



PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

2022 MAY 10 PM 4:50

**The Learning Tree Preschool, Inc.
Major Project Site Plan Special Permit
AMENDMENT OF DECISION
May 3, 2022**

**Application No. 2008-08
(Decision dated November 12, 2008,
Amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020)**

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of V.S.A., LLC, 180 Country Way, Needham, Massachusetts; and The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 (hereinafter referred to as the Petitioner) for property located at 225 Highland Avenue, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan No. 74 as Parcels 36 and 37 containing a total of 15,798 square feet.

This Decision is in response to an application submitted to the Board on March 17, 2022, by the Petitioner for: (1) a Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law) and Section 4.2 of Major Project Special Permit No. 2008-08, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020; (2) a Special Permit under Section 3.2.5.2(c) of the By-Law for a private school, nursery or kindergarten not otherwise classified under Section 3.2.5.1; and (3) a Special Permit under Section 5.1.1.5 of the By-Law to further waive strict adherence with the requirements of Section 5.1.2 (Required Parking).

The requested Major Project Site Plan Special Permit Amendment, would, if granted, permit the Petitioner to expand its current operation at this location to include the abutting former UBreakiFix tenant space. The expected maximum enrollment for the expansion is 19 children with 2 teachers. After the expansion, the total enrollment for the Learning Tree Preschool will be 42 children with 7 teachers.

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 Chairperson, Paul S. Alpert, on Tuesday, April 19, 2022 at 7:45 p.m. by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, and Artie Crocker were present throughout the April 19, 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 - Completed Application Form for Amendment to Major Project Site Plan Special Permit dated March 17, 2022, with Addendum A.
- Exhibit 2 - A letter to Lee Newman, Planning Director, from George Giunta Jr., dated March 8, 2022.

- Exhibit 3 - Letter directed to Lee Newman, Director, Planning and Community Development, from John Giannacopulos, Manager, V.S.A. LLC, dated March 7, 2022.
- Exhibit 4 - Plan entitled "Proposed The Learning Tree Preschool, Inc., 225 Highland Avenue, Needham, MA," prepared by Nunes Trabucco Architects, 315A Chestnut Street, Needham, MA, Sheet 1, Sheet A1.0, entitled "First Floor Plan," dated March 3, 2022.
- Exhibit 5 - Plan entitled "Existing Conditions Site Plan, 225 Highland Avenue, Needham, MA," prepared by Field Resources, Inc., 281 Chestnut Street, Needham, MA, dated January 8, 2017, revised November 4, 2020, November 12, 2021 and February 14, 2022.
- Exhibit 6 - Inter Departmental Communication (IDC) to the Needham Planning Board from Thomas Ryder, Town Engineer, dated April 14, 2022; IDC to the Needham Planning Board from the Needham Fire Department, Chief Dennis Condon, dated March 28, 2022; and IDC to the Needham Planning Board from Tara Gurge, Public Health Division, dated April 13, 2022.

Exhibits 1, 2, 3, 4 and 5 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 Petitioner is seeking to modify Major Project Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020, as follows: to expand the Learning Tree Preschool's current operation at this location to include the abutting former UBreakiFix tenant space, adding 773 square feet to the Preschool. The expected maximum enrollment for the expansion is 19 children with 2 teachers. After the expansion, the total enrollment for Learning Tree Preschool will be 42 children with 7 teachers.
- 1.1 The premises is located within an existing building in the Highland Commercial – 128 Zoning District, at the corner of Highland Avenue and Wexford Street. The property on which the building is located is identified as Parcels 36 and 37 on Town of Needham Assessor's Map No. 74 and contains approximately 15,798 square feet of land area. The building was constructed pursuant to Major Project Site Plan Special Permit, dated November 12, 2008 as affected by Amendment dated August 11, 2009 (reducing the size of the basement space) and Amendment dated January 4, 2011(authorizing several de minimis changes to the site layout). The premises has also been the subject of several different Amendments relating to various uses within the building. The premises is the middle of three existing bays on the first floor of the building and consists of approximately 779 square feet of floor space. It was last used by UBreakiFix, a mobile phone and electronics repair shop and retail store. The remainder of the first floor is currently occupied by (1) The Learning Tree Preschool, pursuant to Amendment dated July 1, 2020, consisting of approximately 1,109 square feet, (2) Snip-Its, a children's hair salon, consisting of approximately 1,134 square feet of floor space, and (3) common areas, including two shared bathrooms. The entire second floor of the building is occupied by Gardner Mattress, a retail mattress store.
- 1.2 The Petitioner is requesting this modification because the Petitioner originally intended and the original permit specified that the first floor which totals 3,875 square feet be used entirely as retail space; however, finding retail tenants for the entire retail space has been extremely difficult.

- 1.3 V.S.A., LLC proposes to lease the premises to Learning Tree Preschool, a fully licensed preschool and group daycare center established in 1997. Learning Tree Preschool currently operates three facilities serving children from 15 months through 6 years of age; in Allston, West Roxbury and Needham, next door to the premises. The Learning Tree Preschool would like to expand its operation to include the former UBreakiFix space.
- 1.4 Learning Tree Preschool offers two programs: one for toddlers (15 months – 3 years) and the other for preschool age children (3-6 years). The toddler program includes a balance of child-initiated and teacher-directed activities featuring a variety of hands-on experiences and play. These activities keep the toddlers actively engaged and continuously learning more about themselves and the world around them and further helps to foster a desire for independence and an understanding of compassion.
- 1.5 The Petitioner asserts that the proposed use falls under the exempt use category as defined in M.G.L. c.40A, Sec. 3 which specifically exempts child care centers which are further defined in M.G.L. c.15D Sec.1A as “facilities operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under 7 years of age . . . for nonresidential custody and care during part or all of the day separate from their parents”. The Board finds that the proposed use falls under this section and is an exempt use not requiring a Special Permit for a private school.
- 1.6 The facility is expected to operate from 7:30 AM to 5:30 PM, five days per week. After the expansion, the total enrollment for Learning Tree Preschool will be 42 children with 7 teachers.
- 1.7 The proposed use was not specifically detailed in the Table of Required Parking, Section 5.1.2 of the By-Law. Accordingly, the Planning Board may recommend to the Building Commissioner the number of spaces required based on the expected parking needs of occupants, users, guests and employees. Such recommendation has previously been based on the ITE Journal of July 1994 entitled “Parking and Trip Generation Characteristics for Day-Care Facilities”. That standard imposes a parking requirement of one space for every five students, plus employee parking (defined as the maximum number of staff on duty at any one time), if enrollment is both known and less than 45 children. Applying such standard to the proposed use of the Premises, the required parking will be 16 spaces, calculated as follows:
- 42 expected children ÷ 5 = 8.4 spaces
7 maximum staff = 7 spaces
- Required Spaces: $8.4 + 7 = 15.4 = 16$ (rounded up) = 16 total spaces required
- 1.8 The prior parking demand for the building was 37 total spaces. With the inclusion of the Learning Tree Preschool expansion, and taking into account the current retail use of the second floor, the total parking for the building is now 38 spaces, calculated as follows:
- Basement: 1,294 square feet @ 1 per 850 square feet (warehouse) = 1.52 spaces = 2 spaces rounded up
- First Floor: 1,993 square feet @ 1 per 300 square feet (retail or consumer service) = 6.64, 7 spaces rounded up, and 1,882 square feet of Learning Tree Preschool @ 15.4 total spaces, 16 spaces rounded up (First Floor total: $7 + 16 = 23$ spaces)
- Second Floor: 3,875 square feet @ 1 per 300 = 12.91 spaces, rounded up = 13 spaces
- $2 + 23 + 13 = 38$ total spaces

- 1.9 There are currently 22 parking spaces on site, to the rear of the building. As a result, an extension of and adjustment to the current parking waiver of one additional space is required. In connection therewith, the new parking waiver required is 16 total spaces ($38 - 22 = 16$).

However, in addition to the 22 spaces available on site, another five spaces are available off-site at 43 Wexford Street on a property owned by the same property owner. Employees are required to park in the off-site parking spaces so that the on-site parking spaces are available for parents doing drop off and pick up at the Learning Tree Preschool use. Whereas the parking demand for the Learning Tree Preschool is primarily drop-off and pick-up, and whereas the new calculated demand is an increase of one space, Learning Tree Preschool is both of the opinion and asserts that the existing parking is adequate to support the proposed expansion.

- 1.10 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and site buffers, and preservation of views, light and air. The Petitioner proposes no change in building footprint, no change in site plans and no change in operation or allowed use of the second floor.
- 1.11 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets have been assured. There is presently limited off-street parking associated with the property, which consists of 22 spaces to the rear of the building and 5 off-site parking spaces. No changes are contemplated for the parking layout or the current curb cuts. With the proposed hours (specifically, the drop off and pick up times), traffic patterns may be changing slightly, but both drop off and pick up occur over an hour and a half long period; therefore, the change should not cause any issue with traffic. The site has been designed to accommodate safe vehicular and pedestrian movement within the site and on adjacent streets.
- 1.12 Adequate parking exists for the proposed uses. The Petitioner is not seeking a waiver over what is currently approved for the space. The Board finds that, given the drop off/pick up nature of the proposed use, the site will function without problem. The Board further notes that the basement space with an associated parking requirement of 1.52 spaces is currently used for tenant storage and does not create any additional parking demand.
- 1.13 Adequate methods for the disposal of refuse and wastes will be provided. The site and building containing the Premises are already developed with infrastructure in place. Moreover, the nature of the proposed use is such that only minimal waste is expected to be generated, and there is an existing dumpster on site.
- 1.14 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 will be met. The site and the building containing the Premises are situated in a highly developed, commercial area. The Petitioner is not aware of any significant community assets in the area immediately adjoining the Premises. Moreover, the site itself is fully developed at present and whereas the Petitioner is not proposing any material expansion or fundamental changes to the existing building, it does not anticipate any significant or material impact from the proposed use. Therefore, the proposed redevelopment, renovation and reuse of the Premises is not anticipated to significantly affect the relationship of the Premises to any community assets or any adjacent landscape, buildings and structures.
- 1.15 Mitigation of 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 will be met as there will be no adverse impact on the Town's resources. The site and building containing the Premises are presently fully developed and fully connected to Town infrastructure. Moreover, only interior modifications within an existing space are being proposed. Therefore, the Petitioner

does not anticipate any significant or material change, or any adverse impacts to any Town resource.

- 1.16 The Board finds that all of its findings and conclusions contained in Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, by the Board on November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020 are applicable to this Amendment, except as specifically set forth in this Amendment.

THEREFORE, the Board voted 4-0 to GRANT: (1) the requested Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law and Section 4.2 of Major Project Special Permit No. 2008-08, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020; and (2) the requested Special Permit under Section 5.1.1.5 of the By-Law to further waive strict adherence with the requirements of Section 5.1.2 (Required Parking), 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 relative to this Special Permit Amendment, 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 nine copies of the final Plans as approved for construction by the Building Commissioner to the Board prior to the issuance of a Building Permit.

- 2.1 The Plan shall be modified to include the requirements and recommendations of the Planning Board as set forth below. The modified plans shall be submitted to the Planning Board for review, approval and endorsement. The Petitioner shall meet all requirements and recommendations, set forth below.
- a) No Plan Modification required.

CONDITIONS AND LIMITATIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.16 hereof.
- 3.1 The conditions and limitations set forth in Major Project Site Plan Special Permit No. 2008-08, issued to V.S.A., LLC, 180 Country Way, Needham, Massachusetts, dated November 12, 2008, amended August 11, 2009, January 4, 2011, August 9, 2011, June 12, 2012 and July 21, 2020, and as further amended by this Amendment are ratified and confirmed.
- 3.2 The Board approves The Learning Tree Preschool use of an additional 773 square feet of the first floor of the building located at 225 Highland Avenue as shown on the Plan and as conditioned herein.
- 3.3 The proposed expansion of Learning Tree Preschool shall contain the floor plan and dimensions and be located on that portion of the locus, as shown on the Plan, as modified by this decision,

and in accordance with applicable dimensional requirements of the By-Law. Minor movement of fixed equipment, interior partitions or seating is allowed without further Board approval provided the use allocation as shown on the plan is maintained. Any changes revisions or modifications other than changes deemed “minor movement” to the Plan, as modified by this decision, shall require approval by the Board.

- 3.4 The maximum number of children participating in classes or functions at any given time shall not exceed forty-two (42). The maximum number of staff persons present at any given time shall not exceed seven (7). Notwithstanding the above, the Board hereby retains jurisdiction to reduce the maximum number of children participating in classes or functions at any given time, or to require additional off-street parking, as necessary in the event of parking problems on the site.
- 3.5 The Learning Tree Preschool may be open from 7:30 a.m. to 5:30 p.m. Monday through Friday.
- 3.6 Staff shall be required to park in the parking spaces available off-site at 43 Wexford Street (property also owned by the Property owner) so as to keep available on-site parking available for drop-off and pick-up.
- 3.7 The operation of the Learning Tree Preschool located at 225 Highland Avenue, Needham, Massachusetts shall be as described in Sections 1.4, 1.6 and 1.9 of this Decision and as further described under the support materials provided under Exhibits 1, 2, 4 and 5 of this Decision.
- 3.8 This Special Permit to operate The Learning Tree Preschool at 225 Highland Avenue, Needham, MA is issued to The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 and may not be transferred, set over, or assigned by The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134 to any other person or entity other than an affiliated entity in which The Learning Tree Preschool has a controlling interest of greater than 50 percent, 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. For purposes of this section 3.8, a transfer or assignment of shares of stock of The Learning Tree Preschool, Inc. such that the current stockholders of The Learning Tree Preschool, Inc. as of the date of this Decision no longer own or control more than fifty (50%) percent of the equity interests or no longer own or control more than fifty (50%) percent of the voting power of The Learning Tree Preschool, Inc. shall be considered a prohibited transfer or assignment.
- 3.9 The special permit and parking waivers granted herein are specifically premised upon the special characteristics of The Learning Tree Preschool located at 225 Highland Avenue, Needham, Massachusetts. In the event of any change in the use permitted hereunder which would result in a greater parking demand, further site plan review will be required, and the Planning Board shall be entitled to evaluate the parking demand of the building as a whole.
- 3.10 The proposed Learning Tree Preschool use shall contain the dimensions and shall be located in the building at 225 Highland Avenue, as shown on the Plan.
- 3.11 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:
 - a. The final plans shall be in conformity with those previously approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Commissioner.
 - b. The Petitioner shall provide the Planning Board with two copies of the plan as approved by the Board (two plans wet-stamped).

- c. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this Special Permit and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
- 3.12 The approximately 773 square feet of the building that is the subject of this decision shall not be occupied until:
- a. There shall be filed with the Board and Building Commissioner a Certificate of Compliance signed by a registered architect upon completion of the project certifying that the project was built according to the approved documents.
- b. There be filed, with the Building Commissioner, a statement by the Board approving the Certificate of Compliance, in accordance with said Decision.
- c. There shall be filed with the Board an as-built floor plan.
- 3.13 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commission or other agencies, including, but not limited to the Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, Board of Health and Department of Early Education and Care.
- 3.14 The portion of the building that is authorized for construction by this Approval shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Commissioner.
- 3.15 The Petitioner, by accepting this Approval, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, and that this information is true and valid to the best of the Petitioner's knowledge.
- 3.16 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 Petitioner of such violation and give the Petitioner 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 Commissioner to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance

with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this decision.

- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this Decision and to take other action necessary to determine and ensure compliance with the Decision.
- 4.3 This Decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is 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 Amendment shall lapse on May 3, 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 May 3, 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 Amendment 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 Deeds and until the Petitioner has delivered a certified copy of the recorded document to the Board.

The provisions of this Special Permit Amendment 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, 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 Decision with the Needham Town Clerk.

NEEDHAM PLANNING BOARD

Adam Block

Jeanne S. McKnight

Artie Crocker

Norfolk, ss

May 5, 2022

On this 5 day of May, 2022, before me, the undersigned notary public, personally appeared Jeanne McNight 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 me, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

Notary Public Alexandra Uee

My Commission Expires: March 9, 2029

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the Amendment to Decision of the project proposed by V.S.A., LLC, 180 Country Way, Needham, and Massachusetts, and The Learning Tree Preschool, Inc., 17 Allston Street, Allston, MA 02134, for property located at the 225 Highland Avenue, Needham, Massachusetts, has passed,

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

Date _____

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____
Design Review Board
Building Commissioner
Conservation Commission
George Giunta, Jr., Attorney

Select Board
Engineering
Fire Department
Police Department

Board of Health
Town Clerk
Director, PWD
Parties in Interest