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Barney Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	May 1, 2018
Land Use Action Date:	June 26, 2018
City Council Action Date:	July 9, 2018
90-Day Expiration Date:	July 30, 2018

DATE: May 1, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #212-18**, CP NEEDHAM STREET LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Orders #91-15 and #182-09(2) to allow a for-profit learning center in the second-floor office space at **180 Needham Street**, Ward 8, Newton Upper Falls, on land known as Section 83, Block 28, Lot 01, containing approximately 8,960 sq. ft. of land in a district zoned MULTI USE 1. Ref: 7.3, 7.4, 4.4.1, 6.3.14 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



180 Needham Street

EXECUTIVE SUMMARY

The property at 180 Needham Street consists of 8,960 square feet parcel improved with a 7,688 square foot, two-story building with a 105-seat restaurant (allowed per Special Permit #91-15) on the first floor and 3,782 square feet of vacant space on the second floor. The petitioner is requesting a special permit to allow a for-profit educational use in the second-floor commercial space. Per Sections 4.4.1 and 6.3.14.B.2 of the Newton Zoning Ordinance a special permit is required to allow a for-profit educational use in the Mixed Use 1 zoning district.

The parcel has three parking stalls; 17 additional required stalls are located off-site on the adjacent and commonly owned 188-210 Needham Street per Special Permits #91-15 and #182-09(2), the latter of which allowed the creation of 34 additional parking stalls on 188-210 Needham Street, including those used by 180 Needham Street. To the extent that the proposed use affects the parking at 188 Needham Street as permitted by Special Permit #182-09(2), an amendment to that order is required.

The Planning Department believes that certain concerns regarding the operation of the proposed use as related to the pick-up and drop-off of students will likely be addressed by the low turnover of the use and the petitioner's access and parking management plan and notes that a study assessing post-occupancy traffic conditions will be required as per a previously granted special permit for the site.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The specific site is an appropriate location for the proposed for-profit educational use (§7.3.3.C.1);
- The proposed for-profit educational use as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2);
- There will be no nuisance or serious hazard to vehicles or pedestrians; (§7.3.3.C.3);
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located on Needham Street between Jaconnet Street and Tower Road. The land uses along Needham Street consist of a mix of retail, service, office and

restaurant types of uses and a large multifamily dwelling; the land uses in the surrounding area consist mainly of single-family and multifamily dwellings (**Attachment A**). The subject property and adjacent parcels along Needham Street are zoned Mixed Use 1 (MU1); there are also Mixed Use 2 (MU2) and Multi-Residence 1 (MR1) properties along Jaconnet and Kenneth streets to the north and northeast, respectively (**Attachment 2**).

B. Site

The property at 180 Needham Street consists of 8,960 square feet parcel improved with a 7,688 square foot, two-story building with a 105-seat restaurant on the first floor and 3,782 square feet of vacant space on the second floor. The property at 188-210 Needham Street is adjacent to the south and consists of 98,677 square feet of land and is improved with several large retail buildings and parking areas. Both sites are located in Wetland Resource Areas, and South Meadow Brook, which begins in Brookline and travels through Newton before eventually discharging into the Charles River, runs underneath Needham Street through a culvert that is partially located on the site.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The applicant proposes to introduce a for-profit educational use to the second-floor commercial space on site. The petitioner has indicated that the proposed use would involve three classrooms of 10-13 students and 1 or 2 teachers each. The ground floor would continue to be used as a restaurant.

As described by the petitioner, the proposed use's operation would include afterschool sessions from 2:30 pm to 6:00 pm weekdays when school is in session, weekday camp sessions from 9:00 am to 4:00 pm both during the summer and on weekdays when there is no school. Students would be in attendance for the entirety of those sessions. Two-hour birthday parties would also be held on weekends.

B. Building and Site Design

The petitioner is not proposing any modifications to the exterior of the building or the site plan. Access to the space would be via an entry served by the sidewalk on the south side of the building, facing the existing parking and drive aisle.

C. Traffic and Parking

The parcel has three parking stalls; 17 additional stalls for its use are located off-site on the adjacent and commonly owned 188-210 Needham Street per Special Permits #91-15 (which also waived 17 parking stalls, among other relief) and #182-09(2)

(which allowed the creation of 34 additional parking stalls on 188-210 Needham Street, including those used by 180 Needham Street).

In total there are 27 existing stalls along the drive aisle between the subject property and 188 Needham Street and 92 stalls in the rear of the latter. All of which are accessible by driveways along Needham Street (two) and Industrial Way (one) to the south. The petitioner has stated that all of these stalls will be available to the school's customers, albeit shared with the customers of both properties' tenants.

Per section 5.1.4, the proposed change from office use to a for-profit educational use would reduce the number of required parking stalls for the second-floor space from 16 (one stall per every 250 square feet of office space) to 10 (one per employee present during the busiest shift). As such, no further parking relief is required for the proposed use under Special Permit #91-15; to the extent that the proposed use affects the parking at 188 Needham Street as permitted by Special Permit #182-09(2), an amendment to that order would be needed.

As part of the materials submitted with the present petition, the petitioners included a letter dated March 30, 2018 addressed to Planning Department staff that details its "Site Access and Parking Management Plan." The Plan addresses concerns related to this petition that "live parking" by drivers picking up/dropping off students near the building might cause congestion in the drive aisle between 180 and 188 Needham Street, which could, in turn negatively impact traffic conditions on Needham Street at the nearby vehicular access points. The Plan indicates that customers will be instructed that in the event they are unable to park in one of the 27 stalls along the drive aisle they should, rather than "live park" in the drive aisle, proceed to park in the 92-stall rear lot. The petitioner and operator of the proposed educational use will work together to identify (by license plate) and address customers who fail to follow this protocol.

Further, as discussed in that letter, the petitioner indicated its prospective tenant will coordinate with a third party on-demand transportation company to facilitate shared rides for some students to and from their schools and/or homes which should serve to eliminate some vehicle trips and related parking demand at the site.

Also, the Planning Department notes that Condition 4 of Special Permit #91-15 requires the petitioner, at its sole expense, to have a qualified firm (approved by the Planning Department) complete a "post-occupancy" traffic study, the scope of which is to be defined by the Planning Department. The petitioner is required to coordinate with the Department as to the dates of said study within three months of 180 Needham Street reaching full occupancy. The study will "document the actual traffic characteristics of the Project and ... assess traffic volumes and operating conditions at the one access point to 180 Needham Street and the two access points to 188-210

Needham Street.” In the event the study finds that “that the project has created an unsafe environment or hazardous conditions for vehicles or pedestrians within the segment of Needham Street adjacent to the project site,” the petitioner shall implement required mitigation measures or restore the access drive immediately adjacent to 180 Needham Street to its previous “exit-only” configuration.

D. Landscaping

No new landscaping is proposed.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment D**). Based on the Memorandum, the petitioner is seeking the following relief:

- Amend Board Orders #91-15 and 182-09(2)
- Special permit per §7.3.3 to allow a for-profit educational use in the Mixed Use 1 zoning district (§4.4.1; §6.3.14.B.2)

B. Engineering Review

No Engineering review is required at this time.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Council Order

ATTACHMENT A





Land Use

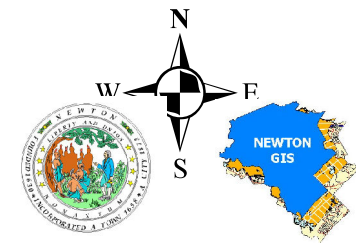
180 Needham St.

*City of Newton,
Massachusetts*

Land Use

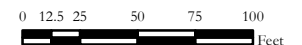
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial

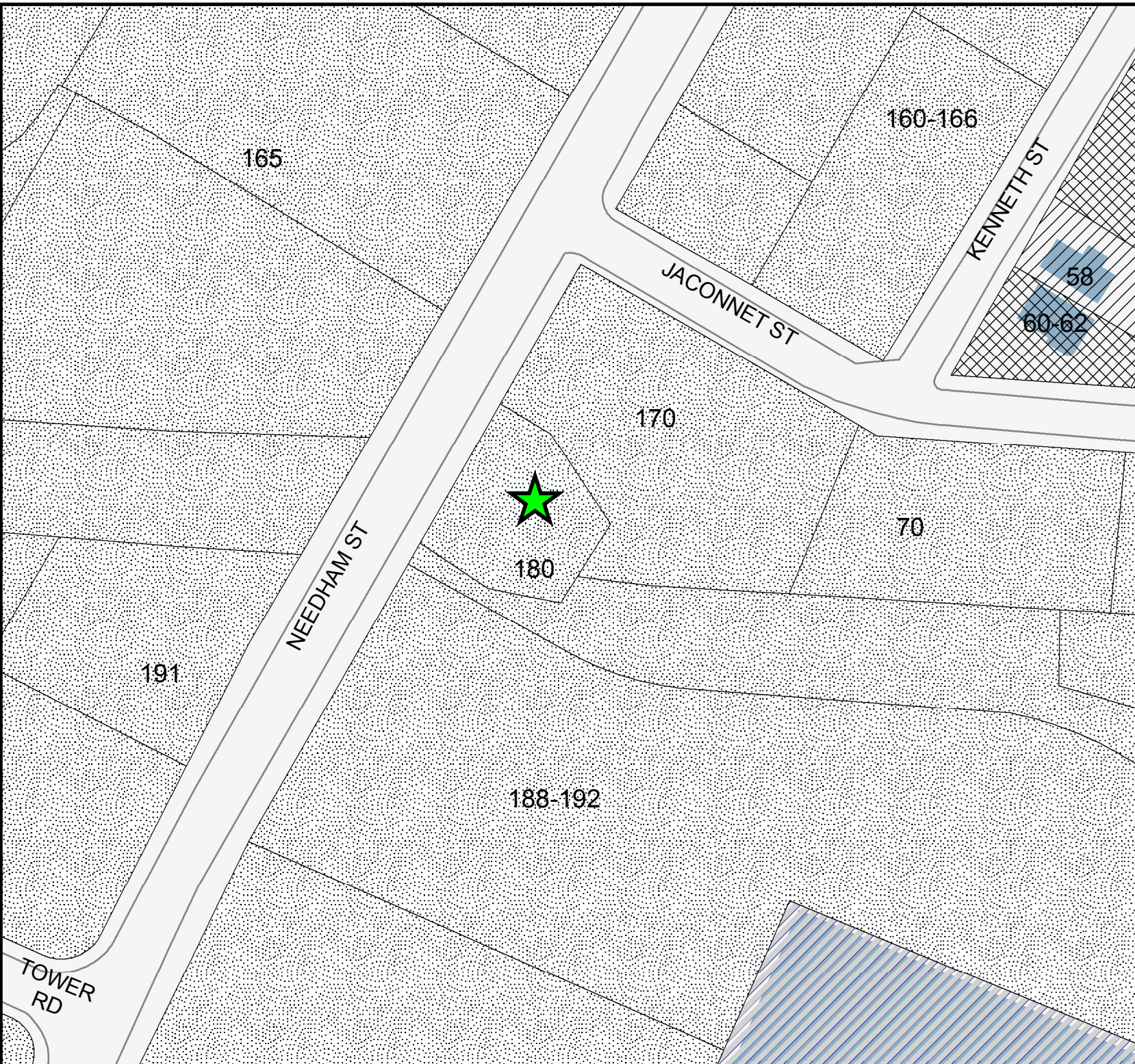


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: April 19, 2018






ATTACHMENT B

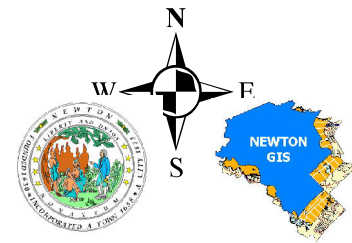
Zoning

180 Needham St.

*City of Newton,
Massachusetts*

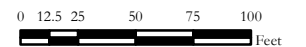
Legend

-  Multi-Residence 1
-  Mixed Use 1
-  Mixed Use 2



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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Map Date: April 19, 2018





Ruthann Fuller
Mayor

ATTACHMENT C

City of Newton, Massachusetts Department of Planning and Development

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 2, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Frank Stearns, Attorney
CP Needham Street, LLC
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: **Request to allow an educational use and to amend Board Orders #91-15 and 182-09(2)**

Applicant: Needham Chestnut Realty LLC	
Site: 180 Needham Street	SBL: 83028 0001
Zoning: MU1	Lot Area: 8,960 square feet
Current use: Office	Proposed use: For-profit education

BACKGROUND:

The property at 180 Needham Street consists of 8,960 square feet improved with a two-story building with a 105-seat restaurant on the first floor and 3,782 square feet of vacant space on the second floor, formerly used as office space. The petitioner requests a special permit to allow for the second-floor office space to be used for a for-profit educational use. No changes to the site plan are proposed.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Frank Stearns, attorney, dated 2/27/2018
- Board Orders #91-15, 182-09(2)
- Zoning Review Memo, prepared by Jane Santosuosso, Chief Zoning Code Official, dated 4/9/2015
- As-Built Site Plan, prepared by Kelly Engineering Group, surveyor, dated 6/30/2017
- Second Floor Tenant Fit-Out, signed and stamped by John M. Rufo, architect, dated 1/16/2018

ADMINISTRATIVE DETERMINATIONS:

1. The applicant proposes to introduce a for-profit educational use to the second-floor commercial space on site. Per Section 4.4.1 and 6.3.14.B.2, a special permit is required to allow a for-profit educational use in the Mixed Use 1 zoning district.
2. The petitioner received a special permit (#91-15) in 2015 allowing off-site parking and waiving 17 parking stalls, among other things. According to the Zoning Review Memo, the proposed uses required 55 parking stalls, 39 for the 105-seat restaurant and 16 stalls for the 3,782 square feet of office space. After the parking credit was applied, only 37 stalls were required, with three parking stalls proposed on the site. The special permit allowed a waiver of 17 stalls and for off-site parking of the remaining 17 stalls.

The petitioner proposes to change the office use to a for-profit educational use. Per section 5.1.4, office uses required one stall per every 250 square feet. A 3,782 square foot office requires 16 parking stalls. Per that same section, an educational use requires one stall for each employee. The petitioner proposes ten employees at the busiest shift, thus requiring ten parking stalls. No further parking relief is required for the proposed use, as the proposed use reduces the parking demand by six stalls per the requirements of the Ordinance.

To the extent that the proposed use affects the parking at 188 Needham Street as permitted by Special Permit #182-09(2), an amendment to that order is required.

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend board orders #91-15 and 182-09(2)	
§4.4.1 §6.3.14.B.2	Request to allow a for-profit educational use	S.P. per §7.3.3

ATTACHMENT D

DRAFT #212-18
180 Needham Street

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to

amend Special Permit #91-15 and allow a for-profit educational use in the Mixed Use 1 zoning district (§4.4.1; §6.3.14.B.2)

as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed for-profit educational use as it is located in an active commercial corridor with a mix of retail, service, office and residential uses (§7.3.3.C.1);
2. The proposed for-profit educational use as developed and operated will not adversely affect the neighborhood as the site is located in a mixed-use area with active commercial uses and has adequate off-site parking to meet the projected parking demand for the proposed uses (§7.3.3.C.2);
3. There will be no nuisance or serious hazard to vehicles or pedestrians; (§7.3.3.C.3);
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved as the site is located on a major commercial corridor with access to highways and public transportation, and the proposed project will not significantly affect the levels of service at surrounding intersections (§7.3.3.C.4).

PETITION NUMBER: #212-18

PETITIONER: CP Needham Street, LLC

LOCATION: 180 Needham Street, on land known as SBL 83, 28, 1, containing approximately 8,960 square feet of land

OWNER: CP Needham Street, LLC

ADDRESS OF OWNER: 300 Third Avenue, Suite 2
Waltham, MA 02451

TO BE USED FOR: Restaurant with 105 seats (85 inside, 20 outside) on the first floor
and a for-profit educational use

EXPLANATORY NOTES: Special permit per §7.3.3 to allow a for-profit educational use in the
Mixed Use 1 zoning district (§4.4.1; §6.3.14.B.2)

ZONING: Mixed Use 1(MU1) district

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #212-18 are null and void.

Approved subject to the following conditions:

Conditions associated with this Special Permit/Site Plan Approval, Order #212-18:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. a plan entitled "As-Built Site Plan, Crosspoint Associates, 180, 188 & 210 Needham Street, Newton Massachusetts," prepared by Kelly Engineering Group, Inc., dated June 30, 2017 (Sheet No. 1);
 - b. a plan entitled "Second Floor Tenant Fit-Out, 180 Needham Street, 180 Needham Street, Newton, MA," prepared by Form + Place, signed and stamped by John M. Rufo, Registered Architect, dated January 16, 2018.
2. The for-profit educational use shall be operated consistent with the provisions of a letter from Kerry Cormack, Director of Development, Crosspoint Associates, Inc. addressed to Neil Cronin, Senior Planner, City of Newton, dated March 30, 2018, and the exhibits:
 - a. Exhibit A- Access Plan (180 Needham Street);
 - b. Exhibit B- Parking Plan (180 Needham Street).
3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:

- a. Recorded a certified copy of this Board Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed final site plans for review and approval by the City Engineer. A copy of such written approval shall be filed with the Clerk of the Board, Director of the Department of Planning and Development, and the Commissioner of Inspectional Services.
 - d. Obtained a written statement from the Department of Planning and Development that confirms plans submitted with any building permit are consistent with plans approved in Condition #1.
4. No Certificate of Occupancy for the buildings and uses covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or surveyor certifying substantial compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in digital format by a licensed surveyor.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
 - d. Filed with the Department of Planning and Development, a statement from the City's Conservation Agent stating that the petitioner has complied with all requirements of the Order of Conditions from the Conservation Commission.
 - e. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing, signage and parking areas.
5. Notwithstanding the provisions of Condition #4e above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, signage and parking areas provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping, fencing, signage and parking areas.

Conditions incorporated from Board Order #91-15:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Site Development Plans, prepared by Kelly Engineering Group, stamped and signed by Steven M. Horsfall or David Noel Kelly, Professional Engineer; dated April 10, 2015 and revised on June 1, 2015, consisting of the following eight (8) sheets.
 - ii. Sheet 1 - Cover Sheet
 - iii. Sheet 2 – Vicinity Plans
 - iv. Sheet 3 – Existing Conditions Plan
 - v. Sheet 4 – Layout and Zoning Plan
 - vi. Sheet 5 – Layout and Landscaping Plan
 - vii. Sheet 6 – Site Plan
 - viii. Sheet 7 - Detail Sheet
 - ix. Sheet 8 – Detail Sheet
 - b. Elevations, prepared by Form + Place, dated April 10, 2015
 - c. Landscape Plan for Courtyard, prepared by Shadley Associates, dated June 23, 2015
2. The petitioner shall maintain all landscaping associated with this Special Permit/Site Plan Approval in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
3. If the petitioner obtains the necessary federal, state and local permits and/or approvals, including but not limited to MassDOT's Access Permit, then the petitioner shall modify the site's access point between 180 and 188 Needham Street, as shown in the site plans approved in Condition #1, prior to the issuance of a Certificate of Occupancy for the renovated buildings covered by this Special Permit/Site Plan Approval. Otherwise, the petitioner shall retain the currently existing one way (exit) traffic pattern.
4. At its sole expense, the petitioner shall complete a post occupancy traffic study to document the actual traffic characteristics of the Project and to assess traffic volumes and operating conditions at the one access point to 180 Needham Street and the two access points to 188-210 Needham Street. The traffic study, with a scope of work to be defined by the Planning and Development Department, shall be conducted by a qualified professional firm selected by the petitioner and approved by the Director of Planning and Development. The petitioner shall coordinate with the Planning and Development Department within three months after the site has reached full occupancy to determine the exact dates for conducting the traffic

study. The results of the traffic study shall be provided to the Director of Planning and Development, the Director of the Transportation Division of Public Works and the MassDOT for review.

If the traffic study indicates that the project has created an unsafe environment or hazardous conditions for vehicles or pedestrians within the segment of Needham Street adjacent to the project site, as determined by the City or the MassDOT, then the petitioner shall, at its sole expense, implement mitigation measures required by the City or the MassDOT such as lane striping, the addition of medians, restrictions on turning movements through signage, and other such measures as may be required, or the petitioner, at its sole expense, shall restore the access drive at the northeast corner of 188 Needham Street to its prior one way (exit) configuration, if required by the City or the MassDOT.

5. The petitioner shall use dispose of its trash in the dumpster on the adjacent site at 188-210 Needham Street. The trash enclosures shall be maintained in a sanitary condition with the gate remaining closed at all times when not in use.
6. At the written request of the Director of Planning and Development, the petitioner shall submit funds in the amount of \$8,755.00 to be paid towards undergrounding of utilities along Needham Street at such time as either the City of Newton or the Commonwealth commences a project of undergrounding the utility lines with sufficient funding in place or committed from governmental or private sources to undertake the project for at least a distance of a quarter mile, inclusive of the section of Needham Street fronting the subject property at 180 Needham Street. This obligation shall run with the land for a period of 25 years from the date of this special permit. These funds shall be used by the City or the Commonwealth for the purpose of undergrounding utilities on Needham Street within the 25 year time period identified above. Any funds collected under this condition and not spent in accordance with this condition at the end of this time period shall be returned to the petitioner or its successors or assigns.
7. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this Board Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed final site plans for review and approval by the City Engineer. A copy of such written approval shall be filed with the Clerk of the Board, Director of the Department of Planning and Development, and the Commissioner of Inspectional Services.

- d. Obtained a written statement from the Department of Planning and Development that confirms plans submitted with any building permit are consistent with plans approved in Condition #1.
8. No Certificate of Occupancy for the buildings and uses covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or surveyor certifying substantial compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in digital format by a licensed surveyor.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
 - d. Filed with the Department of Planning and Development, a statement from the City's Conservation Agent stating that the petitioner has complied with all requirements of the Order of Conditions from the Conservation Commission.
 - e. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing, signage and parking areas.
9. Notwithstanding the provisions of Condition #8e above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, signage and parking areas provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping, fencing, signage and parking areas.