


TOWN OF HINGHAM
PLANNING BOARD

Certified Mail #7018 3090 0000 9231 7323

NOTICE OF DECISION

Special Permit A3 with Site Plan Review

Applicant: W/S/M Hingham Properties LLC.

Premises: The Derby Street Shoppes
100 Derby Street
Hingham, MA 02043

Date: August 5, 2020

RECEIVED

AUG 13 2020

Town Clerk
Hingham, MA

APPROVED PLANS AND SUBMISSIONS:

- a. Derby Street Shoppes Expansion 100 Derby Street Hingham, Massachusetts”, dated March 9, 2018 and revised to July 13, 2018, prepared by the BSC Group, 803 Summer Street, Boston, Massachusetts, 02127, prepared for W/S/M Hingham Properties LLC, 11 sheets.
- b. Traffic Management and Parking Plan, Derby Street Shops, Hingham, Massachusetts, Dated September 13, 2018, revised to November 29, 2018.
 - Restricted Use Plan with respect to Fitness Use, Outdoor Event, and Existing Financial Use Areas, dated March 9, 2020.
 - Technical Memorandum, dated October 29, 2019, prepared by Desman Design Management
 - Shared Parking Model submitted by Derby Street Shops on October 29, 2019 revised to March 8, 2020.
 - Derby Street Shops Future Conditions Spreadsheet, dated January 9, 2020.
- c. Such other plans, submissions and materials as are still in force and effect which will be recited in the decision.

PROCEEDINGS

This matter came before the Planning Board on the application of W/S/M HINGHAM PROPERTIES LLC for Site Plan Review under § I-G and § I-I and a Special Permit A3 Parking Determination and/or Waivers under § V-A, and such other relief as necessary to: 1) update the Special Permit for the Derby Street Shops with several new use categories including the primary designation of 4.17 Shopping Center as well as 3.3 Private School, 3.4 Nursery School, 3.8A Clinic, 4.13 Commercial Outdoor Amusement and V-E Personal Wireless Service Facility; 2) to establish a parking determination for each of the above uses sought through the special permit update to the property; and 3) a Waiver of the Site Plan Review in Association with the Special Permit A2 Application because there are no physical changes being proposed to the Derby Street Shops property at this time, in association with a modification to the Special Permit A2, at the

DERBY STREET SHOPPES, 100 DERBY STREET (Assessor's Map 194 Lot 31, and Map 195 Lots 33 & 34) in the Industrial Park and South Hingham Development Overlay Districts.

The Planning Board opened the site plan review at its meeting of November 12, 2019, and the application continued to December 2, 2019; January 13, 2020; January 27, 2020; and March 9, 2020. Pursuant to (1) the Order issued by the Governor of Massachusetts dated March 12, 2020 Suspending Certain Provisions of the Open Meeting Law and applicable provisions of the Open Meeting Law found at 940 CMR 29 et seq., the public meetings of the Planning Board were conducted by remote participation and (2) pursuant to Section 17 of Chapter 53 of the Acts of 2020 the review of the Application was continued by the Board, all as follows: March 16, 2020; March 23, 2020 (meeting suspended by the Chair due to technical difficulties pursuant to 940 CMR 29.10(6)(d) and the application continued to March 26, 2020); March 26, 2020; and April 13, 2020 (meeting suspended by the Chair due to technical difficulties (weather related power outages) pursuant to 940 CMR 29.10(6)(d) and the application continued to May 11, 2020); June 1, 2020; and June 15, 2020. The Planning Board panel consisted of William Ramsey, Gary Tondorf-Dick, Kevin Ellis, Judith Sneath and Gordon Carr. William Ramsey missed the meeting of November 12, 2019 and completed a Mullins Affidavit. Gary Tondorf-Dick missed the meeting of January 27, 2020 and completed a Mullins Affidavit. The Peer Review Engineer for the Board was Jeffrey Dirk, PE, Vanasse & Associates for the review of the parking and traffic. The Applicant was represented by Victoria Maguire and Sherri Schuler, WS Development, and Attorney Robert Devin.

BACKGROUND AND DISCUSSION

The Applicant explained that the applications before the board seek to update the Special Permit A2 for the Derby Street Shops with several new use categories including the primary designation of 4.17 Shopping Center, and to supersede all previous Special Permits issued for the property. The Applicant also submitted a Special Permit A3 request to modify the parking table for the Project to include the additional uses that are allowed under the Shopping Center use designation and to establish a parking standard for those uses to provide greater flexibility with new tenants and reduce the need for Board review for certain uses like health clubs. In support of this request the Applicant provided a parking demand analysis and a shared parking model prepared by Desman Design Management (Desman). The Shared Parking Model was reviewed by Jeffrey Dirk who offered comments and recommendations on how it could or should be adjusted to be representative of the existing site and consistent with industry standards. The Board expressed concern that this was a new approach to parking management for this site and for Hingham and noted that this property and its tenant mix is a delicate balance related to parking capacity. The Board was interested in having a lookback or review of operations after a period of time to ensure the permit was managing the site as intended. The Board ultimately was advised to have a portion of the permit be renewable so that if the site is not functioning well with regard to parking the permit could be allowed to expire and parking would be handled under the existing regulations. The Board then deliberated and made findings as follows:

Findings:

1. Site Plan Review Criteria pursuant to Section I-I.6:

Based on the information submitted and presented during the hearing, and subject to satisfaction of the conditions set forth below, the Board made the following findings under Section I-I, 6 of the By-Law:

- a. *protection of abutting properties against detrimental uses by provision for surface water drainage, fire hydrant locations, sound and site buffers, and preservation of views, light and air, and protection of abutting properties from negative impacts from artificial outdoor site lighting;*

The Board found that the Abutting properties are not adversely impacted by the proposed Shared Parking Model.

- 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, taking account of grades, sight distances and distances between such driveway entrances, exits and the nearest existing street or highway intersections; sufficiency of access for service, utility and emergency vehicles;*

The Board found that the Wayfinding Signage improvements completed in 2019 has improved circulation on the site and that the Applicant has continued to coordinate with MassDOT to improve access into and out of the site in conjunction with the ongoing roadwork on Derby Street.

- c. *adequacy of the arrangement of parking, loading spaces and traffic patterns in relation to the proposed uses of the premises; compliance with the off-street parking requirements of this By-Law;*

The Board found that the proposed Shared Parking Model, together with the identified locations and limitations on fitness uses, outside special events and outside displays allow for adequate arrangement of parking in relation to proposed uses in a manner consistent with the parking requirements of the Zoning By-law.

- d. *adequacy of open space and setbacks, including adequacy of landscaping of such areas;*

The Board found that no changes to the approved landscape plans are proposed with the Shared Parking Model.

- e. *adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site*

The Board found that there is no physical construction proposed with this the Shared Parking Model that affects disposal of refuse or wastes.

- f. *prevention or mitigation of adverse impacts on the Town's resources, including, without limitation, water supply, wastewater facilities, energy and public works and public safety resources;*

The Board found that there is no physical construction proposed with the Shared Parking Model that creates additional impacts on Town resources.

- g. assurance of positive stormwater drainage and snow-melt run-off from buildings, driveways and from all parking and loading areas on the site, and prevention of erosion, sedimentation and stormwater pollution and management problems through site design and erosion controls in accordance with the most current versions of the Massachusetts Department of Environmental Protection's Stormwater Management Policy and Standards including the Massachusetts Stormwater Handbook, the Massachusetts Erosion and Sediment Control Guidelines and, if applicable, additional requirements under the Town of Hingham MS4 Permit for projects that disturb more than one acre and discharge to the Town's municipal stormwater system;*

The Board found that the Applicant is in compliance with the approved SWPPP and submitted the required report for 2019.

- h. assurance that appropriate Best Management Practices have been incorporated to minimize the amount of disturbed areas and protect natural resources, stabilize sites when projects are complete or operations have temporarily ceased, protect slopes on the construction site, protect storm drain inlets and armor all newly constructed outlets, install perimeter controls at the site, stabilize construction site entrances and exits to prevent off-site tracking of material, and to provide for regular inspection of stormwater controls at consistent intervals;*

The Board found that there is no physical construction proposed with Shared Parking Model that affects stormwater management on the site.

- i. protection of natural and historic features including minimizing: the volume of cut and fill, the number of removed trees of 6 inches caliper or larger, the removal of stone walls, and the obstruction of scenic views from publicly accessible locations;*

The Board found that there is no physical construction proposed with the Shared Parking Model that affects natural or historic features.

- j. minimizing unreasonable departure from the character and scale of buildings in the vicinity or as previously existing on or approved for the site.*

The Board found that there is no physical construction proposed with the Shared Parking Model that affects the character of buildings on the site.

2. Special Permit Findings pursuant to Section V-A.6:

- a) The parking is sufficient in quantity to meet the needs of the proposed Project;*

The Board found that:

- The Applicant has simultaneously applied to the Zoning the Zoning Board of Appeals for a Special Permit A2 modification to allow uses under the 4.17 Shopping Center category on the property that previously were not allowed at this site.
- The Applicant's proposed Shared Parking Model to govern the site and facilitate changes in tenancy without necessitating public hearings governs both existing and the newly proposed uses.
- As tenancy changes the Applicant will provide a comparison of the existing parking schedule, a modified parking scheduled for the new use, and a narrative explanation of the proposed change and the location of the change to demonstrate adequacy of parking for the change.
- As the parking demand ratios for the new uses proposed under the Special Permit A2 modification were obtained from ULI, ITE and the zoning by-law, the Shared Parking Model structured proposed by the Applicant, with appropriate monitoring, will enable staff to review the model and determine sufficiency of parking for new proposals which seek to change uses on the property and allow the Board to determine whether associated parking demand with the new uses differs in actual practice from the assumptions in the Shared Parking Model as a result of location specific influences, and to verify if the Shared Parking Model needs to be calibrated with adjusted ratios.

b) Pedestrian access and circulation has been provided for;

The Board found that the existing site layout, together with identified locations and limitations on fitness uses and outside special events, provide for adequate pedestrian access and circulation.

c) New driveways have been designed to maximize sightline distances to the greatest extent possible;

The Board found that no new driveways are proposed.

d) It is impractical to meet these standards and that a waiver of these regulations will not result in or worsen parking and traffic problems on-site or on the surrounding streets, or adversely affect the value of abutting lands and buildings; and

The Board found that no waivers are proposed.

e) The granting of relief is consistent with the intent of this By-Law and will not increase the likelihood of accident or impair access and circulation.

The Board found that based on peer review of the Shared Parking Model, use of the Shared Parking Model at this location is consistent with parking management strategies at retail developments of similar size and consistent with the intent of the By-law.

3. That the amendment and restatement of the Special Permit A3, to reflect all conditions currently in force and effect as of the date hereof, and including the

modification to allow the proposed Shared Parking Model, is in the interest of the project and the Town of Hingham insomuch as it will allow for the efficient review of project compliance with such conditions.

VOTE AND CONDITIONS

Upon a motion made by William C. Ramsey and seconded by Gary Tondorf-Dick, the Board voted 5-0 that the Board (a) grant approval of the Shared Parking Model and (b) approve the amending and restating of the existing Special Permit A3, as amended by the Shared Parking Model, based on the findings and subject to the following conditions:

A. Shared Parking Model

1. Implementation of Shared Parking Model

- i. The baseline Shared Parking Model shall be deemed to be Shared Parking Model revised as of March 8, 2020. For any change in use within the overall approved floor area of the project to a different allowed use (the “modified use”), the Applicant shall update the baseline Shared Parking Model to reflect modified use and provide a narrative explanation of the change and the physical location of the change by Suite number. The updated Shared Parking Model shall demonstrate there is sufficient parking available within the site to accommodate the modified use.
- ii. The base parking ratio for any single tenant that contains multiple uses shall be based on the parking requirements specified in the Shared Parking Model for each of the functional use areas within the tenant space for the functional use that results in the highest overall parking requirements.
- iii. The required information shall be submitted to the Planning Board, the Zoning Board of Appeals and the Building Commissioner for Administrative Review and Approval. The Director of Community Planning or the Zoning Administrator may request that the updated Shared Parking Model be peer reviewed at the sole cost of the Applicant to verify the methodology and results. Sufficiency shall be defined as a peak parking demand that does not exceed the baseline parking demand during the peak parking demand period, or 95 percent of the available parking supply, whichever is higher. In no instance shall the modified use result in a peak parking demand that exceeds the available parking supply within the site unless the modified use has been approved by the Zoning Board of Appeals (if required), and a modified Traffic Management Plan for the site has been approved by the Planning Board.
- iv. The “Effective Date” of the approval of the Shared Parking Model shall, for the purpose of this condition, be the date this decision (or any renewal approved as set forth below) is filed with the Town Clerk. The approval of the Shared Parking Model set forth herein shall be in effect for a period of three (3) years (the “Approval Period”) from the Effective Date (the “Expiration Date”) and shall thereafter be subject to renewal by the Planning upon application by the Applicant not earlier than six (6) months prior to the Expiration Date. The renewal application shall include a current parking schedule for the project along with a summary of the modifications that have been made to the schedule based on updates to the Shared

Parking Model since the Effective Date, corrective measures implemented in accordance with the Parking Monitoring Program (in accordance with Condition A.2 below), and such additional information that the Planning Board may reasonably require related to the implementation of the Shared Parking Model and the Parking Monitoring Program.

The Shared Parking Model approval shall be renewed by the Planning Board for additional Approval Periods upon a finding that the applicant is in substantial compliance with the applicable conditions. Such renewal shall be on the same terms and conditions of the original approval, provided, however, that if other relief is requested in the same application as the requested renewal, appropriate conditions may be imposed with respect to such other relief.

In the event that the Planning Board finds that the Applicant is not in substantial compliance, the Planning Board may, in its reasonable discretion, deny renewal of the Shared Parking Approval or approve a shorter approval period for the term of the then requested renewal. The Applicant may be found to be “not in substantial compliance” if the Planning Board receives evidence of (x) documented failure of the Applicant to comply with the Shared Parking Model and Parking Monitoring Programs required hereunder (such as the issuance of one or more zoning violations related to parking) and/or (y) that the information submitted in connection with the implementation of the Shared Parking Model or Parking Monitoring Program for the expiring Approval Period was substantially incomplete or inaccurate.

Notwithstanding any provision of this condition A.1 to the contrary, if the Applicant seeks a major modification to the site plan approved pursuant to the Special Permit A2 governing the project or to significantly modify the Shared Using Model approved hereunder, the Applicant shall seek a modification of the Special Permit A3 for the project and approval thereof, if granted, may be subject to modification of conditions in connection with the Shared Parking Model. A major modification to the site plan shall including, but not be limited to, an increase or change in the land area, building configuration, parking lot and/or traffic circulation layout; provided, however, that the previously approved expansion (referenced in Condition B below) is incorporated into the Shared Parking Model and, if constructed in accordance with the prior approval, will not constitute a new major modification.

(e) In the event that the Shared Parking Model approval expires and is not renewed, any further use modifications within the project shall, to the extent required by the Zoning By-law, require a modification of this Special Permit A3. In all other respects this Special Permit A3, as the same may be modified from time to time, shall remain in full force and effect.

2. Parking Monitoring Program.

- (a) The Applicant shall conduct a Parking Monitoring Program (the “Initial Parking Monitoring Program”) for the entire site that shall consist of: (i) parking demand observations conducted over a continuous 12-hour period (7 AM to 7 PM) on a weekday and a Saturday; and (ii) parking occupancy within the site.
- (b) The observations shall be conducted once during the peak holiday shopping season (between November 27 and December 24, 2020) and once during spring (April,

May or June, 2021) or fall (September or October, 2021). Notwithstanding the foregoing schedule:

- (i) the Applicant shall consult with the Building Commissioner and the Director of Community Planning before conducting the observations on such schedule to determine if, due to any declared public health emergency or other exigent circumstances, the timing of the observations should be delayed.
 - (ii) The Initial Parking Monitoring Program shall be performed within two years from the issuance of this permit unless otherwise extended by the Planning Board.
 - (iii) In the event that the Project Expansion (as described in the approvals referenced in Condition B below) has not been constructed and reached Substantial Occupancy (as defined below) prior to the observation periods set forth above, the provisions of Condition A.1(e) below shall apply.
- (c) The results of the Initial Parking Monitoring Program shall be summarized in a written report (the "Parking Monitoring Report") provided to the Building Commissioner and Director of Community Planning within one (1) month of the parking observations and should include the following information:
- (i) Land uses and size (no. of seats, space occupied (sf) and/or occupancy (persons), as appropriate) for the uses located within the overall site at the time that the parking demand observations were performed;
 - (ii) Parking supply (total number of parking spaces provided);
 - (iii) Number of occupied parking spaces reported in 30 minute intervals during the observation period;

Number of available parking spaces reported in 30 minute intervals during the observation period (i.e., parking supply – no. of occupied spaces); and

Peak parking demand period.

The Parking Monitoring Report shall include a comparison of the observed parking demand to the predicted parking demand obtained using the baseline Shared Parking Model, as the same may have been updated prior to the issuance of the Parking Monitoring Report pursuant to the provisions of Condition A.1 above.

- (d) To the extent that the observed parking demand set forth in the Parking Monitoring Report varies from the results of the Shared Parking Model by more than 10%, the Applicant shall identify and undertake corrective measures to address the shortfall, including but not limited to calibration of the Shared Parking Model, construction of land banked parking after Site Plan Review for drainage and design standards, and/or other such measures to ensure that sufficient parking is available within the site to accommodate the approved uses. These measures shall be documented in the Parking Monitoring Report along with the responsible party and time frame for implementation.
- (e) In the event that the Initial Parking Monitoring Program is required to be completed prior to Substantial Occupancy of the Project Expansion, a supplemental parking

monitoring program shall be required within one year of Substantial Occupancy of the Expansion Project in accordance with the requirements set forth below (the “Supplemental Parking Monitoring Program”). “Substantial Occupancy” shall mean the occupancy of eighty percent (80%) or more of the gross leasable area created by the Expansion Project.

The Applicant shall conduct a Supplemental Parking Monitoring Program for the entire site that would consist of: (i) parking demand observations conducted over a continuous 12-hour period (7 AM to 7 PM) on a weekday and a Saturday; and (ii) parking occupancy within the site. The observations shall be conducted once during the peak holiday shopping season (between November 27th and December 24th) and once during spring (April, May or June) or fall (September or October).

The results shall be summarized in a “Supplemental Report” which shall consist of the same information set forth in subsection 2(c) above as updated pursuant to the Supplemental Parking Monitoring program. To the extent that the observed parking demand set forth in the Supplemental Report exceeds the parking supply within the overall site, the Applicant shall identify and undertake corrective measures to address the shortfall consistent with the provisions of subsection 2(d) above.

3. The Applicant shall comply with the limitations and allowances as shown on the Approved Plans and Submissions.
4. The Applicant shall coordinate with the Hingham Chief of Police to manage traffic for special events.
5. No outside display shall be permitted within the parking field.
6. The minimum passage area for pedestrians through outside displays area shall be a minimum of 6 feet or as otherwise permitted upon written request.

B. General Conditions from the Site Plan Review in Association with a Special Permit A2 and A3, 124 Old Derby Street and 100 Derby Street, filed December 4, 2018, in connection with the proposed expansion of a portion of the project (the “Project Expansion”), which remain in effect:

1. Fitness uses shall be located consistent with the Restricted Use Plan Revised to March 9, 2020
2. All temporary parking areas created on the site during the construction of the expansion premises shall be constructed using the same reinforced treatment that is being used for the proposed temporary parking areas to the west of the Kohl’s building.
3. The temporary parking lot behind Kohl’s is for use during peak holiday season (Thanksgiving to New Year’s Day) and is being considered also to be land banked parking. If the applicant finds there is a need to utilize this parking outside of this specified timeframe the applicant must return to the Planning Board for review of the design and construction of this parking.
4. Major construction activities associated with the expansion that would reduce the amount of available parking over current (pre-construction) conditions shall be scheduled so as not to occur during the peak holiday shopping season (Thanksgiving to New Year’s Day),

unless the applicant can demonstrate efforts that includes construction phasing and other accommodations to off-set the net loss in parking within the site.

C. The Applicant shall comply with the Approved Plans and Submission and the representations made to the Planning Board.



Gary Tondorf-Dick

Clerk, Hingham Planning Board

EXECUTED this 13th day of August, 2020

Votes:

In favor: Ramsey, Carr, Tondorf-Dick, Sneath, Ellis

Opposed: none

Cc: Town Clerk, ZBA, Building, J. Dirk,