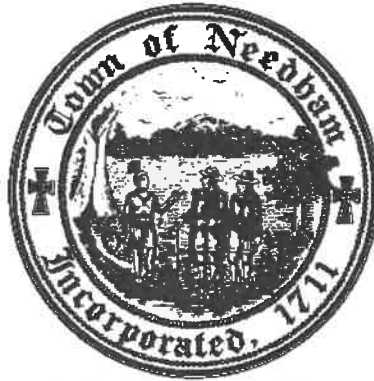


TOWN OF NEEDHAM

Office of the Town Clerk

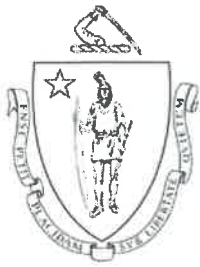


BY-LAWS

Approved By the Attorney General

Special Town Meeting
October 4, 2020

February 4, 2021



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

2021 FEB -4 AM 11:04
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

February 4, 2021

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

**RE: Needham Special Town Meeting of October 4, 2020 - Case # 9951
Warrant Articles # 6 and 7 (Zoning)**

Dear Ms. Eaton:

Articles 6 and 7 - We approve Articles 6 and 7, and the map amendments adopted under Article 7, from the October 4, 2020, Needham Special Town Meeting. We will send the approved map to you by regular mail.

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.

MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Office of the Attorney General
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600

cc: Town Counsel Christopher H. Heep

Received
2021

TOWN CLERK
February 4, 2021

NEEDHAM
11:04



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 SPECIAL TOWN MEETING

HELD ON SUNDAY, OCTOBER 4, 2020

UNDER ARTICLE 6

It was

VOTED: That the Town vote to amend the Needham Zoning By-Law, as follows:

- (a) Amend the definition of "Independent Living Apartments" in Section 1.3, Definitions, by (i) adding the words "or Avery Square Overlay District" after the words "Elder Services Zoning District"; (ii) deleting the word "only" before the words "residential uses"; and (iii) adding to the end of the definition the sentence "; provided, however, that within the Avery Square Overlay District, as provided in Section 3.15.3.2(d), below, such Independent Living Apartments may be located in a building that also houses Assisted Living and/or Alzheimer's/Memory Loss Facilities but need not be part of a Continuing Care Retirement Community.", so that it reads as follows:

"A building in the Elder Services Zoning District or Avery Square Overlay District containing three or more dwelling units, which building houses residential uses and support services accessory thereto, intended primarily as independent living units for individuals aged 55 years or older, and/or families with at least one family member aged 55 years or older, within a Continuing Care Retirement Community; provided, however that within the Avery Square Overlay District, as provided in Section 3.15.3.2(d), below, such Independent Living Apartments may be located in a building that also houses Assisted Living and/or Alzheimer's/Memory Loss Facilities, but need not be part of a Continuing Care Retirement Community."

- (b) Amend Section 2.1 Classes of Districts by adding the following term and abbreviation under the subsection Overlay:

"ASOD – Avery Square Overlay District"

- (c) Amend Section 3, Use Regulations, by adding a new Subsection 3.15, Avery Square Overlay District, to read as follows:

3.15 Avery Square Overlay District

3.15.1 Purposes of District

The purposes of the Avery Square Overlay District ("ASOD") are to promote the health, safety, and general welfare of the community by creating opportunities for housing primarily serving individuals 55 years old or older, who wish to live in independent apartments and/or who may need to live in Assisted Living and/or Alzheimer's/Memory Loss facilities, within walking distance of goods and services, public transportation, and the civic life of the town; to promote a vibrant, walkable area within the ASOD, and to encourage and allow redevelopment of the existing property within the ASOD in a manner that will further these purposes. Toward these ends, development in the Avery Square Overlay District

shall, as set forth in this Section 3.15, be permitted to exceed the density and dimensional requirements that normally apply in the underlying zoning district provided that such development complies with all other requirements of this Section 3.15.

3.15.2 Scope of Authority

In the Avery Square Overlay District, all requirements of the underlying district shall remain in effect except where this Section 3.15 provides an alternative to such requirements, in which case the requirements of this Section 3.15 shall prevail. If the provisions of the Avery Square Overlay District are silent on a requirement that applies in the underlying district, the requirements of the underlying district shall apply.

By filing an application for a Special Permit, site plan review or building permit under this Section 3.15, an applicant shall be deemed to accept and agree to the provisions and requirements of this Section 3.15. If an applicant elects to proceed pursuant to zoning provisions of the underlying district, the provisions and requirements of this bylaw applicable in the underlying district shall control and the provision of the Avery Square Overlay District shall not apply.

3.15.3 Use Regulations

3.15.3.1 Permitted Uses

The following uses are permitted in the Avery Square Overlay District as a matter of right:

- (a) Uses exempt from local zoning control under M.G.L. c.40A, s. 3.
- (b) Public, semi-public and institutional uses permitted as of right in the underlying district.
- (c) Business uses permitted as of right in the underlying district.
- (d) Accessory uses permitted as of right in the underlying district.

3.15.3.2 Special Permit Uses

The following uses are allowed in the Avery Square Overlay District by Special Permit issued by the Planning Board:

- (a) All uses allowed by special permit in the Avery Square Business District as set forth in Section 3.2.2 of this Bylaw, except those uses permitted as a matter of right as set forth in Section 3.15.3.1, above.
- (b) Assisted Living and/or Alzheimer's/Memory Loss Facilities
- (c) Independent Living Apartments.
- (d) Buildings with multiple uses containing, as a primary use, such uses as are allowed by special permit or by right in the Avery Square Overlay District or the Avery Square Business District, as well as accessory uses subordinate to and customarily incidental to the primary uses.

3.15.4 Dimensional Regulations

3.15.4.1 Building Height and Related Requirements

The maximum building height (including mechanical structures such as HVAC equipment) in the Avery Square Overlay District shall be 44 feet. This height limitation shall not apply to elevator shaft overruns, which shall not exceed a maximum height of 49 feet.

A building or structure which is located on property in the Avery Square Overlay District may include, but not exceed, four (4) stories, all of which may be occupied, except in the following circumstances:

- (a) With respect to the existing building, if a different use is proposed for the building that does not include Independent Living Apartments and/or Assisted Living and/or Alzheimer's/ Memory Loss Facilities as the primary use(s), then the proposed use shall be governed by the use regulations of Section 3.15.3, above, but the fourth story cannot be occupied without a special permit.
- (b) If the Special Permit described in subparagraph (a), above is not granted, the fourth story shall remain unoccupied for any use without a Special Permit, but the fourth story, and any associated mechanical equipment, does not need to be demolished.
- (c) In the event the existing building is demolished, if the primary use(s) of the successor building is not one or both of the uses described in Sections 3.15.3.2 (b) or 3.15.3.2 (c), then the successor building shall not be permitted to have a fourth story.

The ability to use and occupy the fourth story, when permitted by a Special Permit granted pursuant to Sections 3.15.3.2 (b) and/or 3.15.3.2 (c), shall continue notwithstanding (i) a shift in the number of units from the use described in Section 3.15.3.2 (b) to the use described in Section 3.15.3.2 (c), or vice-versa; or (ii) the elimination of one of the uses described in Sections 3.15.3.2 (b) or 3.15.3.2 (c), provided such shift or elimination is allowed by such Special Permit or amendment thereto.

For the fourth story, minimum setback requirements, measured from the façade(s) of the building on which such fourth story is located, shall be as follows: from the eastern facade of the building (facing Highland Ave), fifteen (15) feet; from the northern façade of the building (closest to and facing West Street), one hundred and ten (110) feet; from the western facade of the building, zero (0) feet; from the southern facade of the building, thirty-five (35) feet. No fourth story setback from the north-facing building façade is required with respect to any portion of any building that is set back from West Street at least two hundred (200) feet.

The total floor area of any fourth floor addition to the building may not exceed thirty-five percent (35%) of the total roof area of the building. Mechanical equipment, including but not limited to HVAC equipment, whether or not enclosed, shall not be included in the calculation of maximum allowable floor area hereunder.

Buildings developed under the regulations of the Avery Square Overlay District shall not be subject to any other height limitations nor any other limitations contained in Section 4.4.3.

3.15.4.2 Building Bulk and Other Requirements

The maximum floor area ratio in the Avery Square Overlay District shall be 1.1. Property contiguous with and in common ownership with property in the Avery Square Overlay District shall be included in the lot for purposes of calculating floor area ratio. The enclosed area of a building devoted to off-street parking shall not be counted as floor area for purposes of determining the maximum floor area ratio. Buildings developed under the regulations of the Avery Square Overlay District shall not be subject to any other limitations on floor area ratio, lot coverage, or building bulk contained in Sections 4.4.2, 4.4.7 and 4.4.9.

3.15.5 Off-Street Parking

Except as provided below, the off-street parking regulations in Section 5.1 and the regulations for enclosed parking in Section 4.4.6 shall apply in the Avery Square Overlay District.

- (a) The minimum number of off-street parking spaces in Section 5.1.2 shall apply except as follows:
 - (1) For Independent Living Apartments, there shall be one space per Apartment.

- (2) For Assisted Living units and Alzheimer's/Memory Loss units, the parking requirement shall be one space for every two beds, plus one space for each two employees on the largest shift.
- (b) Notwithstanding anything to the contrary elsewhere in this Bylaw, including but not limited to Section 4.4.8.4, in the event that land located in the Single Residence B Zoning District
- (1) is adjacent to the Avery Square Overlay District;
 - (2) is in common ownership with adjacent land located in the Avery Square Overlay District; and
 - (3) prior to approval of this Section 3.15, was improved as a parking area associated with a building located in the Avery Square Overlay District;

then, provided that said land extends into the Single Residence B Zoning District not more than one hundred (100') feet from the boundary line between the Single Residence B Zoning District and the Avery Square Business District, said land may, as a matter of right, be used as a parking area accessory to uses permitted in the Avery Square Overlay District by right or by special permit.

3.15.6 Affordable Housing

Any building with ten or more Independent Living Apartments shall include affordable housing units as defined in Section 1.3 of this By-Law, as may be modified in this Section 3.15.6. The following requirements shall apply to a development that includes ten or more Independent Living Apartments:

- (a) For a development with ten or more Independent Living Apartments, twelve and one-half percent (12.5%) of the Independent Living Apartments shall be affordable units. In the instance of a fraction, the fraction shall be rounded up to the nearest whole number. There shall be no affordable housing requirement for nursing homes, convalescent homes, Assisted Living and Alzheimer's/Memory Loss Facilities, or residential care institutions or facilities.
 - (b) If the Applicant provides at least one-half of the affordable Independent Living Apartments required herein for households with incomes at or below 50% of area median income, the remaining affordable Independent Living Apartments may be rented to households with incomes up to 100% of area median income even if the latter units are therefore not eligible for the Subsidized Housing Inventory, regardless of any requirements to the contrary set forth in Section 1.3.
 - (c) Affordable units shall be dispersed within the building and not concentrated in one area or on one floor. They shall generally be comparable in size, energy efficiency, quality, convenience, and unit-specific real estate-related amenities to the development's market-rate units. Services and other amenities that may be purchased by residents on a voluntary basis are not to be considered unit-specific real estate-related amenities and are excluded from such comparability requirements.
 - (d) The selection of eligible homebuyers or renters for the affordable units shall be in accordance with a marketing plan approved by the Needham Planning Board prior to the issuance of any building permits for the development.
 - (e) The affordable units shall be subject to an affordable housing restriction as defined in Section 1.3 of this By-Law with limitations on use, occupancy, resale prices or rents, as applicable, and which provides for periodic monitoring for compliance with the requirements of said restriction."
- (d) Amend Section 4.4.4 Front Setback, by adding the following paragraph after the fourth paragraph of that section:

"In the Avery Square Overlay District, the front setback, if any, shall be kept open and landscaped with grass, plants, and other non-paving materials such as mulch, and shall be unpaved except for patios, walks, and driveways as defined in section 4.4.5. Walls (including walls serving in part as retaining walls) no higher than 36 inches above the grade of the

patios, as well as fencing and privacy screening, along the front and side edges of the patios, shall be allowed in the Avery Square Overlay District.”

- (e) Amend Section 4.4.6 Enclosed Parking, by adding the phrase “for each square foot” before the words “of parking space (excluding driveways and aisles)” on the fourth line of the first paragraph of that section so that it reads as follows:

“Whenever off-street parking is provided underground and/or within a building itself, the maximum area coverage of the building may be increased up to the limits of the required setback as provided herein. The lot coverage of the building may be increased up to 2 ½ % points above the maximum allowed percentage, by one square foot for each square foot of parking space (excluding driveways and aisles) that is underground and/or within the building itself.”

Parking which is under a building or partially underground shall, except for driveways, be separated from the street line by building space occupied by the principal use, not by parking.

In the Center Business District, enclosed parking shall be entirely below the grade of adjoining streets measured at their respective center lines. Access to enclosed parking shall be from the rear of the building. If provided, enclosed parking shall not be visible from the street. The placement of parking underground shall not raise the first non-parking floor of a structure above grade. Municipal parking facilities in the Center Business District shall be exempt from this provision.”

- (f) Amend Section 7.6.1 Special Permit Granting Authority, by adding the number “3.15” after the number “3.14” on the second line of that Section so that it reads as follows:

“The Planning Board shall act as a Special Permit Granting Authority only where so designated in Sections 3.4, 3.8, 3.9, 3.10, 3.14, 3.15, 4.2.10, 4.2.11, 4.2.12, 4.4.5, 4.4.9, 4.4.10, 5.1.1.6, 6.6, 6.8, and 7.4 of this Bylaw. 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.”

UNANIMOUS VOTE

A true copy

ATTEST:



Theodora K. Eaton, MMC, Town Clerk



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 SPECIAL TOWN MEETING

HELD ON SUNDAY, OCTOBER 4, 2020

UNDER ARTICLE 7

It was

VOTED: That the Town will vote to amend the Needham Zoning By-Law by amending the Zoning Map as follows:

- (a) Place in the Avery Square Overlay District all that land described as follows, and superimposing that District over the existing Avery Square Business District:

Beginning at the point of intersection of the westerly sideline of Highland Avenue and the northerly sideline of what was formerly known as Hildreth Place (said former Hildreth Place as shown on Needham Town Assessors Map 63); thence running northerly by the westerly sideline of Highland Avenue to the point of curvature of a curve having a radius of 20 feet and an arc length of 29.27 feet; said curve being a property rounding of the intersection of the westerly sideline of Highland Avenue and the southerly sideline of West Street; thence running northerly, northwesterly, and westerly by said curve to the point of tangency of said curve located on the southerly sideline of West Street; thence running westerly by the southerly sideline of West Street to the point of intersection of the southerly sideline of West Street and the easterly right of way line of MBTA property; thence running southerly by said easterly right of way line of MBTA property to the intersection of the easterly right of way line of MBTA property and the northerly sideline of what was formerly known as Hildreth Place; thence running easterly by the northern boundary of what was formerly known as Hildreth Place, to the point of beginning.

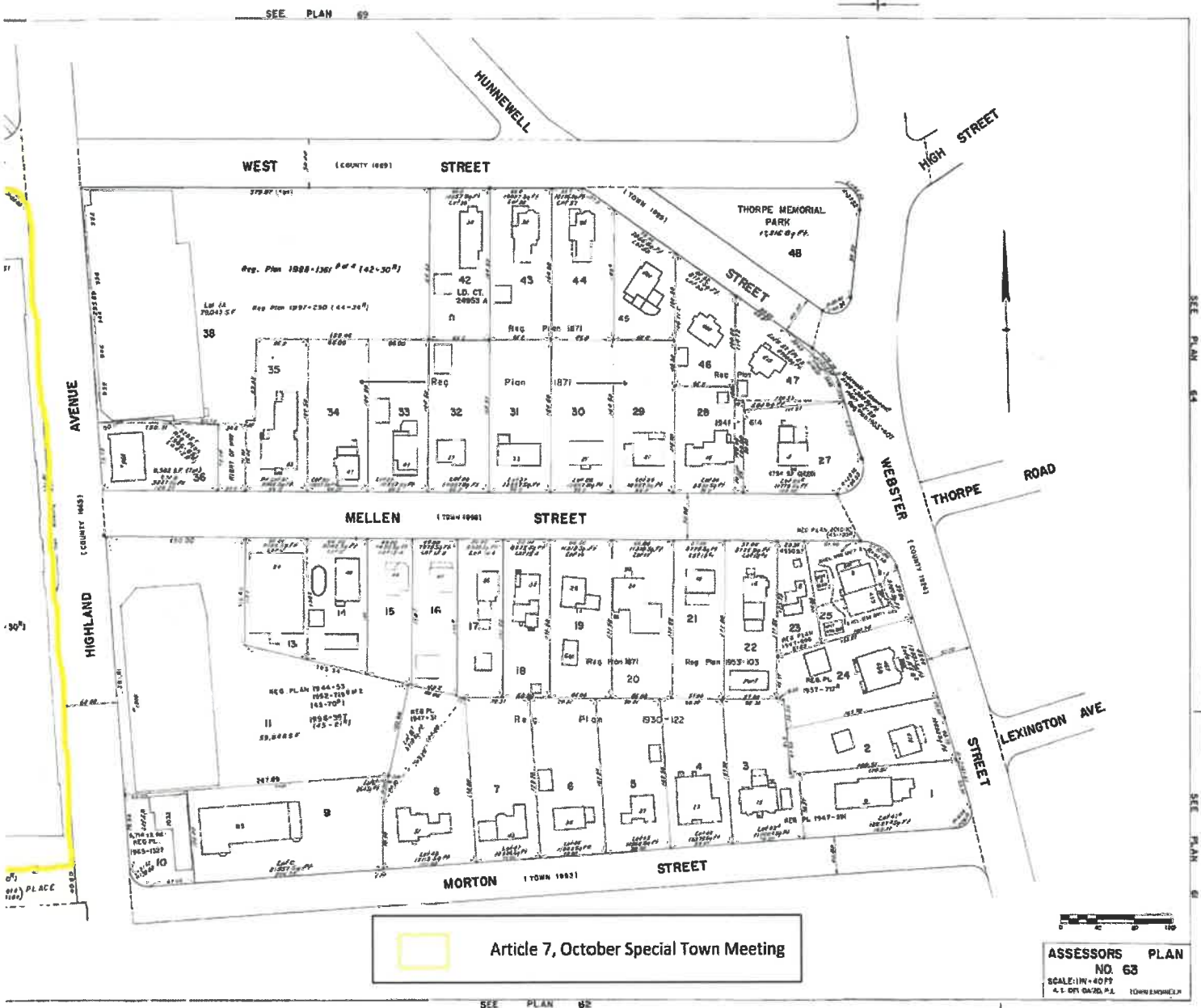
The land is also shown on Needham Town Assessors Map 63, Parcel 37, but excluding any land to the south of the northerly sideline of what was formerly known as Hildreth Place.

TWO THIRDS VOTE DECLARED BY THE MODERATOR
ON A VOICE VOTE

A true copy

ATTEST:


Theodora K. Eaton, MMC, Town Clerk



Article 7, October Special Town Meeting

ASSESSORS PLAN
 NO. 63
 SCALE: 1" = 40' ±
 4.5.01.04.20, P.L. 10/04/2004

A True Copy
 Attest:
Shirley K. Eaton
 Town Clerk of Needham, MA