



PLANNING & COMMUNITY
DEVELOPMENT
PLANNING DIVISION

AMENDMENT
March 28, 2022

Major Project Site Plan Special Permit
SPMP No. 2005-07
Needham Gateway, LLC
100, 120 Highland Avenue
Application 2005-07

(Original Decision dated January 24, 2006,
amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011,
March 6, 2012, July 10, 2012, August 13, 2012 and July 20, 2021)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Needham Gateway LLC, 66 Cranberry Lane, Needham, MA (hereinafter the Petitioner), for property located at 100 and 120 Highland Avenue, Needham, Massachusetts, shown on Assessor's Map No. 73 as Parcel 18 containing 82,582 square feet and partially located in the New England Business Center Zoning District and partially located in the Highland-Commercial 128 Zoning District.

This Decision is in response to an application submitted to the Board on February 24, 2022, by the Petitioner for an amendment to a Major Project Site Plan Review Special Permit issued by the Needham Planning Board on January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012 and July 20, 2021, under Section 7.4 of the Needham Zoning By-Law; (2) a Major Project Site Plan Review Special Permit No. 2005-07, Section 4.2; and (3) a Special Permit Amendment under Section 5.1.1.5 of the By-Law, to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the By-Law (required parking and parking plan and design requirements, respectively).

The requested Major Project Site Plan Review Special Permit Amendment would, if granted, amend the Decision to allow the installation and use of an additional dumpster enclosure with up to three additional trash dumpsters therein to be located within the parking lot of the subject premises as shown on a plan submitted to the Planning Board, to be used exclusively for disposal of cardboard materials.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order by the Chairperson, Paul S. Alpert on Tuesday, March 15, 2022 at 7:20 p.m. by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, Martin Jacobs and Natasha Espada were present throughout the March 15, 2022 proceedings. The hearing was continued to Monday, March 28, 2022 at 7:00 p.m. by Zoom ID Number 880 4672 5264. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, Martin Jacobs and Natasha Espada were present throughout the March 28, 2022 proceedings. The record of the proceedings and the submission upon which this Decision is based may be referred to in the office of the Town Clerk or the office of the Board.

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

Exhibit 1 - Two transmittal letters from Attorney Rick Mann, dated February 17, 2022 and February 28, 2022.

- Exhibit 2 - Application Form for Further Site Plan Review completed by the applicant dated February 24, 2022.
- Exhibit 3 - Rider A to application.
- Exhibit 4 - As-Built plan of the site entitled "100 Highland Avenue, Needham, MA", prepared by Otte & Dwyer, Inc., 59 Appleton Street, Saugus, MA, dated January 12, 2007 and showing the requested dumpster location.
- Exhibit 5 - Parking evaluation letter from the BSC Group to Richard Mann, Esq., dated February 28, 2022 and attached satellite photo of site.
- Exhibit 6 - Email from David Roche, Building Commissioner, February 18, 2022.
- Exhibit 7 - Email from Derek Wade, 41 Riverside Street, dated February 23, 2022.
- Exhibit 8 - Email from Mike Moskowitz, Eclipse Management, dated March 9, 2022, with attached photo of paint on dumpster enclosure.
- Exhibit 9 - Email from Elizabeth Kaponya, dated March 14, 2022, with picture attachment.
- Exhibit 10 - As-Built plan of the site entitled "100 Highland Avenue, Needham, MA", prepared by Otte & Dwyer, Inc., 59 Appleton Street, Saugus, MA, dated January 12, 2007 and showing the requested dumpster location, fence that will be removed, fence that will remain, and existing dumpster.
- Exhibit 11 - Plan showing the parking space proposed to contain the new cardboard dumpsters and their placement within the dumpster enclosure, dated March 22, 2022.
- Exhibit 12 - Information regarding the dumpster loading/unloading prepared by the applicant, dated March 21, 2022.
- Exhibit 13- Parking Memorandum from the BSC Group to Mike Moskowitz, Eclipse Management, dated March 24, 2022.
- Exhibit 14- Letter from Richard S. Mann, Esq. to Lee Newman, Director of Planning and Community Development, dated March 25, 2022.
- Exhibit 15 - Interdepartmental Communication (IDC) to the Board from Chief John Schlittler, Needham Police Department, dated March 10, 2022; IDC from Thomas Ryder, Assistant Town Engineer, dated March 10, 2022; IDC to the Board from Chief Dennis Condon, Needham Fire Department, dated March 10, 2022; and IDC to the Planning Department from Tara Gurge, Needham Health Department, dated March 11, 2022.

Exhibits 2, 3, 10, 11 and 12 are hereby referred to as The Project Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board confirmed its findings and conclusions as contained in its original Decision dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012 and July 20, 2021 except as modified herein.

- 1.1 The Petitioner is seeking the modification to the Decision 2005-07 to allow the installation and use of an additional dumpster enclosure with up to three additional trash dumpsters therein to be located within the parking lot of the subject premises as shown on a plan submitted to the Planning Board, to be used exclusively for disposal of cardboard materials.
- 1.2 The Original Special Permit 2005-07 approved the installation of a single six-foot high outdoor dumpster enclosure near the center of the parking lot serving the Shopping Center as shown on the approved Site Plan. Over time it has become apparent that the volume of trash (both non-organics and organics) has overwhelmed the single dumpster requiring an inordinate number of visits by the trash disposal contractor. As a result, the Petitioner has made the request to install an enclosure measuring approximately 9' x 21' with a height of 6' (the "Enclosure") to contain up to three additional dumpsters (the "Additional Dumpsters") for cardboard products only (i.e. no organics), located along the rear of the Shopping Center parking lot in the location shown on the Site Plan submitted with this application. The addition of the Additional Dumpsters will result in fewer required visits by the trash contractor and will facilitate the maintenance of a clean, vermin free and environmentally responsible shopping center operation.
- 1.2 To ensure proper utilization of the Additional Dumpsters, the Petitioner has adopted a regulation applicable to all tenants of the Shopping Center prohibiting the use of the Additional Dumpsters for anything except the disposal of cardboard products. Additionally, the contract with the trash disposal contractor prohibits the use of the Additional Dumpsters for anything except the disposal of cardboard products.
- 1.3 The Enclosure is proposed to be comprised of the same PVC materials as previously approved for the fence that abuts the property behind the Highland Terrace parcels.
- 1.4 The addition of the Enclosure will eliminate one of the existing parking spaces, thereby reducing the total parking spaces for the Shopping Center from 97 to 96. As a result of this reduction the Petitioner has requested that the Major Project Site Plan Review Special Permit No. 2005-07, dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012 and July 20, 2021 be further amended by the issuance of a special permit pursuant to Section 5.1.1.5 of the Zoning By-Law modifying the existing parking waiver to allow only 96 parking spaces for the Center and confirming the existing waiver in the Special Permit as to the requirements of Section 5.1.3 of the Zoning By-Law as to said spaces.
- 1.5 Under Section 7.4 of the By-Law, a Major Project Site Plan Special Permit may be granted in the New England Business Center Zoning District and the Highland-Commercial 128 Zoning District, if the Board finds that the proposed Project complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and criteria, the Board finds that the Project Plan, as conditioned and limited herein, for Site Plan Review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable by-law requirements, to have minimal adverse impact and to have proposed a development which is harmonious with the surrounding area.
- 1.6 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 (Required Parking) and 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, but that a reduction in the number of spaces and certain design requirements is warranted. On the basis of the above findings and conclusions, the Board finds that there are special

circumstances for a reduction in the number of required parking spaces and 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's and neighborhood's inherent use.

DECISION

THEREFORE, the Board voted 5-0 to GRANT: (1) an amendment to a Major Site Plan Review Special Permit issued by the Needham Planning Board on January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, and July 20, 2021, under Section 7.4 of the Needham Zoning By-Law; (2) a Special Permit 2005-07, Section 4.2; and (3) a Special Permit Amendment under Section 5.1.1.5 of the By-Law, to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the By-Law (required parking and parking plan and design requirements, respectively); subject to the following plan modifications, conditions and limitations.

PLAN MODIFICATIONS

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

- 2.0 The Project Plan 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 modified to include a detail of the dumpster enclosure and gate with such enclosure to be comprised of the same PVC materials as previously approved for the fence that abuts the property behind the Highland Terrace parcels and having a height of 6 feet.
 - (b) The Plan detailed in Exhibit 11 shall be revised to show the height of the cardboard dumpsters (43 inches) and the height of the fence enclosure (6 feet) demonstrating a fence height sufficient to effectively screen the cardboard dumpsters from view.

CONDITIONS

The conditions contained in Major Project Site Plan Special Permit No. 2005-07, dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012 and July 20, 2021, are ratified and confirmed except as modified herein.

- 3.1 The Board approves the dumpster enclosure for cardboard dumpsters as shown on the Plan in Exhibits 10 and 11.
- 3.2 No change to hours of dumpster pick up is hereby approved.
- 3.3 Pick up of the cardboard from the dumpsters in the new enclosure shall be done in accordance with the details provided in Exhibit 12.

- 3.4 The fence that surrounded the prior location of the cardboard dumpsters (that was never approved by the Board) shall be uninstalled, as shown on the plan in Exhibit 10. The rear portion of the decorative fence to remain and the decorative fence running along the north east side of the parking lot behind the Highland Terrace residences shall be repaired and maintained in good condition so as to prevent any leaves and other debris from blowing under the fence from the subject property.
- 3.5 The dumpster enclosure shall not be installed for the Project in the pursuance of the Approval until:
- (a) 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.
 - (b) The Plan shall have been approved by the Design Review Board with a certification of said approval filed with the Board.
 - (c) The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
- 3.6 The dumpster enclosure shall not be utilized in the pursuance of the Approval until there shall be filed with the Board documentation of a satisfactory inspection by the Building Commissioner of the as-built condition and the Commissioner certification of the Project's compliance with the terms of this Decision.
- 3.7 The number of parking spaces required at the property is reduced from 97 parking spaces to 96 parking spaces.
- 3.8 No other changes were requested nor are permitted through this amendment.
- 3.9 This Site Plan Special Permit Amendment shall lapse on March 28, 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 28, 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, except for good cause.

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 Petitioner has delivered a certified copy of the recorded document to the Board.

The provisions of this Special Permit shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on 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


Natasha Espada


Martin Jacobs


Jeanne S. McKnight

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

April 7, 2022

On this 7 day of April, 2022, before me, the undersigned notary public, personally appeared Seanne McKnight, 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 name: Alexandra Clee
My Commission Expires: March 9, 2025

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by Needham Gateway LLC, 66 Cranberry Lane, Needham, MA, for Property located at 100 and 120 Highland Avenue, has passed,

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

Date _____

Theodora K. Eaton, Town Clerk

Copy sent to:

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

Board of Selectmen
Engineering
Fire Department
Police Department

Board of Health
Director, PWD
Design Review Board
Rick Mann, Attorney