

NEEDHAM PLANNING BOARD MINUTES

March 15, 2011

The regular meeting of the Planning Board held in Community Room of the Needham Public Library, was called to order by Ron Ruth, Chairman, on Tuesday, March 15, 2011 at 7:00 p.m. with Messrs. Warner, Eisenhut and Jacobs and Ms. McKnight as well as Planning Director, Ms. Newman and Recording Secretary, Donna Kalinowski.

Correspondence

Mr. Ruth noted a letter from Karen Price, President of the League of Women Voters, dated 3/14/11, regarding Candidates Night.

Minutes

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to approve the minutes of 2/8/11 with changes discussed.

Public Hearings

7:30 p.m. – FY 2012 (Program Year 2011) HOME Funds Allocation.

Upon a motion made by Mr. Jacobs, and seconded by Ms. McKnight, it was by the five members present unanimously:

VOTED: to waive the reading of the public hearing notice.

Ms. Newman noted Needham Opportunities Inc. is in a state of flux. They have recently been asked to allocate money toward the foreclosure buy down project. She noted they recommended allocating money to that class but they could reallocate it if another project comes forward. Ms. Newman stated \$72,000 has been bankrolled for a foreclosure unit. Newton requires the money be earmarked for a particular project. Mr. Eisenhut commented the High Rock Homes sold 19 and one is still on the market. It was very successful. Ms. Newman stated \$67,389 will be added to the \$72,000 and will sit there until they are comfortable with a project that comes along. It is always subject to change.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to close the hearing.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to agree to the buy down program allocation of \$67,389.

7:45 p.m. – Article 1: PB Amend Zoning By-Law – Accessory Pergola.

Mr. Ruth noted this is a citizen's petition. It allows the placement of pergolas within 10 feet of other structures.

Upon a motion made by Mr. Jacobs, and seconded by Ms. McKnight, it was by the five members present unanimously:

VOTED: to waive the reading of the public hearing notice.

Bob Lieb stated he filed the petition. It is an exception to the building setback but not the side or frontage setbacks. Mr. Warner asked how large the pergolas could be. Mr. Lieb noted they can be very large – up to 100 feet or 10 foot by 10 foot. He stated he was inspired by the pool petition last year. Mr. Jacobs clarified the Planning Board would discuss this and make a recommendation if they decide to. He asked Mr. Lieb if he could give his most convincing argument. Mr. Lieb stated they cannot have a building within 10 feet of another building. The regulations unduly inhibit the use of a number of structures that could go between buildings. He thinks the reason is fire safety.

Mr. Eisenhut asked him if he talked to the Fire Chief about the proposal. Mr. Lieb clarified he did not speak with the Chief. Mr. Eisenhut encouraged him to. Mr. Lieb stated a pergola is not a habitable structure. He feels a fence is a much worse issue than a pergola. Ms. McKnight stated the way the petition is worded eliminates the numeral 5 after the word 5. She stated he should put the numeral 5 in (). Ms. McKnight noted she recalled when there was a separate proposal regarding the 10 feet and there was no advice from the Fire Chief relating to that setback. Mr. Eisenhut stated that issue was pools but he would like clarification from the Fire Chief.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to close the hearing subject to receipt of information from the Fire Chief.

They will take this up at the next meeting.

8:00 p.m. – Major Project Site Plan Special Permit No. 2010-04: The Mackin Group, LLC, 7 Harvard Street, Brookline, MA 02445, Petitioner (Property located at 916-032 Great Plain Avenue and 36-58 Dedham Avenue, Needham, MA). Note: This hearing is continued from the September 29, 2010, October 19, 2010, November 1, 2010, December 7, 2010, January 4, 2011, January 18, 2011 and February 15, 2011 Planning Board meetings and will be further continued to the Tuesday, May 24, 2011 Planning Board meeting.

Mr. Ruth noted he had received a request to continue the hearing without it being opened to 5/24/11 and they agree to an extension.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to continue the hearing to 5/24/11.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to accept a applicant's proposed 6/30/11 extension date without prejudice.

Deliberation

Article 1: PB Amend Zoning By-Law – Outdoor Seating.

Ms. Newman noted she has changed "Administrative Review" to "minor site plan permits." As of right as drafted is no special permit. It would be done as of right through a minor project site plan review. Mr. Eisenhut stated he thought there was a consensus it should be as of right. Mr. Ruth asked if Ms. Newman's preference is the Planning Board should be the decision maker. Ms. Newman agreed that was correct. A motion was made to adopt the recommended language of the Planning Director. Ms. McKnight asked if there was also a change to Section B1. Ms. Newman stated that language is already there so there is no change.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to adopt the recommended language of the Planning Director.

Ms. Newman stated this requires a companion article from the Board of Selectmen. She will meet with them to see if they are interested.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to recommend to Town Meeting Article 1: PB – Outdoor Seating from the recommendation by the Planning Director they just approved.

Article 2: PB – Amend Zoning By-Law – Schedule of Use Regulations.

Ms. Newman stated she has not tinkered with the language. She feels it is a policy issue. Ms. McKnight feels a word that is closer to what they meant is purpose rather than intent. Mr. Warner stated he thought it was the intent of the language in the existing regulation. Mr. Eisenhut agreed with him. Ms. McKnight stated it was redundant wording – to a use allowed by Section 3.2 rather than to a use authorized by the uses. By right it is a use similar to, and similar in impact, to a use allowed by Section 3.2 as of right or by Special Permit. Mr. Ruth commented they will hold off on the vote tonight.

Ms. McKnight commented further that if they are allowing similar by right, the Planning Board should allow by Special Permit a use similar to. Mr. Jacobs stated they are coming to the Board for a determination if their proposed use is similar to another. Ms. McKnight stated this formalizes an ongoing process.

Article 3: PB – Amend Zoning By-Law – Neighborhood Business District.

Mr. Ruth stated they are loosening the uses in the Neighborhood District.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to recommend to Town Meeting the adoption of Article 3: PB – Neighborhood Business District.

Article 4: PB – Amend Zoning By-Law – Technical Amendments for New England Business Center, Highland Commercial-128 and Mixed Use-128.

Mr. Ruth stated there are no changes from last week. Ms. Newman noted this is to correct what had been the intent.

Upon a motion made by Ms. McKnight, and seconded by Mr. Eisenhut, it was by the five members present unanimously:

VOTED: to recommend adoption of Article 4: PB -- Technical Amendments for New England Business Center, Highland Commercial-128 and Mixed Use-128.

Article 5: PB – Amend Zoning By-Law – Corrective Zoning Amendments.

Mr. Ruth stated there are no changes from last week.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to recommend adoption of Article 5: PB – variety of corrective Zoning Amendments.

Article 1: PB – Amend Zoning By-Law – Building Height Requirements in the Needham Center Overlay and Chestnut Street Overlay Districts.

Mr. Ruth noted this is a citizen's petition and the proponents were going to get information on the heights. Louis Wolfson and Paul Iantosca gave handouts of the information to the Board members. Mr. Wolfson noted the west side of Chestnut Street from the hardware store to Petrini's block by the train station. Only one building is 3½

stories, which is the hospital. All else is one or 2 stories. On the Sullivan block to Condons – Chestnut Medical is 3 stories and the one next to it is 3 stories. Chestnut Hollow is 3 stories. The majority are one and 2 stories, then there are 2 3-story buildings. Great Plain Avenue is a majority of one and 2 story. There are 3 3-story buildings across the street. Mr. Iantosca noted they redid this as full 3 stories rather than a 2 plus one.

Mr. Eisenhut stated he appreciates the citizen's petition. He was impressed with Louise Condon's testimony. It inflected the history and scale that was consisted with her values. He noted a distinction needs to be made between the Chestnut Street Overlay and the Needham Center Overlay. Four stories on Chestnut Street has been extensively discussed and carefully considered. The Economic Advisor thought if you want to achieve all the amenities the town wanted to achieve, pedestrian friendly environment, etc., 4 stories would give the potential to do that. On the lower Chestnut Street Overlay he would like the Board to have the discretion to allow 4 stories at 48 feet under the right circumstances. They must take into consideration parking. He has a much different view of the 2 districts.

Mr. Warner stated Mr. Eisenhut makes a lot of sense and he agrees. He noted with 3 stories you just get a block or a chunk. Mr. Eisenhut stated they need to keep in mind in Needham Center is also a Garden Street Overlay. There are not many opportunities for aesthetically pleasing 4 story buildings.

Mr. Jacobs noted the proposal came about because of a broad shared vision that they wanted more happening downtown. The town does not own it. They can only incentivize. To provide incentives they need to provide opportunities to develop and to go up to 3½ stories. The petition in front of them now he is sure was sparked by the Mackin project. He is not sure it is necessary to reach the goal of the Mackin project to pass this. It is still under a Special Permit. He commented he does not know how the Mackin project will come out. If the issue really is it is not 3 versus 3 plus, its 3 plus or maybe nothing beyond what we have now, the consequence may be they may never get to their shared goals and vision of 2 years ago. How do they meet what was the goal expressed at Town Meeting? He would like to see the studies from 2 years ago and justify the belief you could not get the development you wanted unless you provide the incentive to go to 3½. He believes there are differences between the 2 districts but does not believe the justification to go up to 3 plus was limited to Chestnut Street. He believes it was applicable equally to Great Plain Avenue.

Mr. Warner stated he understands Town Meeting spoke and they had a 4 story presentation and the fact it was necessary to get development. But seeing what 4 stories would be like, we may need to correct our path a little bit. There is such a thing as high density, low rise. He feels they perhaps should be a little more modest with their goals and go along more slowly with a lower rise.

Ms. McKnight stated she has served on the downtown study committee and remembers the presentations that were made. They should have the possibility of 3½ stories. They would need elevators. The Rinaldi building is a lesson in the difficulties in building under the current zoning. She asked what does the Board want Needham to look like, what is the vision? She feels it is positive that citizens have organized this. She stated voters can decide if they want Needham to remain as is or redeveloped. It has a 1950s look and there is a certain charm to that. She stated her idea was to redevelop not only to bring in a better tax base for downtown but also have a place where young and old can walk to the train and stores and bring vitality to downtown. She hopes the Town Meeting will allow this Board to try to implement that vision inevitably on a site to site basis to decide if it is appropriate. She hopes the voters at Town Meeting will trust this Board to make the right decisions with respect not only to the Mackin site but also to other sites that come before them. She wants to keep, as an incentive, 3 plus one stories not only on Chestnut Street but along Great Plain Avenue.

Mr. Ruth state his thought is there are very few locations in the Center Business District that would be appropriate for a 4 story building. The perception was the business community was in favor of a 4 story approach. He does not feel he has heard that echoed in recent discussions. The vision of the 4 stories downtown is ambitious particularly as we have a commuter station not a T line. He stated from his perspective he is perfectly comfortable with the citizen's petition as is. He added if it takes in order to get to 3 votes on this committee to endorse this petition he could go along with Mr. Eisenhut's comments on Chestnut Street.

Upon a motion made by Mr. Warner, and seconded by Mr. Eisenhut, it was by three of the five members present (Ms. McKnight and Mr. Jacobs voted in the negative):

VOTED: to recommend they oppose the Citizen's Petition as pertains to the Lower Chestnut Street Overlay District and on the Needham Center Overlay District present an objective analysis of the Citizen's Petition as to aesthetics, style and character that Louise Condon so eloquently testified to but they should also state these are what they may potentially give up. They should also recommend they support the Citizen's Petition in the Needham Center Business District in an objective way.

Mr. Eisenhut stated there was no reason they could not have a minority report.

Article 2: PB – Amend Zoning By-Law – Reconstruction of Two-Family Dwellings.

Ms. McKnight stated the amendment does not incentivize garages in the rear of the property.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to oppose the Citizen's Petition.

Article 3: PB – Amend Zoning By-Law – Farmers Market.

Ms. Newman proposed a definition. It is written to allow home goods if produced by a farmer and baked goods. The change will be included in the definition. Mr. Eisenhut clarified the language is still intact but they are just adding a definition. Ms. Newman confirmed this and noted the original language advertised. She stated there is a definition clarifying the use and it broadens it to allow baked goods. Mr. Eisenhut clarified the internal regulation is anyone selling must be licensed.

Mr. Jacobs stated the big problem is farmers want to stay on the farm and hire kids to go sell their produce. This undermines the concept of it being for locally grown produce. Ms. McKnight stated she is in favor but the wording is not there. Mr. Jacobs stated it should be locally grown produce. Mr. Eisenhut stated they cannot say some can participate and others cannot. Jeff Friedman noted farmer's markets have rules they enforce for all that participate. Mr. Jacobs requested the Board be provided with the rules.

Ms. McKnight stated the issue is someone is employed by the farm to take the produce to the farmer's market. Mr. Friedman stated the City of Boston has someone who runs farmer's markets. They may have the rules. Ms. McKnight noted she wants the emphasis on produce.

Deliberation and Decision: Major Project Site Plan Review No. 2011-01: the Continental Wingate Development Company, 63 Kendrick Street, Needham, MA, Petitioner (Property located on the westerly side of Gould Street between the Wingate at Needham Nursing Home at 589 Highland Avenue and the MBTA Right of Way.)

Deliberation and Decision: Amendment to Major Project Site Plan Review No. 1993-03: the Continental Wingate Development Company, 63 Kendrick Street, Needham, MA, Petitioner (Property located at 589 Highland Avenue, Needham, MA.)

Ms. Newman stated on the 2011-01 decision, if they change it to senior living they would need to amend the decision. Steve Levin is neutral. She suggests they leave it alone. Ms. Newman referred to Mr. Cramer's letter of 3/15/11. It will be Wingate Senior Living at Needham, Inc. and there will be no mention of Continental Wingate. That is easily resolvable. She noted they need to add rip-rap on the construction drive under conditions. They need to allow a change of bedrooms up to 10. This can be re-allocated across the assisted living units. The driveway easement (3.13) needs to be secured prior to a building permit. In 3.34 it should state "and in the event the highway is discontinued as a state highway, they shall come back to the town and apply."

Mr. Jacobs suggested “as such time as the town comes into control of the highway.” Mr. Cramer noted Giles Ham commented he sees no reason for the Mass DOT to deny this.

Ms. Newman noted Mr. Ruth has asked for language re: impervious surfaces in 3.35 and it should be “disposed” in 3.35.

Ms. McKnight noted the 26 beds in the independent living area and asked if they are restricted to the number of beds. Mr. Cramer stated he would rather get rid of the 26 and just have 20 independent living units. Ms. McKnight asked if they should change 26 independent living beds to 26 bedrooms? Mr. Jacobs asked why say anything? Why not just state 20 independent living units? It was agreed they should not say 26 bedrooms. Ms. McKnight feels in 3.25 they should say something about the level of maintenance – that it should be maintained in good condition. She feels 3.28 is inconsistent with the visions they have for dumpsters being inside because it cannot be screened with a fence.

Mr. Cramer walked through his letter. He noted in 1.4 the maximum number of residents is not necessary and they should get rid of “the project is comprised of...” In 1.9 (the generator), they will ensure it will meet the standards with respect to noise and screening. In the second line cross out “and screened”, take out “including those” and have “and will be screened to minimize visibility of said generator” at the end. They cannot screen completely so as to ensure it is invisible. Ms. McKnight suggested “screened as far as practical so as to minimize visibility.”

Mr. Cramer feels traffic mitigation should be in the other decision. Ms. Newman agrees. Mr. Cramer noted there will be no dumpster in the underground garage. It needs to be outside. They did not discuss this. Ms. Newman noted she is concerned with noise. She suggested they may be able to put a lock on the dumpster and it can only be opened by the employer. Mr. Cramer noted they do need to add the rip-rap section.

Mr. Cramer stated he was going to do an ANR Plan then decided to do one at a time. He would like 3.5 deleted. Ms. Newman noted they can just amend the permit at that time. Mr. Jacobs suggested adding “this provision shall not prohibit from coming back later.”

Mr. Cramer suggested “staffing for 70 for regular assisted living units.” Mr. Ruth suggested they add at the end “if they come back for Phase 2 it shall not prohibit them as these conditions are limited to this application.”

Mr. Cramer noted they do not necessarily need an acoustical engineer. Sometimes you do but sometimes plans and specifications from the manufacturer are sufficient. Mr. Eisenhut noted they could state “at sound level analysis deemed satisfactory by the Board.” Mr. Cramer suggested adding “or specifications prepared by the manufacturer.” Ms. Newman stated they have not had a generator without a sound study done by an engineer. Mr. Cramer stated he would like this as a condition of the Certificate of Occupancy not the building permit. Ms. Newman asked how they would know what they are going to install and if it is compliant? Mr. Cramer noted during the construction process they will come in with the plans and specifications and state this is what they propose to do. The Board will approve or not.

In 3.11, take out “the site plan shall be revised” as that needs to happen now. Mr. Cramer clarified submission of the generator will be part of the building permit package and the acoustical study before the Certificate of Occupancy. Mr. Ruth suggested they give them a certification of what the generator is and let them take their own risk. He sees the self certification at the building permit side and the rest at occupancy. Ms. Newman feels that is good.

Mr. Cramer noted in 3.13 they should have the condition prior to the Certificate of Occupancy rather than the building permit. He asked in 3.26, what is the form? He noted David Kelly has inspection reports for the operation and maintenance program for the storm water management. Mr. Cramer noted they never discussed a shuttle program at the hearing. He does not agree with this. Ms. Newman noted they agreed to it in the first discussion. This is that an affiliate shall be made available.

Mr. Cramer noted Section 3.37 should be moved to the other decision. Ms. McKnight stated she does not see anything wrong with it being in both decisions. Mr. Eisenhut stated it should be in this decision. Ms. Newman requested they submit a plan of what they are going to do with the street and obtain permits. It was agreed to move it to the Certificate of Occupancy. Mr. Cramer stated he has the same issue with 3.38(e).

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to grant a Special Permit for independent living units and assisted living and/or Alzheimer's/memory loss facilities in the Elder Services Zoning District, to waive strict adherence with certain requirements including parking, minimum setback, maneuvering aisles and driveways and landscape requirements requiring 4 foot setbacks all as set forth in the draft decision dated 3/15/11 with the changes discussed tonight.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to grant a Major Project Site Plan Special Permit to permit the Petitioner to construct a three story structure for an 80 unit facility comprising of 20 independent living units, 40 regular assisted living units and 20 regular assisted living units specializing in Alzheimer's and other memory loss related conditions with the changes discussed tonight.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: to grant a Major Project Site Plan Special Permit to implement various site improvements on the property located at 589 Highland Avenue, Needham as set forth in the draft decision dated 3/15/11 subject to the Board's discussion.

Mr. Cramer noted 3.24 and 3.25. There is no building. Ms. Newman will change that.

Board of Appeals – March 17, 2011.

Jennifer Rabinowitz and David Kuhns, 71 Brookside Road, Needham, MA 02492 – 71 Brookside Road.

This has been continued.

ATT Mobility c/o KJK Wireless (Brian Allen), 3 Brookside Drive, Sutton, MA 01590 – 350 Cedar Street.

This has been continued.

Mary and William Quirk, 56 Paul Revere Road, Needham, MA 02494 – 56 Paul Revere Road.

This has been continued.

Albert M. Gabriele, Administrator of the Estate of Leonara Gabriele, 51 Oakland Street, Braintree, MA 02184 – 107 Central Avenue, Needham, MA.

Ms. Newman noted this creates a new non-conformity. The first floor is non-conforming relative to setback. They should alert them to the language and let them determine if the extension of the wall means vertical.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:

VOTED: “No comment” but to call attention to the last sentence of 1.4.7.2.

Chestnut Builders, LLC, 768 Chestnut Street, Needham, MA 02492 – 66 Oak Street.

This has been withdrawn.

Ms. Newman noted she received a letter from George Giunta Jr. The beauty spa application is being withdrawn without prejudice and they request a refund of the application fee. Ms. Newman noted the only cost has been limited time spent.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by the five members present unanimously:

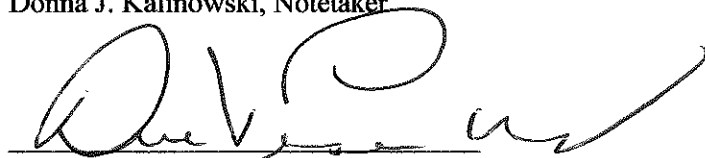
VOTED: to withdraw without prejudice and refund the application fee.

Ms. Newman asked if the next meeting could be changed to next Wednesday morning at 8:00 a.m. to discuss the 2 zoning articles and if there are any remaining questions on these 2 decisions. All agreed.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by the five members present unanimously:

VOTED: to adjourn the meeting at 10:45 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

A handwritten signature in black ink, appearing to read 'Bruce Eisenhut', written over a horizontal line.

Bruce Eisenhut, Vice-Chairman and Clerk