon Associates March 2021
- Traffic Impact Assessment prepared by Gillon Associates Revised March 2021
- Traffic Memo prepared by Gillon Associates dated April 5, 2021
- Traffic Impact Assessment prepared by Gillon Associates Revised June 2021
- Fire Department Comments from March 29, 2021
- Engineering Department Comments from March 31, 2021
- Fire Department Comments from April 27, 2021
- Public Health Comments from April 27, 2021
- Design Review Board Letter dated May 14, 2021
- Police Comments dated May 6, 2021
- Engineering Department Comments dated May 12, 2021
- Design Review Board Letter dated May 22, 2021
- Site Plans dated June 22, 2020
- Site Plans Revised April 15, 2021
- Site Plans revised June 2, 2021
- Submission letter from Attorney Evans Huber dated March 12, 2021
- Various public comments provided to GPI by the Town

The above materials have been reviewed against typical engineering practices, standards, and industry guidelines. In general, it appears the traffic volumes along Central Avenue have been adequately projected to 2021 conditions, in accordance with MassDOT's recommendations on traffic projections for projects undertaken during Covid 19. In addition, based on the anticipated trip generation, it appears that the impacts of the site operation will have minimal impacts on traffic along Central Avenue. However, there are several comments noted below, particularly related to the site operations and site circulation that need further evaluation, prior to providing a definitive final assessment.

Traffic Impact Assessments (TIA)

1. The March 2021 TIA has been developed for a 9,941 square foot Child Care facility and proposed 24 parking spaces.

R-1 This has been revised based on a building size of 10,034 SF and 30 Parking Spaces

2. The study states that the site could accommodate between 80-100 students although 120 children appears to be allowed. The submission letter from Attorney Evans Huber date March 12, 2021 indicates

the site is to accommodate 100 students. If the intent is to eventually grow to 120 students, the traffic and parking analysis should be based on 120 students. Also, the TIA does not mention number of staff, although the attorney's letter indicates 13 staff. Please clarify the maximum number of students and staff in the TIA, as this impacts the parking requirements based on Town calculations of 8 parking spaces are required, plus one (1) for each 40 students, plus 1 space per staff.

R-2 The program is intended to accommodate a maximum number of 115 children. The projected total maximum staff will be 16 Staff and 2 administrators on peak days (Tuesday-Thursday); 15 Staff and 2 administrators on Mondays; and 13 Staff and 2 Administrators on Fridays. According to the Town formula referenced above, the maximum parking demand will be 29 spaces. Staff will be on site before the critical arrival and departure hours to assist children between vehicles and the building. Also, arriving staff and any parent who wishes to park will use the separate entrance lane in order to bypass the drop-off lane. The proposed parking supply is one more space than what is required under the Town calculations.

Maximum total of 115 children is broken down as follows:

- a. 55 Infants, toddlers and preschoolers arriving in the morning peak drop-off period of 7:30 a.m. to 8:50 a.m.
- b. 30 children, who will not arrive until shortly before 9:00 (or later).
- c. 30 after-school kids, who arrive in the afternoon
- d. $55 + 30 + 30 = 115$

3. Based on the June 2021 Revised TIA the number of students has increased to 113; however, there is no mention if the staff is increased and the parking capacity has been increased to 30 vehicles.

R-3 See above. The projected staff has increased to a maximum of 16 FTE and 2 administrators on peak days.

4. Based on the ITE Parking Generation 4th Edition, LUC 565 Child Care Facility, a 9,966 sf facility would have an Average Parking Demand of 24 vehicles and an 85th Percentile Peak Demand of 37 vehicles.
 - a. The proponent is currently proposing 30 spaces, which more than satisfies the Average Demand established in the ITE Parking Generation and the requirements of the Town.

R-4. Please see Figure 14. The Revised Plans show 30 parking spaces are provided for a 10,034 square-foot facility. The ITE Parking Generation Report shows this building would have an average demand of 25 spaces and an 85th Percentile Peak of 37.5 vehicles. However, for the reasons discussed below, we believe this figure is far higher than the actual number of vehicles that will be arriving during the peak drop-off period.

5. The proponent discusses additional Child Care facilities in terms of evaluating number of vehicles arriving during the peak hour. Based on the Goddard School 59 out of 80 students arrived during the peak hour. However, in the two-hour window observed (7-9AM) for 80 students a total of 96 vehicles arrived on site. Assuming a portion of these vehicles were staff, the results seem to indicate that each child appears to be in a single vehicle. Therefore, the impacts of the drop-off and pick-up (queuing, time on site, etc.) cannot be fully evaluated without understanding more about the proposed drop-off and pick up schedules.

Exhibit 14

FRIEZE CRAMER ROSEN & HUBER LLP
COUNSELLORS AT LAW

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

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

May 14, 2021

Via Electronic Mail
Members of the
Needham Planning Board

And

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

Re: 1688 Central Avenue, Needham

Dear Planning Board Members and Ms. Newman:

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

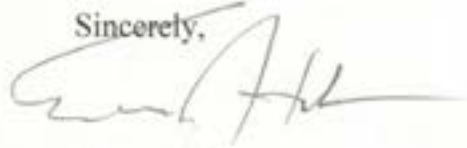
Needham Enterprises is doing so based on the following express understandings with the Town:

1. Needham Enterprises will be submitting electronically, by May 20, an application for major project site plan review. However, it is expressly understood and agreed that no special permit pursuant to Section 7.4 of the Bylaw will be required for this project, nor will the review criteria normally applicable to major project site plan review be applicable in this case. Instead, the Board's jurisdiction and authority will be limited to the criteria enumerated in M.G. L. c. 40A, Section 3.
2. The matter will be scheduled for hearing on June 15, 2021.
3. There will be no need to re-file with the Town the materials relating to the project previously filed on behalf of the applicant.

Needham Planning Board
May 14, 2021
Page 2

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Evans Huber', with a long horizontal flourish extending to the right.

Evans Huber

Exhibit 15

From: [Lee Newman](#)
To: ["scohengold@rcn.com"](mailto:scohengold@rcn.com)
Cc: [Alexandra Clee](#)
Subject: RE: 1688 Central Ave withdrawal of current Minor Project application
Date: Monday, May 17, 2021 12:06:42 PM

Dear Ms. Gold:

Thank you for your email and your question.

"Major Project Site Plan Review" is the procedure set forth in Needham's bylaws to have this project properly before the Planning Board for its review. However, Massachusetts General Laws Chapter 40A, section 3, and the cases thereunder provide that child care facilities must be allowed "as of right", and the Town is limited in the areas which it can review and of which the Town can issue "reasonable regulations", as set forth in that statute and those cases, and the Town cannot subject the child care facility to a "special permit" (Holly Clarke argues that this "special permit" prohibition goes to "use" only, and not to those items listed in the statute and set forth in the cases for which "reasonable regulations" can issue). Unlike some other towns, Needham does not have a provision in its bylaws specific to review under that statute and those cases.

Our Major Project Site Plan Review bylaw provides the ability of the Town to regulate issues beyond that which are set forth MGL Chapter 40A, section 3, and it labels our decision as a "Site Plan Special Permit". The Planning Board agrees with the applicant that it is limited to the subjects which can be reviewed to those set forth at MGL Chapter 40A, section 3, and the cases thereunder, and that our decision whereby the Planning Board issues its "reasonable regulations" will not be called a "special permit". But by submitting the application to Major Project Site Plan Review, as opposed to Minor Project Site Plan Review, the applicant is agreeing to the procedure thereunder (including formal notice to the abutters, publication of the notice in the Needham Times, and a full hearing in which the public has the right to participate), and that the decision of the Planning Board, and the "reasonable regulations" issued thereunder, regulating those items which the Town is allowed to regulate by that statute and those cases, will be legally binding on the applicant. The Planning Board is comfortable with the language in Mr. Huber's letter, which they believe does no more than enumerate what is set forth here.

I trust this answers your questions.

Lee Newman

From: scohengold@rcn.com <scohengold@rcn.com>
Sent: Saturday, May 15, 2021 2:18:37 PM
To: Alexandra Clee <aclee@needhamma.gov>
Subject: RE: 1688 Central Ave withdrawal of current Minor Project application

Dear Ms. Clee,

Thank you for forwarding the letter. I have read the letter and don't understand part of it.

It says that an application for Major Project Site plan review will be submitted. However, it also states that the Town has agreed that the Planning Board will not review the plan based on Major Project Site criteria. Did the Town agree to this? Why did the Town agree to this? How does this help the neighborhood in its quest to have a fair review of the project?

I really don't understand this, so would appreciate clarification of what the next steps are and why the Town is doing it that way.

Thanks again for your help.

Sharon Cohen Gold
253 Charles River Street

From: Alexandra Clee <aclee@needhamma.gov>

Sent: Friday, May 14, 2021 4:42 PM

Subject: 1688 Central Ave withdrawal of current Minor Project application

Dear all abutters/interested parties who have emailed me directly regarding the proposal at 1688 Central,

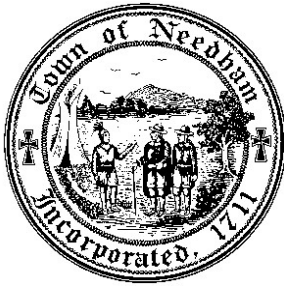
We have received the attached letter requesting withdrawal of the Minor Project application. I expect to have an application for Major Project Site plan review next week to be heard at the Planning Board's meeting of June 15.

Please share this information with neighbors.

Thanks, alex.

Alexandra Clee
Assistant Town Planner
Needham, MA
www.needhamma.gov

Exhibit 16



PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

LEGAL NOTICE
Planning Board
TOWN OF NEEDHAM
NOTICE OF HEARING

In accordance with the provisions of M.G.L., Chapter 40A, S.11 and the Needham Zoning By-Laws, Section 7.4, the Needham Planning Board will hold a public hearing on Monday, June 14, 2021 at 7:20 p.m. by Zoom Web ID Number 826-5899-3198 (further instructions for accessing are below), regarding the application of Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, for a Major Project Site Plan Review, Section 7.4 of the Needham Zoning By-Law.

The subject property is located at 1688 Central Avenue, Needham, MA, located in the Single Residence A Zoning District. The property is shown on Assessors Plan No. 199 as Parcel 213 containing a total of 3.352 acres. 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 (NCC). This will allow NCC to expand and have the necessary room for children post COVID-19. The gross floor area of the building is proposed to be 9,966 square feet on one floor, and 30 parking spaces are proposed.

In accordance with the Zoning By-Law, Section 7.4, a Major Project Site Plan is required.

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

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>

The application may be viewed at this link:

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

NEEDHAM PLANNING BOARD

Needham Times, May 27, 2021 and June 3, 2021.

Exhibit 17



Neutral

As of: October 31, 2021 3:57 PM Z

White v. Armour

Massachusetts Land Court

November 19, 2008, Decided

Misc. Case No. 381210

Reporter

16 LCR 748 *; 2008 Mass. LCR LEXIS 150 **

JONATHAN WHITE, as Trustee of 144 BEAVER ROAD TRUST, and MJN CONSTRUCTION, LLC v. WENDY KAPLAN ARMOUR, PETER KNIGHT, WINIFRED LI, JANE CARLSON, MARK MARGULIES and ELIZABETH MUNRO, as Members of the TOWN OF WESTON ZONING BOARD OF APPEALS, the TOWN OF WESTON, and EUGENE REZNIK

Subsequent History: Judgment entered by, Summary judgment granted by, Motion denied by, Dismissed by [*White v. Armour*, 2008 Mass. LCR LEXIS 192 \(2008\)](#)

Prior History: [*Reznik v. Armour*, 2008 Mass. LCR LEXIS 127 \(2008\)](#)

Headnotes/Summary

Headnotes

Anti Mansionization-Phasing-Past Practices of Planning Board and Building Inspector-Bylaw Upheld as Reasonable Regulation

Syllabus

[**1]

A crude attempt to elude Weston's anti-mansionization bylaw was rejected by Justice Keith C. Long, who ruled that a homeowner seeking to build a home with more than 6,000 square feet of living area could not avoid site-plan review by an obvious phasing of the project. The Justice also affirmed the bylaw as a reasonable regulation of building bulk and height and found it not to be in violation of the Zoning Act's uniformity requirements.

Counsel: Anil Madan, Esq., Madan and Madan, P.C. for MJN Construction.

Marc J. Goldstein, Esq., Beveridge & Diamond, P.C. for Plaintiff.

Mary L. Giorgio, Esq., Kopelman and Paige, P.C. for Weston Board of Appeals.

Judges: Keith C. Long, Justice.

Opinion by: LONG

Opinion

[*748] MEMORANDUM AND ORDER ON THE PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS (CONVERTED TO MOTIONS FOR SUMMARY JUDGMENT) AND THE PLAINTIFFS' MOTION FOR SUMMARY REINSTATEMENT

OF BUILDING PERMIT

Introduction

This case is a [*G.L. c. 40A, § 17*](#) appeal from a decision of the Weston Zoning Board of Appeals (the "ZBA") that revoked a January 3, 2008 building permit for additional finished space in the plaintiffs' dwelling at 144 Beaver Road in Weston and a [*G.L. c. 240, § 14A*](#) challenge to the bylaw on which that revocation was based. **[**2]**¹

The essence of the dispute is simply stated. Town of Weston Zoning Bylaw § V.B.1.a (the "Bylaw") allows a single-family home to be constructed by right so long as its Residential Gross Floor Area ("RGFA") does not "exceed the greater of 3,500 s.f. or 10% of the lot area up to a maximum of 6,000 s.f."² If the RGFA exceeds that maximum, site plan approval from the Weston Planning Board is necessary. Bylaw § V.B.2.d.³ The **[*749]** plaintiffs' home was built with a RGFA of just under 6,000 square feet,⁴ but contained considerable unfinished space that deliberately was left unfinished so that site plan approval would not be required.⁵ An occupancy permit was duly issued for the house in this configuration. Certificate of Occupancy No. 1943 (Sept. 7, 2007).

Less than four months later, on December 19, 2007, the plaintiffs applied for a building permit to complete the unfinished areas, which was issued on January 8, 2008. Defendant Eugene Reznik, an abutter living at 158 Beaver Road, timely appealed that issuance to the defendant ZBA. As revealed at the hearing of that appeal, "the Building Inspector, the builder and the architect all had in mind that once the building was built with less than 6,000 s.f. of RGFA, a second building permit would be sought and granted to finish out the unfinished portions. It was their view that if

¹ The home is owned by plaintiff Jonathan White, as trustee of 144 Beaver Road Trust. Plaintiff MJN Construction, Inc. was the applicant for its permits, as agent for the trust.

² *By Right Uses*: a. Unless located on a lot which bounds on a Scenic Road as defined in Section II, single family detached dwelling containing one housekeeping unit only, together with accessory buildings not containing a housekeeping unit. . . The Residential Gross **[**3]** Floor Area 'RGFA' of any new or replacement single family dwelling use constructed pursuant to a building permit issued on or after October 29, 1998 may not exceed the greater of 3,500 s.f. or 10% of the lot area up to a maximum of 6,000 s.f." Bylaw § V.B.1.a.

Bylaw § V.B.1.a. Bylaw § 11 (Definitions) defines RGFA as "[t]he sum of the horizontal area(s) of the above-grade floors in the residential building(s) on a lot, excluding unfinished attics but including attached or detached garages. The RGFA shall be measured from the exterior face of the exterior walls."

³ *By-Right Uses Allowed With Site Plan Approval*: d. New or replacement single-family dwelling, together with accessory buildings not containing a housekeeping unit, in conformity with Section VI.F.2 [requirements for number and location of dwellings on one lot], which is constructed pursuant to a building permit issued on or after October 29, 1998, and which exceeds the RGFA limit provided in Section V.B.1.a." Bylaw § V.B.2.d.

⁴ The plaintiffs' architect calculated the final RGFA as 5,992 square feet. Letter from Richard Waitt, Jr., P.E. of Meridian Associates, Inc. to Mr. Courtney Atkinson, Building Inspector (Oct. 26, 2007).

⁵ Attic **[**4]** space is excluded from RGFA calculations. *See* n. 2, *supra*. To bring their RGFA below 6,000 square feet, the plaintiffs left a 400+ square foot second floor room unfinished, removed its ceiling, and thus turned it into an attic. *See* Ex. 1 (Second Floor Plan, "unfinished area").

the building were completed in stages, then so long as the first stage was less than 6,000 s.f., the building could be finished without (May 1, 2008).

The ZBA was equally as candid. It admitted that, "[t]o date, the Weston Planning Board has declined to review additions to existing houses to determine RGFA." *Id.* But, the ZBA saw the plaintiffs' **[**5]** situation as different.

In substance, in fact, in intention, and in spirit, this particular case before the Board was not a situation of an existing house to which an addition later was added. It was a situation where a house was constructed that clearly exceeded the 6,000 s.f. RGFA limit, where site plan approval should have been sought beforehand. That the builder and architect made a mistake early in the construction process in calculating the building's RGFA is not an excuse for avoiding the site plan approval process. As soon as the mistake was discovered, the builder and owner should have applied for site plan approval or modified the design of the house so that it would fall under the 6,000 s.f. limit without having to resort to temporary fixes such as ripping out or leaving unfinished, for a short time, areas that were always meant to be finished.

Id. Accordingly, since site plan approval had neither been sought, obtained, or waived by the planning board, the ZBA voted unanimously to revoke the building permit for the additional space. *Id.*

The plaintiffs' appeal from that decision and their motion for summary reinstatement of the building permit are based on three arguments. First, **[**6]** the plaintiffs argue that the Bylaw does *not* apply to subsequent work on a house, even if that work was intended from the start. Second, the plaintiffs contend that the ZBA is estopped by the past practices of the town's building inspector, who had issued building permits without site plan approval in allegedly similar situations, and by the planning board, which "has agreed to waive submission requirements and Site Plan Approval under Section V.B.2.d and Section XI of the Weston Zoning By-law, for existing houses that exceed the Residential Gross Floor Area provision to the By-law, where finishing off interior space is proposed and where there is no change to the exterior of the house." Letter from Susan Haber, Town Planner, to Rob Morra, Inspector of Buildings (Aug. 15, 2008). Third, the plaintiffs maintain that the provision in [G.L. c. 40A, § 3](#) that Injo zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building" invalidates the Bylaw requiring site plan approval for homes with an RGFA in excess of 6,000 square feet and the statute's exception "that such land or structures may be subject to reasonable regulations concerning the **[**7]** bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements" does not apply.

I disagree with each of these contentions. As more fully set forth below, on the undisputed facts of this case, I find and rule that the Bylaw clearly applies to situations such as this where a home deliberately has been phased with the intent of avoiding the site planning process. I find and rule that the past practices of the former building inspector do not estop either the current inspector or the ZBA from applying and enforcing the Bylaw. ⁶ I find and rule that the planning board's past

⁶ Weston's new building inspector, Robert Morra, testified by affidavit that he has "determined that past practices of this [the

practice of "waiv[ing] submission requirements and Site Plan Approval under Section V.B.2.d . . . for existing homes . . . where finishing off interior space is proposed and where there is no change to the exterior of the house," Letter from Susan Haber, Town Planner, to Rob Morra, Inspector of Buildings (Aug. 15, 2008), would not preclude that board from requiring site plan approval in the situation presented by this case or in any other case it deemed appropriate so long as its decision was not arbitrary or capricious. Finally, I find and rule that **[**8]** the Bylaw is a "reasonable regulation . . . concerning the bulk and height of structures" and thus not invalid under [*G.L. c. \[**750\] 40A, § 3*](#) nor in violation of the uniformity requirements of [*G.L. c. 40A, § 4*](#). See [*81 Spooner Road LLC v. Brookline, 452 Mass. 109, 117, 891 N.E.2d 219 \(2008\)*](#). Accordingly, the defendants' motion for summary judgment is **ALLOWED**,⁷ the ZBA's decision is **AFFIRMED**, the plaintiffs' motion for summary reinstatement of the building permit is **DENIED**, and the plaintiffs' claims are **DISMISSED** in their entirety, with prejudice.

Discussion

"Summary judgment is appropriate where there is no genuine issue of material fact, and when viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law." [*Gray v. Giroux, 49 Mass. App. Ct. 436, 438, 730 N.E.2d 338 \(2000\)*](#) (citing [*Mass. R. Civ. P. 56\(c\)*](#)). The only *potentially* disputed facts relevant to these motions concern the past practices of the building inspector and planning board -- did the former building inspector, in fact, issue building permits to build out previously unfinished interior space in excess of the RGFA threshold without prior site plan approval and did the *planning* board regularly "agree[] to waive submission requirements and Site Plan Approval under Section V.B.2.d and Section **[**11]** XI of the Weston Zoning By-law, for existing houses that exceed the Residential Gross Floor Area provision to the By-law, where finishing off interior space is proposed and there is no change to the interior of the house"? Letter from Susan Haber, Town Planner, to Rob Morra, Inspector of Buildings (Aug. 15, 2008). For purposes of these motions,

Building] department are not consistent with the RGFA provisions of the By-law in that building permits have been issued for existing residences, without referral to the Planning Board for Site Plan review, despite the fact that the maximum threshold requirements of Section V.B. I.a of the By-law have been exceeded" and, "because [he] has determined that such a practice is not consistent with the By-law's RGFA provisions, [he has] put an end to that practice and [has] denied and will continue to deny any application for a building permit **[**9]** which exceeds RGFA thresholds in new construction or for an existing residence constructed pursuant to a building permit issued on or after October 29, 1998" (the effective date of that Bylaw provision). Aff. of Robert Morra at 1-2 (Sept. 11, 2008). He further stated that he would "continue to require the building permit applicant to apply to the Town's Planning Board for Site Plan Approval pursuant to Section XI of the By-law" and, "[o]nce the Planning Board has concluded its review of the proposed project pursuant to Section XI of the By-law, a building permit may be issued if all other By-law requirements are met." *Id.* at 2.

⁷The motions under consideration were initially filed under [*Mass. R. Civ. P. 12\(c\)*](#) (judgment on the pleadings). All parties, however, submitted materials beyond the scope of that rule (Plaintiffs, for example, filed an appendix that included materials from other cases (Misc. Case Nos. 354262 (AHS) and 376194 (KCL)) [16 LCR 744] and an affidavit of Janet Schmidt (attaching letter from Weston's town planner and documents related to building permits for other properties). Defendant Eugene Reznik filed his own affidavit. The town defendants filed an affidavit from **[**10]** the town's current building inspector, Robert Morra, and documents related to his rulings on other building permit applications.). The motions were thus converted to ones for summary judgment and I address them as such. [*Mass. R. Civ. P. 12\(c\)*](#) ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.").

taking all disputed facts in the light most favorable to the plaintiffs, I assume these facts to be true.⁸ As discussed more fully below, however, they are not material to this memorandum and order. Even *with* these facts, the defendants are entitled to summary judgment dismissing the plaintiffs' claims as a matter of law.⁹

The initial question presented by this case -- whether the Bylaw facially applies to situations where a building permit is sought for previously unfinished interior space that was deliberately left unfinished to avoid the requirement of site planning approval--is easily answered. Bylaws, like statutes, are to be interpreted according to "the intent **[**13]** of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." [*Moloney v. Boston Five Cents Savings Bank, FSB*, 422 Mass. 431, 433, 663 N.E.2d 811 \(1996\)](#) (quoting [*Telesetsky v. Wight*, 395 Mass. 868, 872-873, 482 N.E.2d 818 \(1985\)](#)). The Bylaw's words are straightforward. Homes with an RGFA of more than 6,000 square feet require site plan approval before a building permit may issue. The Bylaw's purpose for this requirement is clear. In the town's judgment, size matters. Larger homes (those in excess of 6,000 square feet) are deemed to have a greater impact on their surroundings than smaller ones and surely this is so. Generally speaking, larger homes have more bulk, more bedrooms, more cars, more visitors, and more activity. Interpreting the Bylaw as *not* requiring site plan approval for a home in excess of 6,000 square feet if the developer simply leaves a portion of its interior unfinished for a short period of time would make the Bylaw subject to manipulation and **[**14]** evasion, effectively rendering it meaningless. See [*81 Spooner Road LLC*, 452 Mass. at 118-119](#) (upholding powers of towns to restrict subsequent conversion of previously "unfinished" space to prevent developers from "thwarting" bylaw requirements). The town currently interprets the Bylaw as requiring site plan approval in such situations (Aff. of Robert Mona, Inspector of Buildings at 1 (Sept. 11, 2008); ZBA Decision at 5 (May 1, 2008)) and that interpretation is entitled to deference. [*Livoli v. Zoning Bd. of Appeals of Southborough*, 42 Mass. App. Ct. 921, 923, 676 N.E.2d 68 \(1997\)](#).

The plaintiffs argue that the Bylaw impermissibly turns a "by right" use into a use requiring a special permit. Amended Case Management Joint Statement at 2 (July 15, 2008). This is incorrect for two reasons. First, on its face, the Bylaw does *not* require a special permit, only site plan approval. The two are quite different. [*Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 58-59, 687 N.E.2d 1274 \(1997\)](#). Unlike a discretionary special permit, "if the specific area and use

⁸ The defendants concede that such building permits had been issued in the past by the former building inspector, a practice that Mr. Morra, the current building inspector, does not follow and it is one that he believes was "not consistent with the RGFA requirements of the By-law." Aff. of Robert Morra, Inspector of Buildings at 1 (Sept. 11, 2008). The defendants also concede that, in at least one instance (15 Walnut Road), the planning board "agreed to waive submission requirements and site plan approval" as set forth in **[**12]** Ms. Haber's August 15, 2008 letter.

⁹ The plaintiffs' argument that Mr. Reznik did not have standing to bring the plaintiffs' violation of the RGFA Bylaw before the ZBA of appeals is unavailing. As a direct abutter, potentially affected by the external impacts of the plaintiffs' expansion of their RGFA, Mr. Reznik had a "legitimate interest in preserving the integrity of the district," [*Rafferty v. Sancta Maria Hospital*, 5 Mass. App. Ct. 624, 629-30, 367 N.E.2d 856 \(1977\)](#), and thus a right to have the issue of the Bylaw's applicability addressed by the ZBA.

criteria stated in the by-law [are] satisfied, the board [does not] have discretionary power to deny . . . [site plan approval], but instead [is] limited to **[**15]** imposing reasonable terms and conditions on the proposed use." Prudential Ins. Co. of America v. Bd. of Appeals of Westwood, 23 Mass. App. Ct. 278, 281-82, 502 N.E.2d 137 (1986) (quoting SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 105, n.12, 106, 472 N.E.2d 269 (1984)). Second, a municipality is entitled to draw reasonable regulatory distinctions based on size. The line drawn by the Bylaw (requiring site plan approval for homes greater than 6,000 square feet) is not only a reasonable distinction, but also a reasonable approach to addressing the consequences of such size. See Y.D. Dugout, Inc. v. Bd. of Appeals [**751] of Canton, 357 Mass. 25, 31, 255 N.E.2d 732 (1970) (towns may adopt "reasonably flexible methods . . . allowing [their] boards . . . to adjust zoning regulation to the public interest in accordance with sufficiently stated standards"); Andrews v. Town of Amherst, 68 Mass. App. Ct. 365, 367-368, 862 N.E.2d 65 (2007) (Municipalities have "broad legislative powers" under the Home Rule Amendment, Art. 89 of the amendments to the Massachusetts Constitution, and the Zoning Enabling Act, G.L. c. 40A, to regulate land use within their boundaries. Standards will be upheld so long as they serve allowable zoning objectives, § 2A **[**16]** of St. 1975, c. 808, and are neither in violation of any provision of the Zoning Enabling Act nor "an arbitrary or unreasonable exercise of the police power having no substantial relationship to the public health, safety or general welfare.").

Moreover, an important point should not be forgotten. The town is *not* saying that a building permit will not issue. The ZBA has simply said that the permit's issuance in this case was premature because site plan review was never sought, obtained, or formally waived by the planning board. The law prohibits the planning board from acting arbitrarily or capriciously. After reviewing the situation, the planning board might very well decide that the site need not be altered in any way. At most, it can only impose reasonable terms and conditions unless no such terms could resolve the site's problems, if any. Prudential Ins. Co. of America, 23 Mass. App. Ct. at 283 n.9 ("In some cases, the site plan, although proper in form, may be so intrusive on the interests of the public in one regulated aspect or another that rejection by the board would be tenable.").

The plaintiffs next argue that the town is estopped from enforcing its Bylaw because the past practice **[**17]** of its building inspector had been to issue building permits to build out previously unfinished interior space without prior site plan approval and the past practice of its planning board had been to waive submission requirements and site plan approval where (as here) there was no change to the exterior of the house. This too is incorrect. First, this is *no longer* the building inspector's practice and, moreover, it is one he recognizes was "not consistent with the RGFA requirements of the By-law." Aff. of Robert Mona at 1. Second, it is not clear that it is *still* the practice of planning board or if, under that practice, waivers were given *automatically* for situations such as this where the developer deliberately left space unfinished (space always clearly *intended* to be finished) solely to avoid the site planning approval process. If that is the practice, for the reasons discussed above, it is improper. The Bylaw requires site plan approval and a municipality is not estopped from enforcing its laws due to the previous improper actions of its agents. Holahan v. Medford, 394 Mass. 186, 191, 474 N.E.2d 1117 (1985) (courts should be "reluctant to apply principles of estoppel to public entities where to **[**18]** do so would negate

requirements of law intended to protect the public interest," quoting [*Phipps Prods. Corp. v. Massachusetts Bay Transp. Auth.*, 387 Mass. 687, 693, 443 N.E.2d 115 \(1982\)](#)); [*Dagastino v. Comm'r of Corr.*, 52 Mass. App. Ct. 456, 459, 754 N.E.2d 150 \(2001\)](#) (citing [*McAndrew v. School Comm. of Cambridge*, 20 Mass. App. Ct. 356, 360, 480 N.E.2d 327 \(1985\)](#)).

The plaintiffs' next challenge to the Bylaw is their contention that it violates [*G.L. c. 40A, § 3*](#) and is thus invalid because it impermissibly regulates the interior area of a single-family residential building. This argument also fails. The Bylaw does not regulate the interior area. It regulates the *external impact* of that area and is thus a permissible regulation concerning the "bulk" of structures within the meaning of [*G.L. c. 40A, § 3*](#). [*81 Spooner Road LLC*, 452 Mass. at 117](#).

The zoning bylaw at issue in *81 Spooner Road LLC* concerned a residential dwelling's floor-to-area ratio. A building permit was issued and the neighbors challenged that permit on the grounds that the top floor of the house was intended to be used as habitable space, not an attic. The ZBA agreed and revoked the permit. The developer appealed, contending that the floor-to-area ratio regulations were **[**19]** invalid as applied to single-family homes pursuant to [*G.L. c. 40A, § 3*](#). The initial question presented was whether [*c. 40A, § 3*](#) prohibited "all restriction of the interior area of a residence." [*Id. at 112*](#). The Supreme Judicial Court rejected this argument, noting that if it did so,

none of the regulatory devices mentioned in the proviso in [*§3*](#), second par. [allowing "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements"] would be valid, and single-family residences could be constructed to cover an entire lot, with no height restriction. Houses, as well as lots, could abut, wreaking havoc on the purposes of zoning. We do not construe a statute in a manner that renders its purposes ineffective or its words meaningless.

[*Id. at 112-113*](#). It further stated that "the prohibition ... cannot be absolute because it would deprive the town of all ability to regulate 'density of population and intensity of use' created by single-family homes." [*Id. at 117*](#).

In construing the meaning of the statute, the court focused particularly on its use of the word "bulk." As the court noted, "unlike **[**20]** the other devices mentioned in the proviso, a 'bulk' regulation operates in a more complex manner involving consideration of interior area" and was different and distinct from "size." [*Id. at 113-114*](#). "[W]hen 'bulk' and 'size' are used interchangeably, they refer to width, length, and height, but 'bulk' may also be expressed in terms of [a building's] gross floor area." [*Id. at 114*](#) (citing 3 A.H. Rathkopf & D.A. Rathkopf, *Zoning and Planning* § 54:2, at 54-2 (2005)). "[R]egulation of the bulk of a building by considering its internal area, as through the use of a floor-to-area ratio, is a generally recognized and accepted principle of zoning" of which "the Legislature was well aware" when it enacted [*G.L. c. 40A, § 3*](#). [*Id. at 115*](#). Thus, the court concluded, "it follows that the proviso of [*§ 3*](#), second par., permits consideration of interior area in bulk regulation." *Id.* In sum, the court concluded, "regulation of single-family residences pursuant to the authority in the proviso of [*G.L. c. 40A, § 3*](#), **[**21]** second

par., including bulk regulation of floor-to-area ratio, is a proper exercise of the zoning power, provided the effect of such regulation on the interior area of such structures is incidental." [*Id. at 117.*](#)

Here, the regulation is of "gross floor area" rather than "floor-to-area ratio," but the analysis is the same. As stated above, bulk can be expressed in terms of gross floor area. [*Id. at 114.*](#) Further, as the court held, "to the extent the definition of 'gross floor area' and the floor-to-area ratio operate as a use restriction, [*752] they constitute a permissible 'intensity of use' regulation under [*c. 40A, § 3*](#) and St. 1975, c. 808, § 2A." [*Id. at 118.*](#)

Whether this Bylaw (requiring site plan approval for homes with an RGFA in excess of 6,000 square feet) is an "incidental" rather than "direct" regulation of interior space and whether the requirement of site plan approval is rationally related to RGFA has already been answered by the analysis earlier in this memorandum. To repeat, in the view of the town, size matters. Larger homes (those in excess of 6,000 square feet) are deemed to have more of an impact on their surroundings than smaller ones and surely this is so. Generally speaking, [**22] larger homes have more bulk, more bedrooms, more cars, more visitors, and more activity.

To be sure, the court in *81 Spooner Road LLC* did state that "dimensional, bulk, and density requirements may properly regulate single-family residences so long as they *do not set minimum or maximum levels of interior area.*" [*Id. at 116-17*](#) (emphasis added). However, contrary to the plaintiffs' argument, the site plan approval requirement for residences with an RGFA greater than 6,000 square feet does *not* "flatly prohibit the construction of a single-family house in excess of 6,000 square feet." ¹⁰ Reply Brief of Jonathan A. White, Trustee, and MJN Construction LLC, to Oppositions and Cross Motions of Town of Weston and the Weston ZBA, and to Reznik's Opposition to Motion for Judgment on the Pleadings at 5 (Aug. 15, 2008); *see also* Brief of Jonathan A. White, Trustee, and MJN Construction LLC, in Support of Motion for Judgment on the Pleadings Pursuant to [*M.R. Civ. P. 12\(c\)*](#) at 19 (June 27, 2008). Rather, it merely sets a level that triggers a requirement for site plan approval for residences with an RGFA greater than 6,000 square feet. This is clearly intended to address the *external effects* of such [**23] bulk (*e.g.*, the number of cars, residents and visitors; parking and driveway location; the types and locations of activities, etc.) and thus is a rational and "incidental" bulk regulation. *See 81 Spooner Road LLC, 452 Mass. at 118-19* (where the bylaw provision allowing conversion of attic and basement space to habitable space only after ten years was rationally related to the goal of regulating density and intensity of use).

The plaintiffs also contend that the site plan approval requirement for buildings with an RGFA greater than 6,000 square feet cannot validly regulate bulk and density because other provisions in the Bylaw specifically deal with bulk and density considerations (height, setback, parking, etc.) and the planning board would be bound to follow them. As *Muldoon v. Planning Board of*

¹⁰ The plaintiffs even acknowledge this fact in other sections of their brief: "No reading of the Weston Bylaw leads to the conclusion that a house exceeding 6,000 square feet may not be built at all." Brief of Jonathan A. White, Trustee, and MJN Construction LLC, in Support of Motion for Judgment on the Pleadings Pursuant to [*M.R. Civ. P. 12\(c\)*](#) at 30-31 (June 27, 2008).

Marblehead makes clear, **[**24]** however, that argument fails as well. [*72 Mass. App. Ct. 372, 892 N.E.2d 353 \(2008\)*](#). Where, as here, the goals of site plan approval include minimizing the impacts to neighboring properties and the community,¹¹ the site plan approval bylaw allows the planning "board to impose reasonable conditions on site plan approval in order to achieve those goals even where those conditions impose dimensional requirements stricter than the minimum required by the applicable zoning by-law." [*Id. at 376*](#). Stricter requirements in such circumstances do not violate the uniformity requirements of [*G.L. c. 40A, § 4. Id. at 375*](#). As a result, the fact that the planning board evaluates the impacts of bulk and density for homes with an RGFA in excess of 6,000 square feet under the Bylaw's general site plan approval provisions rather than simply requiring those homes to meet the specific dimensional requirements in other sections does not invalidate the site plan approval requirement for those homes.

The plaintiffs' more general attack that the Bylaw violates the uniformity requirements of [*G. L. c. 40A, § 4*](#) fails as well. In this argument, the plaintiffs once again equate the site plan approval argument, the plaintiffs once again equate the site plan approval requirement to bylaws that require a special permit for certain uses, citing [*SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 472 N.E.2d 269 \(1984\)*](#), for the proposition that Weston cannot require site plan approval without violating the uniformity requirement. As explained above, however, special permits and site plan approvals are very different mechanisms, and the Bylaw does *not* require a special permit for a use allowed as of right. In addition, as the town points out in its briefs, the town applies uniform requirements within the two classes established by the Bylaw: (1) single-family residences constructed after October 29, 1988 with an RGFA of *less* than 6,000 square feet and (2) single-family **[**26]** residences constructed after October 29, 1988 with an RGFA of *more* than 6,000 square feet. The fact that the planning board *may* impose stricter requirements on residences with an RGFA exceeding 6,000 square feet does not violate the uniformity requirement. [*Muldoon, 72 Mass. App. Ct. at 375*](#).

Conclusion

For the foregoing reasons, I find and rule that Bylaw §§ V.B.1.a, V.B.2.d, and XI, requiring site plan approval for single-family homes with an RGFA in excess of 6,000 square feet, clearly applies to situations such as this where a home deliberately has been phased with the intent of avoiding the site planning process. I find and rule that the past practices of the former building inspector do not estop either the current inspector or the ZBA from applying and enforcing the Bylaw. I find and rule that the planning board's apparent practice of "waiving submission requirements and Site Plan Approval under Section V.B.2.d ... for existing homes . . . where finishing off interior space is proposed and where there is no change to the exterior of the house," Letter from Susan Haber, Town Planner, to Rob Morra, Inspector of Buildings (Aug. 15, 2008), would not preclude that

¹¹ See Bylaw §§ XI.H.4 ("development shall minimize demands placed on Town services and infrastructure"), XI.H.8 ("Exposed storage areas . . . and other unsightly uses shall be set back and/or screened to protect neighbors from objectionable **[**25]** features."), XI.H.9 ("proposed projects shall be designed in such a way as to minimize shadows on neighboring properties"), and XI.H.10 ("There shall be no unreasonable glare . . . onto neighboring properties from lighting or reflection").

board from requiring **[**27]** site plan approval in the situation presented by this case or in any other case it deemed appropriate so long as its decision **[*753]** was not arbitrary and capricious. Finally, I find and rule that the Bylaw is a "reasonable regulation . . . concerning the bulk and height of structures" and thus is not invalid under [G.L. c. 40A, § 3](#) nor in violation of the uniformity requirements of [G.L. c. 40A, § 4](#). See [81 Spooner Road LLC, 452 Mass. at 117](#); [Muldoon, 72 Mass. App. Ct. at 374](#). Accordingly, the defendants' motion for summary judgment is **ALLOWED**, the ZBA's decision is **AFFIRMED**, the plaintiffs' motion for summary reinstatement of the building permit is **DENIED**, and the plaintiffs' claims are **DISMISSED** in their entirety, with prejudice. Judgment shall enter accordingly. Appears for Weston Board of Appeals

SO ORDERED.

Exhibit 18

1 the property was purchased?

2 A. Yes.

3 Q. After Mr. Borrelli purchased the property through
4 this entity called Needham Enterprises, what was
5 the next step in the process in terms of how the
6 property was going to be developed? What was the
7 next step in the process that involved you?

8 A. I think it was trying to develop the building and
9 work with the Needham Enterprises architect.

10 Q. So Needham Enterprises had an architect involved?

11 A. Yes.

12 Q. Do you remember that person's name?

13 A. Mr. Gluesing.

14 Q. So did you have interactions with Mr. Gluesing
15 about the design of the property or the building?

16 A. Yes.

17 Q. Did you also have interactions with Mr. Borrelli
18 about the design of the building?

19 A. Yes.

20 Q. And when you -- where did these take place? Were
21 they at the site? Were they at somebody's office?

22 A. We had meetings at Mr. Gluesing's home, and we had
23 meetings onsite.

24 Q. And when you were -- did you provide input into

1 the design of the building?

2 A. A lot.

3 Q. What were your goals for the building or the space
4 that were being designed?

5 A. Needham Children's Center prides itself on not
6 having any signs. We really like that we're
7 invisible for security and safety for the kids.
8 So the idea was to be a good neighbor, be in a
9 safe location; and therefore, we wanted a building
10 that had a soft look for the environment. We
11 wanted it to not have any advertising in the
12 front. We wanted the entrance in the back.

13 And then we had a lot -- all of us had a
14 lot of input on the interior, how we wanted the
15 interior designed. But the exterior needed to
16 have a soft look to fit into the environment and
17 not stick out. We wanted to be there, but not
18 there.

19 Q. To follow up on something you said a moment ago,
20 what was your specific thought about where the
21 entrance to the building should be?

22 A. Definitely from day 1, we wanted it in the back of
23 the building.

24 Q. In the back of the building. And what about --

1 A. And -- sorry.

2 Q. I'm sorry. I interrupted you. Did you finish
3 your answer?

4 A. And that was very important to us.

5 Q. What about the parking? Did you have input as to
6 where that should be on the site?

7 A. Definitely.

8 Q. What was your input on that?

9 A. Again, to not call attention to the building,
10 other than the building itself, we wanted the
11 parking in the back.

12 Q. Did you have input regarding play space regarding
13 the children?

14 A. Yes.

15 Q. And what was your input on that subject?

16 A. That -- it was interesting because people have a
17 lot of preconceived thoughts about playgrounds for
18 children. This was not what Needham Children's
19 Center was looking at. It was looking at a more,
20 a model of a more natural environment for the
21 children, something that was close enough to the
22 building so that we could get exterior bathroom
23 doors so children could go in and out.

24 We wanted water in the playgrounds. So

1 we wanted to have -- the play area was as well
2 thought out as an open classroom or an outside
3 classroom as we could possibly do. And that's
4 still a work in progress.

5 Q. Did you also have any thoughts or input about an
6 interior play space?

7 A. Yes.

8 Q. And what were your thoughts or input on that
9 subject?

10 A. If you'll humor me for one minute. Way back in
11 the day, we thought -- my daughter had been ill,
12 and she had been hospitalized and needed a lot of
13 PT. And we worked with this PT in Wellesley, got
14 to know him really well. And I said to him, you
15 know, what all child care needs is a big indoor
16 space so that you're not confined to a program
17 room.

18 So way back when, I said, wouldn't it be
19 great if we could collaborate, you know, if a
20 child needed -- whatever, they could have this
21 big space, also that you could have plays and
22 talent shows and spaghetti nights and things like
23 that.

24 And a lot of the models for child care,

Exhibit 19

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

LAND COURT DEPT.
OF THE TRIAL COURT
22 MISC 000158 (JSDR)

NEEDHAM ENTERPRISES, LLC.

Plaintiff,

v.

NEEDHAM PLANNING BOARD,
PAUL ALPERT, ADAM BLOCK,
MARTIN JACOBS, and
JEANNE McKNIGHT,
in their capacity as members of the
NEEDHAM PLANNING BOARD

Defendants.

DEFENDANT NEEDHAM PLANNING BOARD'S POST TRIAL BRIEF

INTRODUCTION

Now come the defendants, the Needham Planning Board and its Individual Members (the “Board”) and hereby submit this post-trial brief following trial. Based upon the evidence available to the Court, as well as the Court’s rulings to date on the same, this Court must find that the Plaintiff has failed to meet its burden of proof and, accordingly, judgment of dismissal is warranted.

This matter arises under protections afforded to licensed child care facilities under G.L. c. 40A, §3 (a/k/a the “Dover Amendment”). However, this matter presents an unusual situation because, unlike other childcare cases, the Board did not deny the project; nor did the Board impose conditions that would render the proposed project infeasible. Rather, the Board here approved the proposed childcare facility in its entirety and merely required that it be placed in a location that would ensure greater compatibility with the neighborhood, a goal that both parties share, and

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 7.4.6(e) of the Bylaw. A larger setback would help create a buffer from the proposed use, increasing both the 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.^[7]

The municipal interest 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 to both setback and bulk, among other criteria.

Exhibit 15, Decision, at 25-26, § 1.21. The reasonableness and, indeed, the wisdom of the Board's and DRB's findings are supported by Mr. Gluesing's and Ms. Day's own testimony, wherein, as noted above, they corroborated the benefits of a design that was compatible to development pattern and residential character of the neighborhood. Mr. Gluesing's testimony included:

Q. Okay. Now, I believe when you appeared before the planning board -- you did appear before the planning board in July-ish, do you recall that?

A. Yes.

Q. And you talked to them about design of the project?

A. Yes.

Q. And with respect to the design of the project, you did -- you did note that you wanted a residential feel, correct, for the design of the building?

A. Yes.

Q. Okay. You wanted it to fit in with the neighborhood?

A. Yes, Ms. Day -- it was very important to Ms. Day.

Q. Okay. Important that it not differentiate itself from the neighborhood design pattern?

A. Yes.

⁷ This finding also supports conditions relating to vehicular related conditions discussed below.

Trial Transcript, Vol. III, at 57:7-24. Mr. Borelli's own answers to interrogatories and subsequent testimony thereon, where he confirmed that placing the building footprint as far away from Central Avenue as possible would provide both "aesthetic and safety" benefits. *Exhibit 18, Needham Enterprises Ans. to Int. 9, at 8; Trial Transcript, Vol. II, at 100:13-20.*

The Plaintiff did not provide any evidence or testimony that contradicted or challenged the Board's and the DRB's findings in any way. Indeed, as noted above, three out of the Plaintiff's four witnesses corroborated the Board's findings!

Ultimately, for the foregoing reasons, the Board concluded that the setback must be increased to 120 feet. *Exhibit 15, Decision, at 30-31, §§ 2.1(d) and 3.1.* To make room for the building and the associated area for the unloading and loading of children, the Board also required that the barn be demolished. However, the Board has stipulated that it has no objection if the barn remains on the site, either in a different location or in a reconfigured design.

Parking/Loading Issues

Although the primary dispute in this matter concerns Condition 2.1(d) of the Board's decision, the Plaintiff also challenges several conditions that the Board imposed with respect to both parking and the loading and loading of children at the site.

The Plaintiff presented no expert witnesses on these subjects. Nor did the Plaintiff seek to introduce any reports from the traffic consultant that it retained for the Board's hearing. Rather, the only evidence on these subjects derives from the reports of John Diaz, P.E., the Board's consultant during the underlying hearing.

As discussed at length during the hearing, parking was a genuine issue of concern. Mr. Diaz studied the adequacy of parking for the site. In order to do so, he was presented with data from the Plaintiff and NCC who volunteered that there would be a maximum of 115 students and

Exhibit 20

Pages 1 - 129
 Volume 2
 Exhibits: Per Index

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. LAND COURT DEPARTMENT
 OF THE TRIAL COURT
 22 MISC 00158 (JSDR)

 *
 NEEDHAM ENTERPRISES, LLC, *
 Plaintiff *
 vs. *
 NEEDHAM PLANNING BOARD, *
 And *
 PAUL ALPERT, ADAM BLOCK, *
 MARTIN JACOBS, and *
 JEANNE McKNIGHT, *
 *
 in their capacity as members of the *
 NEEDHAM PLANNING BOARD, *
 Defendants *
 *

BENCH TRIAL
 BEFORE THE HONORABLE JENNIFER S.D. ROBERTS

3 Pemberton Square
 Boston, Massachusetts
 Courtroom 1102
 Wednesday, April 26, 2023 at 9:10 a.m.

Reported By: Christine L. Warwick, CSR, RPR

KS COURT REPORTING
 10 Westview Circle
 Peabody, Massachusetts 01960
 978.777.5802
 wlthomascourtreporting@comcast.net

1 So I'm going to overrule that objection. Go
2 ahead, Mr. Huber.

3 BY ATTORNEY HUBER:

4 Q. So Mr. Borrelli, can you turn back to --

5 THE COURT: Can you remind me again which
6 condition this is?

7 MR. HUBER: We're talking about Tab 15,
8 and I think we were talking about condition --

9 THE COURT: 3.8, got it.

10 MR. HUBER: -- 3.8.

11 BY ATTORNEY HUBER:

12 Q. So just to clarify, this condition does not say
13 any changes to the plan? It says any changes to
14 the property, correct?

15 A. That is correct.

16 Q. Okay. And can you tell -- do you object to that
17 condition?

18 A. I do.

19 Q. Can you tell the Court why?

20 A. Yes, for the reason that I stated earlier as far
21 as getting approval going back to the planning
22 board. But also if there were any parcels of this
23 property that I wished to deed off to abutters or
24 to anybody else or in the future do any further

1 development, I would not be able to do that
2 without going back to the planning board.

3 Q. In the rear of this property, there are various
4 abutters to your property?

5 A. There are.

6 Q. And on one side, what's on one side?

7 A. Temple Aliyah.

8 Q. And what's on the other side?

9 A. Residential abutters.

10 Q. Have you been approached by any residential
11 abutters about possibly purchasing portions of
12 that property?

13 A. I have.

14 Q. Okay. Now, there's -- could you turn to on this
15 decision the next page, Page 33.

16 A. Yes.

17 Q. Condition 3.14.

18 A. Okay.

19 Q. Okay. Do you see 3.14A?

20 A. I do.

21 Q. And could you just read that into the record,
22 please? Just stopping when you get to paragraph
23 small letter B.

24 A. "The petitioner shall be responsible for securing

Exhibit 21

The following are excerpts from the extensive number of email submission to the Board of Health regarding the past uses of the property at 1688 Central Avenue as well as historical complaints regarding 1688 Central Avenue

The full packets in which these documents appear can be viewed on the Town website:

<https://www.needhamma.gov/ArchiveCenter/ViewFile/Item/9354>

and

<https://www.needhamma.gov/ArchiveCenter/ViewFile/Item/9182> (beginning on page 49)

From: Kenneth Bassett <kbassett33@gmail.com>
Sent: Wednesday, December 8, 2021 12:08 AM
To: Tara Gurge <TGurge@needhamma.gov>
Cc: Ken Bassett <kbassett33@gmail.com>
Subject: Soil testing at 1688 Central Ave

Hello, my name is Ken Bassett. I have lived within the Charles River Village in Needham for well over 50 years, currently residing on South Street.

I was a friend of both Dave and Bobby Welch, they were great guys, lived in this house on Central Ave forever as far as I am aware of.

When I was a kid these two men raced stock cars over in Norwood Mass where there actually was Stock car racing, Demolition Derby and Drag Racing, it was wonderful and exciting.

Long story short, the Welch Brothers were of a time in the 50's & 60's, etc. when environmental issues were far from the thoughts of these two guys in Needham building Race Cars and running their excavation business from their home on Central Ave in Needham.

You would probably find a number of different contaminants in the soil at this location, not done intentionally to harm anything or anybody.

Testing this soil should be accomplished and reported upon with nothing left untested. What are we trying to hide? If it is contaminated Fix it or leave it alone, empty lot trees growing, etc.

-----Original Message-----

From: Geoffrey Kurinsky <gkurinsky@hotmail.com>
Sent: Monday, December 6, 2021 6:13 PM
To: Tara Gurge <TGurge@needhamma.gov>
Subject: Soil testing at 1688 Central Avenue Sight

My wife Deborah and I built a home in 1994 at 1 Bridle Trail Rd, which is adjacent to the 1688 Central Avenue property which is under review. Our home is immediately behind Temple Aliyah, and the narrowing rear section of 1688 Central Avenue lies to the west of our home.

As part of our review before purchasing the land in 1994, a walk of the property noted a couple of tanks (looked like oil tanks) that stretched across into our property by about 5 feet. Upon notifying the Welch brothers, who owned the property, the oil tanks were removed from our property. Over the years, the back section of the lot had been used for storage of all kinds of liquids in tanks and old vehicles, which must have been related to the Welch brothers excavating business.

I wanted to provide my input, as I have been made aware that there may be some issues around soil testing on the 1688 Central Avenue property.

We still live at 1 Bridle Trail Road and would be happy to elaborate on what we saw on the back half of the property, prior to the sale of the land to the current owner.

Sent from my iPad

From: HOLLY CLARKE <jonasclarke@verizon.net>
Sent: Friday, December 10, 2021 1:45 PM
To: Tara Gurge <TGurge@needhamma.gov>
Subject: 1688 Central Avenue

Hi Tara:

As we discussed, I shared with neighbors the Board of Health's desire to hear concerns about the past activities at 1688 Central Avenue in order to address the need for environmental testing or remediation on the site, as well as to assure the safety of any construction and future use at the property.

Kim and Jim Grasso have lived at 15 Bridle Trail since 1994. Their youngest son, Michael, took a series of photographs at 1688 Central Avenue in 2008. His note to me is below. He entitled the photographs "Bridle Trail Lot" and posted them on Flickr. The photos clearly depict trucks, machinery and metals decaying at the site.

The photos can be seen at: <https://www.flickr.com/photos/30464714@N03/sets/72157720231204617/>.

Thank you for sharing these with the Board and Department. I know that putting the packet together is difficult and important, and I am sorry that I could not get this in any sooner. I am happy to forward these to any Board members so that they can have more time to consider them.

Best,
Holly Clarke
617-816-0607

-----Original Message-----

From: Mike Grasso <mikegrasso0@gmail.com>

To: Jonasclarke@verizon.net

Sent: Thu, Dec 9, 2021 11:16 pm

Subject: The Lot

My name is Mike Grasso, I grew up at 15 Bridle Trail Road in Needham Massachusetts. My parents were some of the first to build on Bridle Trail, so I watched the neighborhood grow year by year. I was an adventurous kid. By the time I was ten I had thoroughly explored my block, especially the areas directly adjacent to my house.

I must have been around ten when I first wandered past the woodsy back end of the lot behind my neighbors house, and into the clearing that on google maps today looks mostly empty, except a few piles of wood and stone. The place always fascinated me. It appeared to house some an abandoned fleet of work trucks. Although I knew it wasn't actually abandoned because I could tell some sort of work was going on at the front of the property, likely the managment of a construction or landscaping company. As I got older I examined the lot more carefully, although never getting too close to the structures near the front of the property. When I was 15 (2008) I took my dads digital camera back there to take some photos, I was able to dig the shots up on an online account.

Back then, when you entered the lot through the trees between my neighbors at 1 and 2 Bridle Trail, there were stacks of railroad ties, loose metal, and random chunks of concrete. These half dozen stacks and piles made up the rear quarter of the lot, under the canopy of the surrounding trees.

Moving further towards Central Ave at the widest point of the clearing, there were four (or so) pickup trucks, and two 50's era stock car bodies, one of them on a trailer. All these vehicles were old and in

varying stages of disassembly and decay. They were surrounded by weathered landscaping, paving and construction tools, trailers and accessories. Truck and equipment parts like plows and hydraulic arms peppered the area. There were small and large pieces of construction equipment like a mini steam roller and an old paving machine.

In the middle of the clearing, adjacent to the temple parking lot, there were several more trucks. These were two-ton and larger dump trucks and flatbeds, and looked to be from the 1970's and earlier. None of these vehicles looked like they had moved in many years. Most had one or several broken windows, and many were missing body parts. Tires were flat or old and cracked, wheels sunken into the ground over time. Grass grew tall in between vehicles and scattered parts.

Now and then through highschool I'd wander back there to smoke, rarely would I see signs of anything moving, or anyone coming or going. Occasionally though I would see a newer landscaping truck or two parked in the clearing near the garage behind the house. I never saw anyone else back there and never really knew anything about the place, even though I felt like I knew the place itself quite well.















Image 8: 2009 Needham GIS view



Image 9: 2009 Needham GIS view



Image 14: 2019 Needham GIS view



Wanita Kennedy

From: "Wanita Kennedy" <wanita.kennedy@comcast.net>
To: <Dana.Muldoon@state.ma.us>
Sent: Monday, December 01, 2003 10:14 AM
Subject: RE:December 1st 9 a.m. 2003

Today I observed the moving of debris further back onto the Needham property, 1688 Central Avenue. There were four men involved and a landscaping back-hoe and a white pick-up truck. I observed three men loading something heavy into the front-end loader and then it was moved further back onto the property. They did this twice.

I also noticed that the 500-gallon oil drum is gone from its original location



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

ELLEN ROY HERZFELDER
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

FACSIMILE TRANSMITTAL FORM

DATE: 11/20/03

TO: Board of Health

FROM: Laron Smith

for 781-449-4569

SUBJECT: we are forwarding this complaint
to the Board of Health for
investigation & follow up. Thank you,
Laron Olden-Smith

NUMBER OF PAGES (INCLUDING TRANSMITTAL SHEET): 3

CONFIDENTIAL: The documents accompanying this fax contain information that may be CONFIDENTIAL and/or PRIVILEGED. The information is intended for the use of the individual or entity named on this transmittal sheet. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited. If you have received this transmittal in error, please notify us immediately at the telephone number below and return the original message to us by First Class Mail via the U.S. Postal Service at the letterhead address. Thank you.

IN CASE OF PROBLEM WITH FAX, CALL 617-556-1000
ORIGINATING FAX: (617) 556-1090

situation. The materials stated above continue to be clearly visible from properties along Country Way that abut 1688 Central Avenue, as well as from the parking lot of Temple Aliyah at 1664 Central Avenue. Further, none of the materials have moved since at least December 2003, let alone since the June 24th report date.

We are re-submitting our complaint with the Town of Needham. However, as previous efforts by the Town and neighboring residents have failed to rectify this situation, we are requesting the NE EPA evaluate this property.

Thank you.

submit

Send

WARNING NOTICE

This electronic mail originated from a federal government computer system of the United States Environmental Protection Agency (EPA). Unauthorized access or use of this EPA system may subject violators to criminal, civil and/or administrative action. For official purposes, law enforcement and other authorized personnel may monitor, record, read, copy and disclose all information which an EPA system processes. Any person's access or use, authorized and unauthorized, of this EPA system to send electronic mail constitutes consent to these terms.

This information is for tracking purposes only.

Submitting script: /cgi-bin/mail.cgi

Submitting host: 24.91.51.0 (24.91.51.0)

Browser: Mozilla/4.0 (compatible; MSIE 5.5; Windows 95; T312461)

Referred: <http://www.epa.gov/region01/contact/reportform.html>

TSSMS: region01

Mail to File: rlweb

Golden-Smith, Karen (DEP)

From: Muldoon, Dana (DEP)
Sent: Monday, November 10, 2003 10:28 AM
To: Golden-Smith, Karen (DEP)
Subject: FW: Possible Violation of Environmental Law

617-654-6590

-----Original Message-----

From: Wanita Kennedy [mailto:wanita.kennedy@comcast.net]
Sent: Monday, November 10, 2003 9:30 AM
To: Muldoon, Dana (DEP)
Cc: Bill Kennedy, Jr
Subject: Possible Violation of Environmental Law

For assistance, please contact the State of MA DEP

<http://www.state.ma.us/dep/dephome.htm>

Internet Daemon
Owner
To: Mail
RLWeb/RL/USEPA/US@EPA
<idaemon@mountain
.epa.gov>
cc:
Subject: (311143500)
Reporting a Possible Violation of Environmental Law
11/08/2003 02:35
PM

01) first and last name
Wanita Kennedy
02) organization

03) email address
wanita.kennedy@comcast.net
04) phone number
781.444.3512

05) comments
Residents of the Town of Needham have filed multiple complaints regarding the Needham
property, 1688 Central Avenue.

Said property contains large quantities of discarded debris in the back acres of the
property. Such debris includes rusted vehicles and equipment, old construction materials,
a 500-gallon oil drum and six 55-gallon oil drums.

The property was inspected by the Town of Needham Fire Department on June 24, 2003. At
that time, the property owner stated he was a contractor, a restorer of antique trucks and
a builder of race cars. The Town Inspector (Donald Ingram) stated in his report that no
hazardous materials were observed on the property and further stated that the property
owner was in the process of "reducing his inventory."

We have reason to believe through contacts at the Needham Fire Department that Mr. Ingram
is familiar with the property owner and therefore did not fully execute his duties in this

Wanita Kennedy*Submitted Nov 8th*

From: "Wanita Kennedy" <wanita.kennedy@comcast.net>
To: <Dana.Muldoon@state.ma.us>
Sent: Monday, December 01, 2003 10:14 AM
Subject: RE:December 1st 9 a.m. 2003

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Said property contains large quantities of discarded debris in the back acres of the property. Such debris includes rusted vehicles and equipment, old construction materials, a 500-gallon oil drum and six 55-gallon oil drums.

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We have reason to believe through contacts at the Needham Fire Department that Mr. Ingram is familiar with the property owner and therefore did not fully execute his duties in this situation. The materials stated above continue to be clearly visible from properties along Country Way that abut 1688 Central Avenue, as well as from the parking lot of Temple Aliyah at 1664 Central Avenue. Further, none of the materials have moved since at least December 2003, let alone since the June 24th report date.

We are re-submitting our complaint with the Town of Needham. However, as previous efforts by the Town and neighboring residents have failed to rectify this situation, we are requesting the NE EPA evaluate this property.

Thank you.

12/1/03



Town of Needham
Fire Department Headquarters
88 Chestnut Street
Needham, Massachusetts 02492

Telephone
(781) 455-7580
Fax
(781) 444-2174

Chief of Department
Robert A. DiPoli

Deputy Chief of
Operations
Charles J. Rizzo

Deputy Chiefs
Alfred B. Delulio
John F. Whalen
Barry J. Carloni
James A. Benedict

JUNE 24, 2003

ON THIS DATE AN INSPECTION WAS MADE OF THE PROPERTY BELONGING TO DAVID WELCH, 1688 CENTRAL AVENUE, NEEDHAM, MA 02492. THE PURPOSE OF THE INVESTIGATION WAS TO ADDRESS THE COMPLAINT(S) MADE BY

MR. WELCH, A CONTRACTOR, HAS NUMEROUS PIECES OF EQUIPMENT ON HIS PROPERTY. MR. WELCH RESTORES ANTIQUE TRUCKS AND AUTOMOBILES AND ALSO BUILDS RACE CARS. WITH RESPECT TO HAZARDOUS MATERIALS, I DID NOT OBSERVE ANY CONTAINERS WITH HAZARDOUS SUBSTANCES IN THEM. I DID NOT OBSERVE ANY FREE-FLOATING PRODUCT AT THIS SITE. AT THIS TIME, MR. WELCH IS IN THE PROCESS OF REDUCING HIS INVENTORY. AFTER THIS IS ACCOMPLISHED A THOROUGH ASSESSMENT CAN BE DONE. *See last page*

ALSO PRESENT WAS MR. ROBERT A. WELCH.

INSPECTOR DONALD B. INGRAM
N.F.P.D.

- ① I have never ^{observed} ~~seen~~ an antique truck on this property
- ② I have never observed a race car on this property
- ③ I have never observed Antique cars on this property
- ④ I never said there was free-floating products at this site



Tel. 617-455-7542

TOWN OF NEEDHAM
BUILDING DEPARTMENT

470 Dedham Ave.
Needham, MA 02192

REQUEST FOR ZONING ENFORCEMENT

Date Dec 1, 03

To the Inspector of Buildings:

Dear Sir:

See attached

I believe that the property owned by _____
located at _____ is being
used as (describe) _____

_____ in violation of the Needham Zoning By-Laws. Section _____
(pursuant to MA General Laws CH 40A-7)

I request that you enforce the Zoning Ordinance and request a report of the action
you take on this matter within fourteen days.

Very truly yours,

I am the owner of the property at 31 Country Way
Name Wanita & Bill Kennedy
Address _____
Tel. 761 444 3512

as of dated cleanup)

The Welches are in the process of:
removing debris that neighbors have
(~~dump~~ ~~with~~ ~~etc~~)
complained about

To remedy this problem:

~~I am allowing them~~ ~~weeks to~~
 ~~adhere~~

We have scheduled a follow up visit
for the month of to see
if ~~the~~ R+D Welch have complied
with my original findings

cc: Karen Golden-Smith (DEP)

Footnote: according to Jana on date you spoke
A complaint was never filed by the
Kennedys to the Needham B.O Health

RE: Possible Violation of Environmental Law

Address: 1688 Central Ave
^{David + Robert Welch}

1. Email sent to DEP

2. DEP ~~sent~~ forwards email to Needham Board of Health

3. Board of Health → NFD -

Filing Complainants: Wanita + Bill Kennedy
31 Country Way, Needham
Inspector

Inspected by Donald Ingram on 6/24/03

Findings are recorded in a report by Inspector Don Ingram stating "with respect to hazardous materials, I did not observe any containers with hazardous substances in them, I did not observe any free floating product at this site."
* Attached

upon receiving an ~~email~~ email dated 11/10/03 from Karen Golden Smith of DEP, I contacted D + R Welch to meet with them at 1688 Central Ave on date you want.

I observed the following:

① ~~46~~ 55 gallon drums, containing no hazardous waste, if fact, they are empty

② 500 gallon oil drum contains no hazardous waste, it is empty

Yes, ~~the~~ ~~drums~~ are in violation of

~~that~~ Plans to remedy (solution to problem)

No, they are not in violation of

But will be cleaning up yard -



Town of Needham
Fire Department Headquarters
88 Chestnut Street
Needham, Massachusetts 02192

Telephone
444-0142

Chief of Department
Robert A. DiPoli

Deputy Chief of
Operations
Ernest A. Steeves

Ins # 3002

Deputy Chiefs
Alfred B. DeJulio
Charles J. Rizzo
John F. Whalen
Barry J. Carloni

ON 11-25-03 The BOARD of Health (Town Needham)
FORWARDED AN E-MAIL TO N.F.D. FIRE PREVENTION
CONCERNING THE PROPERTY AT 1688 CENTRAL AVE. FOR A
POSSIBLE VIOLATION OF ENVIRONMENTAL LAW.

12-02-03
ON ~~THIS DATE~~ AN INSPECTION WAS MADE AT
1688 CENTRAL AVE NEEDHAM. THE PROPERTY IS OWNED
BY DAVID AND ROBERT WELCH.

WHILE DOING A VISUAL INSPECTION I OBSERVED
6 - 55 GAL DRUMS BEHIND THE BARN AND ONE
LARGE TANK APPROX. 500 GALS AND TWO 275 GAL
OIL TANKS. ALL OF WHICH WERE EMPTY. MR.
WELCH STATED THE HE USED THE 55 GAL DRUMS
TO DETOUR TRAFFIC WHILE DOING EXCAVATING JOBS
ON ROADWAYS OR IN PARKING LOTS. THE 275
GAL TANKS WERE TO BE PUT IN HALL TO BE USED AS
MORTAR TUBS THE LARGE TANK WHICH WAS ALSO
EMPTY WAS TO BE SCRAPPED FOR JUNK METAL.
MR. WELCH SHOWED ME THAT HE HAD MOVED MANY



Town of Needham
Fire Department Headquarters
88 Chestnut Street
Needham, Massachusetts 02492

Telephone
(781) 455-7580
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(781) 444-2174

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JUNE 24, 2003

ON THIS DATE AN INSPECTION WAS MADE OF THE PROPERTY BELONGING TO DAVID WELCH, 1688 CENTRAL AVENUE, NEEDHAM, MA 02492. THE PURPOSE OF THE INVESTIGATION WAS TO ADDRESS THE COMPLAINT(S) MADE BY

MR. WELCH, A CONTRACTOR, HAS NUMEROUS PIECES OF EQUIPMENT ON HIS PROPERTY. MR. WELCH RESTORES ANTIQUE TRUCKS AND AUTOMOBILES AND ALSO BUILDS RACE CARS. WITH RESPECT TO HAZARDOUS MATERIALS, I DID NOT OBSERVE ANY CONTAINERS WITH HAZARDOUS SUBSTANCES IN THEM. I DID NOT OBSERVE ANY FREE-FLOATING PRODUCT AT THIS SITE. AT THIS TIME, MR. WELCH IS IN THE PROCESS OF REDUCING HIS INVENTORY. AFTER THIS IS ACCOMPLISHED A THOROUGH ASSESMENT CAN BE DONE.

ALSO PRESENT WAS MR. ROBERT A. WELCH.

INSPECTOR DONALD B. INGRAM
N.F.P.B.



Town of Needham
Fire Department Headquarters
88 Chestnut Street
Needham, Massachusetts 02492

Telephone
(781) 455-7580
Fax
(781) 444-2174

Chief of Department
Robert A. DiPoli

Deputy Chief of
Operations
Charles J. Rizzo

Deputy Chiefs
Alfred B. DeIulio
John F. Whalen
Barry J. Carloni
James A. Benedict

June 13, 2003

Mr. David Welch:

This department has received a complaint regarding abandoned automobiles and oil drums on your property, located at 1688 Central Avenue. The Fire Inspectors would like permission to make an inspection of said property. Please call 781-455-7580 to make an appointment.

Thank you,



Town of Needham
Fire Department Headquarters
88 Chestnut Street
Needham, Massachusetts 02492

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(781) 455-7580
Fax
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Robert A. DiPoli

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ALSO PRESENT WAS MR. ROBERT A. WELCH.

INSPECTOR DONALD B. INGRAM
N.F.P.B.

Exhibit 22

From: [Tara Gurge](#)
To: [Alexandra Clee](#)
Cc: [Lee Newman](#)
Subject: Public Health Division's reply to Planning Boards Request for comment - 1688 Central Avenue
Date: Wednesday, March 24, 2021 2:12:41 PM
Attachments: [ALL APPLICATION materials minus Stormwater_reduced.pdf](#)
[Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham.docx](#)
[image002.png](#)
[image003.png](#)
Importance: High

Alex –

Here are the Public Health Division comments for the **Project Site Plan Special Permit proposal at 1688 Central Avenue**. See below:

- Prior to demolition, we will need to ensure that the applicant fills out the online Demolition permit form, through the Building Dept., via ViewPoint Cloud online permitting system, and submits the Demolition review fee along with uploading the required supplemental demolition report documents online, including septic system abandonment form and final pump report, for our review and approval (as noted on the form.)
- Ensure that a licensed pest control service company is contracted and will conduct routine site visits to the site, first initially to bait the interior/exterior of each structure to be raised prior to demolition, and also continue to make routine site visits (to re-bait/set traps) throughout the duration of the construction project. Pest reports must be submitted to the Health Division on an on-going basis for our review.
- If this proposal triggers the addition of any food to be served or prepped on site at this new facility, the owner must fill out and submit an online application for a Food Permit Plan Review packet. As part of this plan review, a food establishment permit will need to be applied for through the Public Health Division via the Town's ViewPoint Cloud online permitting system, which will require a review of the proposed kitchen layout plans, with equipment and hand sinks noted, along with any proposed seating layout plans where applicable.
- Please ensure that sufficient exterior space is provided to accommodate an easily accessible Trash Dumpster and a separate Recycling Dumpster, per Needham Board of Health Waste Hauler regulation requirements. These covered waste containers must be kept clean and maintained, and be placed on a sufficient service schedule in order to contain all waste produced on site. These containers may not cause any potential public health and safety concerns with attraction of pest activity due to improper cleaning and maintenance.
- As noted in the proposal, the applicant will be required to connect to the municipal sewer line, once it's brought up to the property, prior to building occupancy. A copy of the completed signed/dated Sewer Connection application, which shows that sewer connection fee was paid, must be forwarded to the Public Health Division for our record.
- No public health nuisance issues (i.e. odors, noise, light migration, standing water/improper on site drainage, etc.), to neighboring properties, shall develop on site during or after construction. We are in support of an extensive landscaping plan be developed on site to screen and enhance the site, and to ensure that noise and visual impacts are minimized for the benefit of the neighboring residential properties in this location. Additional buffering, by the addition of new vegetation, along with new plantings, is strongly encouraged.

- Proposed lighting on site shall not cause a public health nuisance, with lighting being allowed to migrate on to other abutting properties. If complaints are received, lighting may need to be adjusted so it will not cause a public health nuisance.
- The applicant must meet current interior/exterior COVID-19 Federal, state and local requirements for spacing of seating, HVAC/ventilation, face covering requirements, sanitation requirements and occupancy limit requirements, etc. Please ensure that proper occupancy limits are met in order to accommodate the most updated state COVID-19 requirements for this proposed facility to ensure the health and safety for the number of proposed students and staff on site.
- The Public Health Division is also in support of the comments and concerns noted in the letter entitled, 'Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham,' that was received and distributed by the Planning Board, including the excerpt on the neighboring abutters' concerns regarding the previous uses of the property with reference to potential soil contamination that may be present. We conducted a file check for this property address and we support the neighbors request for a soil test based on a concern that was investigated by the Fire Dept. that was filed back on June 24, 2003. The applicant must ensure that the property is safe, which includes conducting proper soil testing of the site prior to construction, and also follow through with any necessary mitigation measures as found to be necessary, as part of this project approval.

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

Thanks,



TARA E. GURGE, R.S., C.E.H.T., M.S.
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
Mobile- (781) 883-0127
Email - tgurge@needhamma.gov
Web- www.needhamma.gov/health



please consider the environment before printing this email

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[Follow Needham Public Health on Twitter!](#)

Exhibit 23



Needham Public Health Division

178 Rosemary Street, Needham, MA 02494
www.needhamma.gov/health

781-455-7940 ext. 504
781-455-7922(fax)



Memo

To: Lee Newman, Planning Board
Alex Clee, Planning Board

From: Tara Gurge, Public Health Division
Tiffany Zike, Public Health Division

Date: 12/16/2021

Re: #1688 Central Ave. – Recommendation to the Planning Board

The Needham Board of Health had their monthly meeting on Tuesday evening (12/14), which all five members of the Board were present in-person at the meeting. The Board heard all the citizens comments and at the end of that 30-minute comment session, the Board continued their discussion of the #1688 Central Ave. project and all were unanimous on this recommendation (see attached agenda.) As you requested, we have typed up the following recommendation below.

The Needham Board of Health has the following recommendation to the Planning Board re: the project located at #1688 Central Avenue –

The Board of Health would like the Town to hire an independent third party, licensed site professional to conduct an independent evaluation only. This professional must oversee this project and confirm that the soil testing work, along with the proposed capping work to be conducted, meets all local, state and Federal requirements. Rob, the Board of Health chair, stressed the need for an independent and qualified evaluator. They must conduct a complete site assessment, give their recommendations on whether soil testing is required and what types of testing need to be conducted due to the history of this site. This licensed site professional must also determine what type of barrier or capping measures may be necessary on this site. Also need to offer their guidance on what mitigations to the new building will be required to ensure the building air quality is adequate and safe. Then they must offer their guidance on what will be required going forward to ensure the site is deemed safe for the children at this pending new Daycare facility.

Please let us know if you have any follow-up questions for us on that recommendation.

Please contact me if you have any additional questions on these requirements. You can reach me at (781) 455-7940, Ext. 211.

Exhibit 24

Neighborhood Petition Regarding Development of 1688 Central Avenue in Needham

This letter sets forth some of the concerns of the surrounding neighbors and neighborhoods to the proposed project at 1688 Central Avenue, Needham MA.

We learned in mid-January 2021 that Needham Town Selectman and Developer Mr. Matt Borrelli plans to build a 9,960 sq ft. building to use as a day care facility at 1688 Central Avenue. We have several concerns regarding the impact this will have on Central Avenue and the surrounding neighborhoods.

As the Town undertakes the required reviews, we ask that these serious safety and other issues be considered and addressed.

***This is a "Major Project." ***

First, we believe this project should be treated as a "Major Project" and undergo the full review required of Major Projects under Section 7.4.3 of the Needham Zoning ByLaws (NZBL).

That section requires that Major Projects receive a special permit and undergo the notice and hearing requirements of Chapter 40A.

The NZBL defines as a Major Project "[a]ny construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces."

The proponent obviously tried to design the project to fall outside the Major Project category by claiming to fall just short of these thresholds (9960 sq ft and 24 parking spaces). However, in reality, more than the threshold 25 parking spaces are likely to be needed.

The proponent's March 12, 2021 letter to the Planning Board notes that the Town's formula requires "8 spaces plus 1 space for each 40 children, plus one space for each staff member." The facility plans for the possibility of increasing to 120 children (according to its traffic study). With a staff of 13, the proponent claims its parking needs fall just under the 25-space threshold. We believe the Planning Board should conclude that the parking needs are, in fact, likely to be at least 25 spaces for several reasons.

First, with the traffic congestion in exiting the facility during morning rush hour, it is likely more parking spaces will be needed to accommodate drop offs, particularly if the facility is open to larger numbers of children.

Second, we do not believe that the childcare facility can effectively operate with only 13 staff members (to include administrative staff) with 120 children and the adult to children ratios required. The proponent must, at the very least, explain how 13 staff were arrived at.

Third, other childcare facilities in the area of similar sizes operate with more than 25 parking spaces (e.g., the Goddard School in Medfield, mentioned in the proponents traffic study, had 36 spaces per satellite imaging.

The Medfield Children's Center has 40 (smaller building but bigger student population)).

Finally, the significant change in use and impact of the proposal over existing use strongly suggests that the Planning Board treat the proposal with the full level of review.

Traffic Concerns

We are deeply concerned about the impact the project will have on safety and traffic on Central Avenue and the surrounding streets.

In normal, non-COVID, times, morning weekday traffic along Central Avenue in this area is extremely heavy and backed up. The morning rush hour extends from approximately 6:30 to 8:30 AM and regularly causes solid backups from the RTS to Temple Aliyah, and often from Newman School back to Temple Aliyah.

To be blunt, during the weekday morning commute, Central Avenue is often an intermittent parking lot all the way to Cedar Street. Evening traffic congestion begins with the release of school and extends through approximately 6:30. Adding the additional vehicles in and out of the facility parking lot --whether coming from the south and joining the backed up traffic before entering the facility's driveway or coming from the north and needing to make a left turn across the backed up northbound traffic and exiting the facility to again add to the backed up traffic -- will make a bad situation much worse and severely impact the ability of neighboring residents to get into and out of their homes and as pedestrians attempt to safely try and cross Central Avenue at Charles River Street and elsewhere.

In addition, Carleton Drive, Pine Street, Country Way, Charles River Street, Fisher Street, Village Lane, Russell Road, Walker Lane, and South Street will all be negatively impacted by the proposed facility, either trying to maneuver into an even denser traffic line on Central Avenue or trying to escape the traffic by cutting through roads not designed to handle heavy commuter traffic.

The ability of the fire department, ambulances and police to respond in a timely manner to an emergency in the neighborhood, especially during rush hours, could also well be impacted by traffic in and out of the facility.

Afterschool programming and mid-day drop offs, which may include the use of busses, must also be accounted for.

The current schedule of activities at Temple Aliyah includes preschool and after school programs, and the existing traffic patterns connected to these programs should be considered as the day care facility is reviewed.

With all of these concerns, we would have hoped to see a realistic, thorough traffic study by the proponents. Instead, we are deeply disappointed to see a wholly inadequate study which fails to address any of these concerns in a realistic manner.

- Unlike typical traffic studies, this one does not identify when the field work was done. We are told the study was conducted in February, 2021, during the Covid pandemic, when traffic on Central Avenue is a fraction of what it was before and will be after. So too, Needham public schools are remote-only on Wednesday -- if the study was done on a Wednesday it is entirely unreliable.

The Massachusetts Department of Transportation stated last April that “[t]raffic counts are currently at historic lows and may underrepresent a realistic existing condition” and issued guidance on how to correct for undercounting. <https://www.mass.gov/doc/massdot-guidance-on-traffic-count-data/download>. As far as we can tell, the proponent’s study takes none of this into consideration and instead reaches a conclusion that every resident and morning rush hour traveler on Central Avenue knows to be wrong -- that Central Avenue currently enjoys an “A” level of service.

- Given the traffic line that occurs during normal weekday rush hour, the level of service for a turn into or out of the facility driveway and along Central Avenue itself, is likely an “E” or “F” without the childcare facility and will be made even worse with it. We are not traffic experts, but a short google search of conditions defining different roadway levels of service, seems instructive: (Graphic source: https://policymanual.mdot.maryland.gov/mediawiki/index.php?title=Roadways:_Facility_Selection).

The illustration of Levels of Service E and F are what typifies the morning rush hour on Central Avenue in the vicinity of the facility during normal times.

We note also that the field work seems to consist of a single morning’s observation. No analysis has been offered of afternoon and evening traffic impact and no attempt has been made to provide the date or day of the week (or school schedule that day) when this data was obtained.

- The report assumes a traffic distribution of 70% from the south and 30% from the north without any explanation of this assumption. We understand the building will be occupied by a childcare operation currently operating in the center of Needham which would suggest that the traffic percentages should be reversed, with more users coming into the facility from the north, requiring more traffic to cut across the northbound lane to enter the driveway. However, It is important to note that each car will both enter and exit the driveway, doubling the number of trips impacting the neighborhood.

- The report relies on the proponent's description of the drop off and pick up practices of the facility used at its current location. There is no provision for what happens if the facility finds that the new location requires adjustments in its drop off procedure, nor is there any provision for changes should a different entity operate the facility. No explanation is given for the queuing this process will involve, especially if cars are delayed in returning to Central Avenue.
- The report wholly fails to examine the impact of the project on the adjacent streets or intersections (or, for that matter, traffic along Central Avenue itself). It focuses solely on the driveway entrance and exit from the proposed building.
- It does not consider the safety ramifications of the proposed increase in traffic. While traffic studies usually reference recent accidents in the area, this report does not. Just last week, a four car accident which happened at Pine Street and Central Avenue, approximately 350 feet from the site. Over the years, neighbors have repeatedly sought to increase the safety of Central Avenue.

Recently, residents of Oxbow Road asked for the installation of crosswalks to enable children to safely cross the street. Adding a commercial project to the area heightens these concerns. Pedestrian, as well as vehicular safety, is a critical issue and must be addressed (including the lack of sidewalks and how that impacts pedestrian options). Residents previously requested the Town provide sidewalks in the area and the dangers to pedestrians in this area have long been a topic of discussion. The town's Traffic Management Advisory Committee (TMAC) recently held a meeting with three community agenda items -- and all three related to this neighborhood. TMAC recommended a pedestrian system, including crosswalk, be added at the intersection of Charles River Street and Central Avenue (where none exists now) be added to the community plan but given other projects on the list in town, it is unlikely the project will be authorized or take place for decades.

The Planning Board's site review process must include consideration of "[c]onvenience and safety of vehicular movement within the site and on adjacent streets...." A real traffic study, using realistic traffic counts and addressing all the relevant issues should be completed and analyzed before allowing the project to proceed.

Setback Concerns

The proponent acknowledges that the site review process must address "[t]he relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area...." The proposal is for the main building to have a setback from Central Avenue of only 35 feet. The immediate south side abutter, at 1708 Central Avenue, has a set back of approximately 70 feet, Temple Aliyah is set back approximately 200 feet from to the front corner of the building, and 1652 Central Avenue is set back approximately 109 feet. Every other home on this section of Central Avenue has a setback of at least 90 feet. At 35 feet from the road, this building will be completely inconsistent with the neighborhood.

There is no sound reason why the setback cannot be in accord with the existing buildings in the neighborhood. It is a commercial building proposed for a residential zone, and assuring that it is in harmony with the surrounding area is required by Section 7.4.1 of the Needham by laws. This may limit any potential further development of the other parts of the property (the proponent has not revealed whether that is his intention), but that is irrelevant to the requirements of site review.

Lighting Concerns

The proponent recognizes that the site review process must include “protection of adjoining premises against seriously detrimental uses by ... sound and sight buffers....” We request that the proposed plan include sound and sight buffers, as well as lighting measures which will limit the impact of the building and its operation on the surrounding homes.

The proponent notes that the lighting will be adjacent to Temple Aliyah, but does not address lighting impacts on the abutter at 1652 Central Ave, on the other side of the Temple parking lot and with a clear line of sight to the project parking lot and anticipated light poles, nor does the proponent address concerns of those across from the project. This lighting impact must be mitigated for all of the neighbors.

Road Reconstruction After Sewer Installation

We have been informed town sewer service will be extended from the tie in at Country Way down to 1688 Central Ave. Based upon what Needham has experienced with the South Street project, we ask that should the project be allowed to proceed, road repairs return the streets to the safest and most drivable condition in a timely manner.

Environmental and Conservation Concerns

Several neighbors have concerns about the potential of soil contamination at the site due to the previous uses of the property. We seek to make sure the property is safe for the proposed use and that any necessary mitigation measures be taken.

Conclusion

In sum, we request the following steps be taken:

- This letter be distributed to all Town bodies and officials who will consider this project. We ask that distribution include the Traffic Management Committee, which may have expertise to offer concerning the traffic conditions on Central Avenue.
- The project be treated as a Major Project, with the full review process required.
- The public be afforded a public and transparent process, including the ability to comment and be heard.

- A new traffic study be done, and full consideration be given to whether the traffic degradation and safety issues can be mitigated and, if so, how.
- If the project proceeds, the setback be increased.
- If the project proceeds, the lighting, road construction, sidewalk, crosswalk, landscape, and environmental concerns be mitigated.
- Finally, the Developer is a member of the Needham Select Board, which raises concerns about conflict of interest and ensuring that the process is without improper influence. For transparency sake, we ask that all project-related communications between the Developer and the Planning Board and the Developer and other members of the Select Board be fully disclosed.

Sincerely,

Neighbors & Neighborhoods of 1688 Central Avenue

(submitted electronically due to dangers due to COVID-19 of door-to-door canvassing)

Timestamp	Email Address	Name (please submit a self-statement of interest to the town clerk if you are a resident of Needham Heights)	Street Name and Town	Do you join in the above?	Do you live in 02492?	Do you live on Belle Lane	Are you registered to vote in Needham (useful information for town meeting Varrant requirement purposes)?
3/20/2021 13:13:57	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:17:22	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:17:27	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:24:02	macled41@aol.com	Norman MacLeod	41 Pine St, Needham, M	Yes	Yes	Yes	Yes
3/20/2021 13:27:49	macled41@aol.com	Janet MacLeod	41 Pine Street, Needham	Yes	Yes	Yes	Yes
3/20/2021 13:40:42	briano1055@yahoo.com	Brian O'Neill	149 Charles River St	Yes	Yes	Yes	Yes
3/20/2021 13:46:42	jurk@bafnfirm.com	Jeffrey Turk	312 Country way	Yes	Yes	Yes	Yes
3/20/2021 13:47:27	kevin@killeen@yahoo.com	Kevin Killeen	339 Country Way	Yes	Yes	Yes	Yes
3/20/2021 14:06:54	tkdavison@gmail.com	Timothy Davison	1011 South Street needh	Yes	Yes	Yes	Yes
3/20/2021 14:11:17	stankykeller@buckford.com	stanky keller	County Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 14:12:17	sandykell@aol.com	Sandra Keller	County Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 14:24:14	danieledarish@gmail.com	Danielle Darish	County Way, Needham	Yes	Yes	Yes	Yes
3/20/2021 15:35:11	tkdavison@gmail.com	Timothy Davison	1011 South Street needh	Yes	Yes	Yes	Yes
3/20/2021 15:45:24	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/20/2021 16:41:59	annlyons24@yahoo.com	Ann Lyons	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/20/2021 17:29:35	rachnjim@gmail.com	Rachel Flanagan	863 Webster Street	Yes	Yes	No	Yes
3/20/2021 18:01:34	jabruzese@yahoo.com	Joseph Abruzese	30 Bridge Trail Road, Need	Yes	Yes	Yes	Yes
3/20/2021 18:25:45	turkby@yahoo.com	Barbara Turk	County way Needham	Yes	Yes	Yes	Yes
3/20/2021 19:45:33	thompson3,1415@gmail.com	Andrew Thompson	Windsor Road, Needham	Yes	Yes	Yes	Yes
3/20/2021 20:08:19	ericsockol@gmail.com	Eric Sockol	324 Country Way, Needh	Yes	Yes	Yes	Yes
3/20/2021 20:09:25	judysockol@gmail.com	Judy Sockol	324 Country Way, Needh	Yes	Yes	Yes	Yes
3/20/2021 20:31:47	seanimo22@yahoo.com	Sean Morris	48 Scott Rd, Needham	Yes	Yes	Yes	Not Sure
3/20/2021 20:32:26	marinamorris@gmail.com	Marina Morris	48 Scott Rd, Needham	Yes	Yes	Yes	Not Sure
3/20/2021 21:12:51	mshillback@aol.com	Marjorie S Hillback	34 Wilson Ln	Yes	Yes	No	Yes
3/20/2021 21:52:39	adamspatti@gmail.com	Adam Patti	257 Country Way	Yes	Yes	Yes	Yes
3/20/2021 21:53:22	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes	Yes
3/20/2021 22:06:35	33hls@gmail.com	Hila Krikov	Fisher St, Needham	Yes	Yes	Yes	Yes
3/20/2021 22:09:17	nkrikov@gmail.com	Niv Krikov	Fisher St, Needham	Yes	Yes	Yes	Yes
3/20/2021 22:22:45	javaheri@mac.com	Stephaniejavaheri	1886 Central Ave	Yes	Yes	Yes	Yes
3/21/2021 0:21:05	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes	Yes
3/21/2021 0:27:17	stephpos@gmail.com	Stephanie Patti	257 Country Way needha	Yes	Yes	Yes	Yes
3/21/2021 6:27:56	petelyons26@gmail.com	Pete Lyons	1689 Central Ave, Needh	Yes	Yes	Yes	Yes
3/21/2021 7:51:22	brosen@thenorfolkcompa	Benjamin David Rosen	20 Stratford Rd.	Yes	Yes	Yes	Yes
3/21/2021 9:58:59	sbentsman@gmail.com	Sophia Bentsman	County Way, Needham	Yes	Yes	Yes	Yes
3/21/2021 10:01:16	bentsman@gmail.com	Lev Bentsman	County Way, Needham	Yes	Yes	Yes	Yes
3/21/2021 10:10:31	turkby@yahoo.com	Barbara Turk	County way Needham	Yes	Yes	Yes	Yes
3/21/2021 10:40:37	mikeg80pc@yahoo.com	Michael Gillespie	210 Stratford Road, Need	Yes	Yes	Yes	Yes
3/21/2021 11:41:21	crilint22@gmail.com	Carol R Lintz	49 Carleton Dr	Yes	Yes	Yes	Yes
3/21/2021 13:07:54	ewallack@gmail.com	edward wallack	8 stratford road	Yes	Yes	Yes	Yes
3/21/2021 13:38:17	arvedon@verizon.net	ANDREW ARVEDON	29 PINE STREET	Yes	Yes	Yes	Yes
3/21/2021 14:01:17	alangsnr70@gmail.com	Alan Langsner	30 Windsor Road	Yes	Yes	Yes	Yes
3/21/2021 14:55:04	mhwallack@comcast.net	Margo Wallack	8 Stratford Rd	Yes	Yes	Yes	Yes
3/21/2021 17:05:32	taraleekilleen@yahoo.com	Tara Killeen	339 Country Way Needha	Yes	Yes	Yes	Yes
3/21/2021 17:30:36	ashleybrosen@gmail.com	Ashley Rosen	Stratford Road, Needham	Yes	Yes	Yes	Yes
3/21/2021 21:30:12	sallymck@mac.com	Sarah (Sally) McKechnie	1703 Central Ave	Yes	Yes	Yes	Yes
3/21/2021 21:51:49	sarahbracken@gmail.co	Sarah Bracken	South street needham	Yes	Yes	Yes	Yes
3/21/2021 21:58:02	jonathanbracken@hotmail	Jonathan Bracken	South street, Needham	Yes	Yes	Yes	Yes
3/21/2021 22:20:01	sandyjordan@comcast.ne	Sandra Jordan	Stratford Road, Needham	Yes	Yes	Yes	Yes
3/22/2021 6:37:00	sarahbracken@gmail.co	Sarah Bracken	South street needham	Yes	Yes	Yes	Yes
3/22/2021 7:11:09	mttkelly@yahoo.com	Tobin Kelly	Charles River Street, Need	Yes	Yes	Yes	Yes
3/22/2021 10:17:08	edhillback@aol.com	Elliott Hillback Jr	34 Wilson Lane	Yes	Yes	Yes	Yes
3/22/2021 11:04:46	egodes@comcast.net	Eric Godes	CEDAR SPRINGS LN, N	Yes	Yes	No	Yes
3/22/2021 11:38:14	vickikaufman@comcast.n	Vicki Kaufman	35 Starr Ridge Rd, Needh	Yes	Yes	Yes	Yes
3/22/2021 13:42:21	gina@bradley@gmail.com	Gina Bradley	Great Plain Ave., Needha	Yes	Yes	No	Yes
3/22/2021 14:07:25	pgazmuri@comcast.net	Paolo Gazmuri	Stratford Rd., Needham	Yes	Yes	Yes	Yes
3/22/2021 15:14:10	noah.n.carp@gmail.com	Noah Carp	169 Fairfield Street, Need	Yes	Yes	No	Yes
3/22/2021 15:59:18	robert.onofrey@gmail.com	Robert J Onofrey	49 Pine Street	Yes	Yes	Yes	Yes
3/22/2021 19:29:23	pbschatz@gmail.com	Paula Schatz	37 White Pine Rd., Needh	Yes	Yes	Yes	Yes
3/22/2021 20:09:56	ruthlangsnr1@msn.com	Ruth Langsner	Otis St, Needham	No	Yes	No	Yes
3/23/2021 0:03:50	debby@catsystdg.com	Debby chaoman	1843 Central Ave Needha	Yes	Yes	Yes	Yes
3/23/2021 4:49:04	evanrauch@msn.com	Evan Rauch	224 Country Way	Yes	Yes	Yes	Yes
3/23/2021 13:39:28	pfalcao@rcn.com	Patricia Rose FALCAO	19 Pine St	Yes	Yes	Yes	Yes
3/24/2021 8:18:54	divyadas@yahoo.com	Divya Das	92 Pine Street	Yes	Yes	Yes	Yes
3/24/2021 8:20:04	anuragkdas@yahoo.com	Anurag Das	Pine St, Needham Ma	Yes	Yes	Yes	Yes
3/24/2021 21:39:48	bowebetty@gmail.com	Betty Bowe	Central Ave NEEDHAM	Yes	Yes	No	Yes
3/25/2021 15:53:42	kaillev2@gmail.com	Kailyn Lew	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/25/2021 18:11:14	kaillev2@gmail.com	Kailyn Lew	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/25/2021 22:39:35	kaillev2@gmail.com	Kailyn Lew	Central Avenue, Needham	Yes	Yes	Yes	Yes
3/27/2021 12:08:26	jesskadar@gmail.com	Jess Kadar	102 Pine Street	Yes	Yes	Yes	Yes
3/27/2021 12:09:08	aran.kadar@gmail.com	Aran Kadar	Pine Street, Needham	Yes	Yes	Yes	Yes
3/27/2021 12:14:04	ideponte1@yahoo.com	Tammie Kukolea	Pine Street, Needham	Yes	Yes	Yes	Yes
3/27/2021 12:14:58	mjkuk03@yahoo.com	Michael Kukolea	Pine Street, Needham	Yes	Yes	Yes	Yes
3/27/2021 12:47:00	mabruzese@gmail.com	Margaret Abruzese	30 Bridge Trail Rd, Needh	Yes	Yes	Yes	Yes
3/28/2021 8:56:21	elysepark@yahoo.com	Elyse Park	19 Walker Lane	Yes	Yes	Yes	Yes
3/28/2021 14:59:18	KrissyWolf1@gmail.com	Krissy Wolf	76 oxbow road, needham	Yes	Yes	Yes	Yes
3/29/2021 7:17:48	javaheri@mac.com	Stephaniejavaheri	1886 Central Ave	Yes	Yes	Yes	Yes
3/30/2021 15:54:25	bobfitz13@gmail.com	Robert Fitzgerald	145 Stratford Rd	Yes	Yes	Yes	Yes
3/30/2021 15:55:16	bkfitz13@gmail.com	Kerry Spence	145 Stratford Rd	Yes	Yes	Yes	Yes
3/30/2021 15:57:28	hoopsfitz@gmail.com	Jack Fitzgerald	145 Stratford Rd	Yes	Yes	Yes	No
3/31/2021 6:37:06	evanbg@rcn.com	Evan Gold	253 Charles River St, Ne	Yes	Yes	Yes	Yes
3/31/2021 17:20:06	rebeccabf177@gmail.com	Rebecca Friedman	177 bridge trail road Need	Yes	Yes	Yes	Yes
3/31/2021 17:21:11	michaebf177@gmail.com	Michael Friedman	177 bridge trail road needh	Yes	Yes	Yes	Yes
3/31/2021 17:22:16	hannahbfriedman@gmail	Hannah	177 bridge trail road Need	Yes	Yes	Yes	Yes
3/31/2021 17:23:23	jessicafriedman7@gmail	Jessica	177 bridge trail road Need	Yes	Yes	Yes	Yes
3/31/2021 17:25:07	friedman177@gmail.com	Jacob Friedman	Bridge Trail Road, Needha	Yes	Yes	Yes	Yes
4/1/2021 17:56:34	kajikango@yahoo.com	Kajindi Kango	81 country Way	Yes	Yes	Yes	Yes
4/1/2021 17:57:41	kikango@yahoo.com	Sujay Kango	81 country Way	Yes	Yes	Yes	Yes
4/1/2021 20:03:20	preethy_thomas@yahoo	Preethy Thomas	Barrett st., Needham	Yes	Yes	No	Yes
4/1/2021 21:28:24	yasu@post.com	Prasanna panichuru	Prasant st, needham	Yes	Yes	No	Yes
4/1/2021 21:32:58	therostroot@yahoo.com	Jennifer Barmon	Jarvis circle, Needham	Yes	Yes	No	Yes
4/2/2021 8:39:32	laura@winmail.com	Laura Gere	Stratford road needham	Yes	Yes	Yes	Yes
4/2/2021 11:15:40	susanburdick@gmail.co	Susan Murdock	66 Rolling Lane Needham	No	Yes	No	Yes
4/2/2021 11:18:29	meredithb1@gmail.com	Meredith Berger	Savoy Rd, Needham	Yes	Yes	No	Yes
4/2/2021 12:11:27	melissak1124@gmail.com	Melissa Stein	Bonwood Rd Needham	Yes	Yes	No	Yes
4/2/2021 11:37:49	buren,alexander@hotmail	Lauren Alexander	Mayflower Rd, Needham	Yes	Yes	No	Yes
4/2/2021 11:40:09	jason.hemming@gmail.co	Jason Hemming	Deerfield Needham	Yes	Yes	No	Yes
4/2/2021 11:43:23	cathy.yvert61@gmail.com	Cathy White	Rybury Hillway, Needham	Yes	Yes	No	Yes
4/2/2021 11:51:43	sdornbusch27@gmail.co	Steve Dornbusch	51 Damon Road	No, but I regularly travel	No	No	Yes
4/2/2021 11:52:22	mike@agds@yahoo.com	Michelle Hoffman	Paul Revere Road Needh	No, but I regularly travel	No	No	Yes
4/2/2021 11:58:54	rainbowow@verizon.net	Caryn F Schwartz	Forest St, Needham	Yes	Yes	No	Yes
4/2/2021 11:59:45	caroline.valentini@gmail	Caroline Valentini	Webster Street, Needham	No, but as a community n	No	No	No
4/2/2021 12:02:41	ebs28@yahoo.com	Elizabeth Stanton	Needham	Yes	Yes	Yes	Yes
4/2/2021 12:25:55	beth.marcus@verizon.net	Beth Marcus	Meredith Circle, Needham	Yes	Yes	No	Yes
4/2/2021 12:32:53	butter418@gmail.com	Kathy Butters	50 Audrey Ave., Needham	Yes	Yes	No	Yes
4/2/2021 12:42:45	robbyn.fink@me.com	Robyn Fink	128b Hillside Ave 02494	No, but I work in 02492	No	No	Yes
4/2/2021 12:46:50	robbyn1020@gmail.com	Robyn Stanley	Maple, Franklin	No, but I work in 02492	No	No	No
4/2/2021 12:54:24	onjan@aol.com	Jennifer Lehman	Oakland Ave, Needham	Yes	Yes	No	Yes
4/2/2021 12:58:03	goodnightgracey@gmail	Grace Scott	15 Mercer Rd	No, but I regularly travel	No	No	Yes
4/2/2021 12:58:23	lbugaman@comcast.net	Lesley Sugarman	111 Stratford Rd Needham	Yes	Yes	Yes	Yes
4/2/2021 13:02:14	jessiebellachou@hotmail	Jessie Chou	Mary Chilton Road, Need	Yes	Yes	No	Yes
4/2/2021 13:17:17	alexistjames@gmail.com	Alexistjames@gmail.com	529 High Rock St, Needh	Yes	Yes	No	Yes
4/2/2021 13:32:41	hmcgroddy@gmail.com	Heather McGroddy	Bonwood Needham	Yes	Yes	No	Yes
4/2/2021 13:37:00	adreaan@hotmail.com	Jennifer Adreaan	Gayland rd, needham	Yes	Yes	No	Yes
4/2/2021 13:46:13	LaodolFairb@gmail.com	Laura GoldFairb	Valley Rd, Needham	Yes	Yes	No	Yes

Timestamp	Email Address	Name (please submit a set of Street Name and Town	Do you join in the above?	Do you live in 02492?	Do you live on Belle Lane	Are you registered to vote in Needham (useful information for town meeting Warrant requirement purposes)?
4/3/2021 10:18:11	sbentsman@gmail.com	Sophia Bentsman	Country Way, Needham	Yes	Yes	Yes
4/3/2021 10:20:13	lbentsman@gmail.com	Lev Bentsman	Country Way	Yes	Yes	Yes
4/3/2021 10:29:20	jodiegruen@gmail.com	Jodie Gruen	20 Fairview Rd Needham	Yes	Yes	No
4/3/2021 10:32:41	mleibowitz@gmail.com	Matthew Leibowitz	65 Whitman Rd, Needham	Yes	Yes	Yes
4/3/2021 10:51:54	matttarlin@yahoo.com	Matt Tarlin	Gould St	Yes	Yes	No
4/3/2021 10:54:06	kdet1327@gmail.com	Deborah Bassett	South Street Needham	Yes	Yes	Yes
4/3/2021 10:55:35	kbassett33@gmail.com	Ken Bassett	South Street Needham	Yes	Yes	Yes
4/3/2021 11:07:12	amysnelling@yahoo.com	Amy Snelling	Hoover rd, Needham	Yes	Yes	No
4/3/2021 11:23:31	jillianerdos@gmail.com	Jillian Erdos	Sunset Road Needham	Yes	No, but as a community n	No
4/3/2021 11:26:47	lppy6730@gmail.com	Owen Lipchitz	Sunset road, Needham	Yes	No, but I regularly travel to	No
4/3/2021 11:29:56	scohen601@rcn.com	Sharon Cohen Gold	Charles River Street, Needham	Yes	Yes	Yes
4/3/2021 11:52:06	flecknershopping@comcast.net	Sarah Fleckner	Locust Lane, Needham, MA	Yes	Yes	No
4/3/2021 12:03:33	kerryhurwitch72@gmail.com	Kerry Hirwitch	Edgewater Drive - Needham	Yes	Yes	No
4/3/2021 12:09:54	jgraffman@gmail.com	Jennifer Graffman	Country Way, Needham	Yes	Yes	Yes
4/3/2021 12:15:18	vanessajones694@icloud.com	Vanessa Jones	55 Nardone Road	Yes	Yes	No
4/3/2021 12:19:17	mncjc@comcast.net	Cornelius Coughlin	22 Grasmere Needham	Yes	No, but as a community n	No
4/3/2021 12:33:16	acupuncdoc@gmail.com	Lauren Dore	1018 Central Ave	Yes	Yes	Yes
4/3/2021 12:44:09	almu@comcast.net	A. Mukherjee	46 Horace Street	Yes	No, but as a community n	No
4/3/2021 12:48:25	jdlipchitz@gmail.com	Joseph D Lipchitz	3 Sunset RD	Yes	Yes	No

Daphne Collins

From: Keller, Stanley <Stanley.Keller@lockelord.com>
Sent: Tuesday, November 14, 2023 3:11 PM
To: Daphne Collins
Subject: ZBA Hearing on 1688 Central Avenue Project

I am a long time resident of Country Way and write to express my opposition to the ZBA permitting the proposed project at 1688 Central Avenue to proceed while legal proceedings are still pending regarding the Town of Needham Planning Board's approval of the project with reasonable conditions designed to protect the interests of the Town and specifically the interests of the affected community.

Using a questionable process, the Town chose not to appeal the problematic decision of the Land Court, leaving it to the abutters to pursue their legal remedy. It is therefore premature for the Town to allow this project to proceed while these legal proceedings are continuing. In particular, it was premature under these circumstances for the Town to issue a building permit for the project, and that authorization should be withdrawn or suspended pending the outcome of the legal proceedings. This is particularly important in this case because of the sensitive nature of this project in view of the developer's holding the position of Chair of the Select Board during the time of the proceedings before the Planning Board. Moreover, it is shameful that this former Town official should proceed with clearing the property and taking active construction steps while these legal proceedings seeking to uphold the actions of the Planning Board to impose reasonable conditions on the project as contemplated by the Dover Amendment are continuing. If the integrity of the Town is to be upheld, it is vital that the ZBA and the Town act to suspend any further activities inconsistent with the Planning Board's actions while the legal proceedings are pending.

This is not an objection to the project, which is entitled to be built as a matter of right under the Dover Amendment, but rather a desire to (i) uphold the integrity and reputation of the Town and (ii) uphold the legitimate actions of the Planning Board in exercising its lawful right to impose reasonable conditions to address the various issues presented by the project as it was proposed in order to protect the interests of the Town and the affected community as the Town is entitled to do. The project as presented is inconsistent with certain provisions of the Town's bylaws, compliance with which does not affect its use as a child-care center as proposed and presents safety and traffic concerns that were identified and addressed by the Planning Board, again in a way that does not interfere with the operation of a child-care center as proposed. If these reasonable conditions have any effect, it is upon the developer's future development plans for the site, but those have nothing to do with the child-care center, which is the subject of the Dover Amendment.

Accordingly, both as a matter of process and of substance, the ZBA should defer action on the project and the building permit that was prematurely issued should be withdrawn or suspended. The integrity of the Town of Needham in the face of this sensitive project requires no less.

Thank you for considering my views.

Stanley Keller
325 Country Way
Needham, MA. 02492
T: 617-775-6213
F: 617-316-8355
stanley.keller@lockelord.com



Daphne Collins

From: Randy Hammer <rhammer622@rcn.com>
Sent: Wednesday, November 15, 2023 9:29 PM
To: Daphne Collins
Subject: 1688 Central Ave

I am a local resident living near 1688 Central Ave.

I am writing to voice my concerns about this development, which I am against.

I am particularly concerned about the known environmental hazards, and the traffic and parking related to this property.

Thank You.

Randy Hammer

**253 Charles River Street
Needham, MA 02492**

November 13, 2023

dcollins@needhamma.gov
Zoning Board of Appeals

Re: Daycare Facility at 1688 Central Avenue

We have offered comments throughout this long process with respect to the Daycare Facility at 1688 Central Avenue. For the benefit of the Zoning Board of Appeals, we would like to offer comments on this issue from the point of view of Charles River Street. With respect to the issue of traffic congestion on Central Avenue, we would like to add our point of view as residents of Charles River Street.

Since Central Avenue is too narrow to install a left turn lane for the proposed Daycare Facility, traffic will back up on Central Avenue even more than it does today. Since Central Avenue is so narrow, it makes it difficult for cars to pull aside so emergency vehicles can pass. This is a safety issue for the neighborhood.

For residents of Charles River Street, there is little access to the area except via Central Avenue. We do not have other options if Central Avenue is over congested. This is not just for the residents of Charles River Street, but also many of the streets located off of Charles River Street which have little to no other access except via Charles River Street. Any additional traffic diverted to Charles River Street will affect all of the residents of Charles River Street and the surrounding streets.

The issue of traffic congestion on Central Avenue and Charles River Street is real. Pre-Covid, leaving the house around 7:30 to 8:00 am, it would take multiple cycles of the traffic light at the corner of Central Avenue and Charles River Street before there would be a break in traffic and we could exit our driveway on to Charles River Street. The problem was that cars were not able to make the left turn from Charles River Street on to Central Avenue because Central Avenue would be backed up to at least Temple Aliyah and sometimes to Charles River Street.

As congestion increases on Central Avenue, the blocking of driveways on Charles River Street will extend up and down the street. Having the setback so close to Central Avenue will mean a short driveway which will not allow cars to turn into the driveway. Therefore, this will add to the congestion on Central Avenue.

Safety is a real issue for Charles River Street residents. There is no crosswalk at the intersection of Central Avenue and Charles River Street. Our understanding is that there is no plan by the town to install a crosswalk any time soon. Even with the traffic light, it is still dangerous to cross the street because so many cars turn on and off of Central Avenue. When the light is green so pedestrians can cross, cars make turns at the same time into the pedestrian crossing. This affects adults and children who walk and bike in the area. Cricket Field, the Rail Trail and Ridge Hill Reservation are all located off of Charles River Street, but there are no sidewalks. Therefore, to get to Cricket Field, the Rail Trail and Ridge Hill Reservation (or anywhere else), residents have to walk on Charles River Street.

We want to emphasize that the issue of access to the neighborhood by the fire department, ambulances and police is a real issue and increasing traffic congestion will affect the safety of the neighborhood. In May 2020, we had a major fire at our house which caused substantial damage. We did not return to our house until December 2021, 20 months later. The fire occurred in the evening so the fire trucks, which came from many towns, could get to our house fairly quickly. The fire trucks all came via Central Avenue and Charles River Street. What would have happened if the fire had occurred during the day? How would the fire trucks have been able to get through the Central Avenue traffic to get to our house?

We would be happy to discuss our experiences in further detail.

Sharon Cohen Gold
617.610.1020

Evan Gold
617.974.1219

Daphne Collins

From: Andrea Dannenberg <ardannen@gmail.com>
Sent: Tuesday, November 14, 2023 6:35 AM
To: Daphne Collins
Subject: 1688 Central Construction

Please ^{halt} ~~halt~~ the construction work at 1688 Central avenue until the abutters cases are heard. They will be directly impacted by this project and deserve to have their property rights protected.

Please cancel the building permit until their cases are complete. Give their concerns a proper hearing.

Thank you,
Andrea Dannenberg
Town Meeting Member Precinct C

Daphne Collins

From: Andrea Dannenberg <ardannen@gmail.com>
Sent: Tuesday, November 14, 2023 6:35 AM
To: Daphne Collins
Subject: 1688 Central Construction

Please ^{halt} ~~halt~~ the construction work at 1688 Central avenue until the abutters cases are heard. They will be directly impacted by this project and deserve to have their property rights protected.

Please cancel the building permit until their cases are complete. Give their concerns a proper hearing.

Thank you,
Andrea Dannenberg
Town Meeting Member Precinct C

Daphne Collins

From: Robert Dimase <rob.dimase@verizon.net>
Sent: Thursday, November 16, 2023 9:04 AM
To: Daphne Collins
Subject: 1688 Central

ZBA Board,

As an abutter of 1688 Central I urge you to reconsider issuance of a building permit for a monstrous day care center plopped in the middle of a residential neighborhood. As previously communicated to many town boards we have the following grave concerns about this project:

The Barn: Allowing two buildings on this lot, covers it with 15,000sf of buildings, plus the parking lot and playground. The open space is gone, and instead it is congested and overcrowded. On top of the Temple, it changes where we live. It impacts all of the abutters. It overwhelms the Heideman's house. It pushes the project to the front of the lot, replacing open space- which enhances the character of the street- and instead each of the abutters now see and hear the all day comings and goings to the child care.

Traffic is very bad for the entire neighborhood already, and this project makes it worse. AND it impacts each abutter individually. How do we get out of our driveways, or Country Way onto Central with the traffic changes caused by the day care customers? How am I supposed to get into and out of my driveway in the morning when cars are backed up waiting behind cars headed into the 1688 driveway, and there is through traffic headed in both directions? In the evening, the rush hour makes it harder for folks on the other side of the street to exit their driveways. The traffic study was a scam, conducted twice during peak COVID and traffic has returned worse than before, this project will create a significant public safety hazard for the neighborhood without mitigation options.

Setback- It's not just that the building is out of character with the neighborhood generally, it is about how putting the building so close to the road changes the view from our homes, hurts our privacy, and negatively impacts our property. Putting the building up front puts the commercial aspects of the project right at the property's edge. We - and our kids- will experience the cars going in and out all day, some of us seeing them, and all of us trying to safely walk or bike across the 30' wide driveway which is wider than Central Avenue itself.

The longer Setback lengthened the driveway- which was important as a safety measure. The longer driveway gave more cars space on the lot, which would help prevent cars from backing up onto Central Avenue. Requiring cars to not park or wait on Central Ave is critical for safe entry and exit to 1688. It is impossible to see safely around any cars parked on Central.

Lighting: there was no lighting plan on file, but we know from the old proposal: The lighting from the building and posts will impact everyone within sight of the building. Especially, my property 1681 Central Ave. The Temple currently leaves their lights on all night at lumens far in excess of legal limits, including an unnecessary

lighting of a sign. What is preventing this developer from doing the same? The town is allowing a residential neighborhood to look like Times Square.

Screening: Right now there is no landscape plan on file. Screening is very important and it's critical for the developer to provide the neighborhood with a plan.

The Environmental Risks and the Need for testing:

We live here. We are right next door now to any contaminants being distributed in the air through dust, and on trucks as they leave the neighborhood. Later, any contamination that results from stormwater impacts our families first, particularly the direct abutters on the same side of the street. There is a proposal to use septic now rather than the previously approved sewer. How is that reasonable for a commercial building? Will the water flowing through the property be clean? Removing so many trees already impacts the absorption of storm water. How will this impact the houses right next door?

I strongly urge the board to consider the litany of adverse impacts this preposterous project has on the public safety and quality of life in a predominantly residential neighborhood.

Rob DiMase
1681 Central Avenue
781-844-5729

Daphne Collins

From: Patricia Falcao <pfalcao@rcn.com>
Sent: Monday, November 13, 2023 12:18 PM
To: Daphne Collins; James Blumenfeld
Subject: About 1688 Central Ave

Good afternoon D. Collins, Needham Government,

About 1688 Central Avenue:

It would be a terrible violation of the character and quality of living of our residential neighborhood, if Needham allows a large commercial building to be built at 1688 Central Ave.

Already, we face overwhelming traffic, noise levels, and pedestrian dangers on daily walking, daily driving, daily attempts in quest of healthy sleep cycles.

Although the new owners are using a "day care exclusion" (whether non-profit or for-profit) in their attempts to saddle this neighborhood with a large building, and another load of rush hour traffic, there is nothing to prevent them from ending the lease of the day care, and opening a commercial office park, or worse, in this RESIDENTIAL neighborhood.

All of us who live here have stressful enough jobs, that we had HOPED to create more quiet, peaceful, lower stress home environments, where Needham is advertised as a "great place to raise a family".

We beg you: PLEASE do NOT allow this commercial venture, from an entrepreneurial venture capital company, to dominate the character of residential neighborhoods in Needham.

Respectfully, Patricia Falcao & for spouse James Blumenfeld, 40 year Needham residents, near abutters (entry to Central Ave & Pine Sts - within 100 yards of 1688 Central Ave)

Daphne Collins

From: Meredith Fried <meredith@thefrieds.net>
Sent: Monday, November 13, 2023 9:04 AM
To: Daphne Collins
Subject: 1688 central ave property

To the Zoning Board of Appeals –

Unfortunately I'm not able to attend the meeting this Thursday evening, but I wanted to express my strong disapproval around the building permit granted to Mr. Borrelli. There are myriad concerns about his plans for the site, including safety around both environmental and traffic issues, among others. The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met. I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli. Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you very much for your consideration.

Regards,

Meredith Fried
136 Stratford Road
Needham

Daphne Collins

From: kimberly grasso <kimberlygrasso3@gmail.com>
Sent: Tuesday, November 7, 2023 1:23 PM
To: Daphne Collins
Subject: Zoning Board of Appeals/Nov.16

Dear Ms. Collins,

I'm writing with concerns that I want the Zoning Board to know about BC23-10079.

I'm missing the information on the soil testing at 1688 Central Ave. Can you please provide me with any information on the testing. I live at 15 Bridle Trail Road and took my kids on walks to the lot in question. I saw "oil barrels" and old vehicles in 2008. The barrels were old and rusty and had been there for what looked like MANY years. Surely it is the responsibility of the Town of Needham and its appropriate boards to protect any resident and patrons of a Needham business from anything that could be harmful to them, before it is granted any licenses.

The traffic issues associated with this project are also very concerning. As it is now Central Avenue it is busy and congested especially at commuting times. I believe it would be a safety issue to ignore the "set back" of this proposed building. The longer the driveway the more room for car's to pull in. I urge the committee to insist that the "set back" be pushed back.

Thank you your attention to this matter.

Kimberly Grasso

Daphne Collins

From: Mike Grasso <mikegrasso0@gmail.com>
Sent: Wednesday, November 15, 2023 1:43 PM
To: Daphne Collins
Subject: 1688 Central Avenue

My name is Mike Grasso. My family lives at 15 Bridle Trail Road.

In December of 2021 I sent a letter to the Board of Health with photos of 1688 Central Avenue I took while in high school 2008. The photos clearly depict what I saw: barrels that represent a holding vessel for what could be considered hazardous materials or liquids, old vehicles and equipment that dated back years given their condition, and other rusting and rotting items.

It's my understanding that no testing has been done and this concerns me. Knowing that there could possibly be contaminated soil there it is my intent to follow up and make sure that the lawful and proper procedures be taken to insure that the land intended for the Daycare Center, where children will be, and the surrounding neighbors, is being tested for contamination and properly mitigated so that it is safe.

--

Mike Grasso
mikegrasso0@gmail.com
7816353633

Daphne Collins

From: Karen Langsner <kblangsner@gmail.com>
Sent: Monday, November 13, 2023 3:58 PM
To: Daphne Collins
Subject: 1688 Central Avenue

To the Zoning Board of Appeals –

Unfortunately I'm not able to attend the meeting this Thursday evening, but I wanted to express my strong disapproval of the issuance of the building permit granted to Mr. Borrelli.

There are myriad concerns about his plans for the site, including safety around both environmental and traffic issues, among others. Additionally, Mr. Borelli has consistently tried to evade the requirements and rules imposed on developers to protect the interests of the taxpayers of Needham.

The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met.

I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli. Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you very much for your consideration.

Regards,

Karen Langsner
30 Windsor Road

Daphne Collins

From: Alan Langsner <alangsner70@gmail.com>
Sent: Monday, November 13, 2023 1:43 PM
To: Daphne Collins
Subject: Central Ave Daycare

Dear Zoning Board of Appeals,

I wanted to express my strong disapproval for the building permit granted to Mr. Borrelli. There are several concerns about his plans for the site, including safety around both environmental and traffic issues, among others. The Planning Board worked tirelessly to understand and address these concerns and unfortunately the Land Court Decision did not support the excellent decisions the Planning Board made. The Planning Board was working in the interest of the town and spent a significant amount of time ensuring that the interests of ALL parties were being met. I hope the ZBA will recognize the incredible work already done by the Planning Board and reconsider the permit granted to Mr. Borelli.

The traffic on Central Avenue is already horrendous and a commercial property will compound this problem. Further, several kids in this area ride bikes to school and will be at risk with the additional traffic. Finally, the property itself was once (recently) a storage facility for lawn equipment and automobiles. A thorough soil study MUST be performed for the safety of the small children.

Whether it is revoking the permit or putting reasonable restrictions on it to address the many safety issues presented by the project, I implore you to reconsider the initial decision and reign in this project so that the needs of all constituents are being considered and addressed.

Thank you for your consideration,

Alan Langsner

30 Windsor Road

Daphne Collins

From: macleod41@aol.com
Sent: Monday, November 13, 2023 5:02 PM
To: Daphne Collins
Subject: 1688 Central Ave

November 13, 2023

To: Needham Zoning Board of Appeals

I was very disappointed to learn the Town (Planning Board and Select Board) met on September 11, 2023, and decided not to challenge the judge's ruling on the 1688 day care project on Central Avenue.

This project, even with the restrictions proposed by the Planning Board, is in direct conflict with the character of the immediate and surroundings of this residential area.

I urge the Town to pursue at least some of the conditions set forth by the Planning Board in the proposed development of 1688. Allowing this project to be built as currently defined is a mistake and will hurt Needham and other towns as the Dover Rule is interpreted in the courts.

Mr. Borrelli (Needham Enterprises) "Gamed" the system and has made the Town government look foolish in not exercising better judgement and working in the best of the total community.

What is it to prevent other developers from doing the same thing in other parts of our community?

Norman MacLeod

41 Pine Street

Needham, MA

Tel: 781-444-7525

Email: Macleod41@aol.com

Daphne Collins

From: SALLY MCKECHNIE <sallymck@mac.com>
Sent: Wednesday, November 15, 2023 5:34 PM
To: Daphne Collins
Subject: 1688 Central Av.

To the Needham PBA:

As an abutter to the property at 1688 Central Ave., I was quite disappointed that the town failed to appeal the Land Court Decision concerning the proposed plans of Mr. Borelli.

I believe the Planning Board carefully scrutinized those plans with input from many citizens and proposed what they believed were reasonable requirements for the construction of the childcare facility.

I am in support of the appeal that has been filed by these citizens.

Sally McKechnie, 1703 Central Ave.

Sent from my iPhone

Daphne Collins

From: Robert Onofrey <robert.onofrey@gmail.com>
Sent: Tuesday, November 14, 2023 9:17 AM
To: Daphne Collins
Subject: 1688 Central Avenue

I live on Pine Street and have been opposed to the Day Care Development proposed for 1688 Central Avenue. I've been opposed for a number of reasons:

- The negative impact on Traffic on Central Avenue.
- The disregard for the potential contamination on the site due to past use as a junkyard.
- Siting the Daycare Center too close to Central - given the size of the facility in comparison to the footprint of abutting residences.

I'm disappointed that the Town did not appeal the decision to allow this project to proceed. The proponent made a mockery of the Planning and Design Review process by ignoring the recommendations made to mitigate some of the concerns of the neighbors. The proposed site plan is ill conceived - and done for considerations not related to the operation of the Daycare Center.

I ask that the Zoning Board vote to request that the Building Department revoke the Building Permit. The Zoning Board should also amend the Dove Amendment to make sure this doesn't happen again in the future.

This project is a sad commentary on the governance of the Town of Needham.

Thank you.

Robert James Onofrey
49 Pine Street
Needham

Daphne Collins

From: Leon Shaigorodsky <shaigor@gmail.com>
Sent: Sunday, November 12, 2023 11:49 PM
To: Daphne Collins
Subject: 1688 central av. demolition

I am writing to express my major concern about start of development of large commercial facility that will host child care center at 1688 central av

As a resident of Bridle Trail I spend at least 15-20min in the morning just to get to the lights at Newman school

Additional expected traffic to and from 1688 central av will make the situation even worse!

How can the town allow building large child care facility when the traffic situation is already ridiculous

Please make every attempt to make the condition for people leaving in this area at least not been worse then it is now

Thank you