

NEEDHAM PLANNING BOARD MINUTES

March 20, 2012

The regular meeting of the Planning Board held in the Charles River Room of the Public Services Administration Building was called to order by Bruce Eisenhut, Chairman, on Tuesday, March 20, 2012 at 7:30 p.m. with Messrs. Warner, Jacobs and Ruth and Ms. McKnight as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Correspondence

Mr. Eisenhut noted the following correspondence for the record: the notice of By-Laws; the warrant schedule from Town Manager Kate Fitzpatrick, dated 2/27/12 and a copy of the Planning Board report the Planning Director prepared.

Public Hearing:

7:30 p.m. – Amendment to Major Project Site Plan Review No. 2010-02: Town of Needham, 470 Dedham Avenue, Needham, MA, and the Needham Historical Society, 1155 Central Avenue, Needham, MA, Petitioners (Property located at 1155 Central Avenue, Needham, MA).

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Steve Popper, representative for the applicant, noted they have more detail on the site. The intent was to ensure they had the ability to maintain accessibility around the site. They need some changes to the scope of the site work. Mr. Jacobs stated he had no questions or objections. He asked how the performance went with the parking. Mr. Popper stated he had not heard anything so he felt it was good. The Board members had no comments or questions.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to close the hearing.

A motion was made to approve the changes to the plan as described in the 2/7/12 letter. Mr. Popper stated the project has gone well. It is very complicated. They are working with a contracting manager and things are going more smoothly. He feels it has been a good experience.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to reopen the hearing.

Mr. Eisenhut noted the following correspondence for the record: a letter from Lt. John Kraemer, of the Police Department, noting no concerns; a memo from Town Engineer Tony DelGaizo noting no comments and a memo from the Health Department with no comments.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to close the hearing.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to grant the amendment to the Major Project Site Plan Review as presented in the plan presented tonight.

Deminimus Change: Major Project Site Plan Special Permit No. 91-3: North Hill Needham, Inc., Petitioner (Property located at 865 Central Avenue, Needham, MA).

Mr. Eisenhut noted the following correspondence for the record: a memo from Lt. John Kraemer, of the Police Department, noting no safety concerns.

Roy Cramer, representative for the applicant, stated one unit will be converted to a temporary sales office. He noted one modification is the redesign of the mechanical systems. They have changed the canopy shape. They are changing the greeting center. They feel it is confusing for some to see jersey barriers during construction. They will have a person out there directing. They want to put a 6 foot by 8 foot modular building made mostly of glass for someone to be inside. It will be in one location for the first part of the construction then moved for the next phase. A separate submission has all the detail for the booth. Mr. Jacobs asked if there will be a jersey barrier in front of it to protect it. Mr. Cramer noted there would not be. Mr. Jacobs commented they may want to think about it. Mr. Cramer noted it went to the Design Review Board last night.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously: VOTED: to grant the relief requested in the form of the decision today.

Deminimus Change: Major Projects No. 1996-05: Highland Montrose, LLC, 159 Cambridge Street, Allston, MA, Petitioner (Property located at 922-958 Highland Avenue, Needham, MA).

Roy Cramer, representative for the applicant, noted the property was first developed in 1996 when Calvert's closed. A construction fence was put around the parking area to screen it from the residential area. The immediate abutter on Mellen Street, Ardian Rrapi, bought the house, took down the fence and built a new one. There were 8 parking spaces there. The abutter took down a portion of the fence around his property, then they found the fence meandered.

Mr. Rrapi wanted to put up a 6 foot vinyl fence on his property that he would pay for. He did not want customers to hit his fence and wanted a guardrail built on their side. They agreed, then Mr. Rrapi wanted granite curbing between the fence and rail. They agreed to that and then Mr. Rrapi wanted something else. He found it was difficult to turn in and out of his garage so he asked for an easement of a one and a half foot wide strip of land. They had agreed they would construct the guard rail and curbing and then he will construct the fence.

Mr. Cramer stated in the last few days Mr. Rrapi retained a lawyer and the deal started to change. As of today, the easement has grown by a few feet. It was a triangle of land that was 9 feet by 9 feet by 12.7 feet. Now Mr. Rrapi wants 9 feet by 15 feet by 17.5 feet. Mr. Cramer stated they wanted to get it over with so they have agreed. He is asking the Board to acknowledge, and agree, that as long as a fence on his property is up they do not have to replace the fence Mr. Rrapi took down that was theirs.

Mr. Cramer noted a couple of changes on the decision. The new plan should be included in the decision. Also, condition 4 requests an As-built upon project completion. This is an odd situation. The fence is not being done by them and no work is on their property. They ask they not be required to do an As-built plan.

Mr. Jacobs clarified the original decision required a fence. Ms. Newman noted it was an existing fence and not called out as a condition but was on the plan. Mr. Cramer noted the fence was 6 feet high. He added they have no obligation to construct a fence. Ms. Newman reiterated it was on the site plan. Mr. Jacobs asked if there should be a minimum fence height requirement and commented there has been no discussion as to when this will be done. Mr. Cramer stated they will have a fence consistent with the rest of the fence around the property. Ms. Newman will get a measurement of the existing height and put it in the decision.

Mr. Rrapi stated it would take about 3 weeks according to the fence company. He clarified it will be 6 feet down to 4 feet. Ms. McKnight asked what the easement area is used for now and asked if it was for plantings. Mr. Cramer does not think there is anything there now.

Ms. McKnight noted the parking lot landscape requirement. She feels this may take away even more. It is a raggedy area and not maintained. Mr. Rapi stated he has stakes in the ground where the property line is. Mr. Ruth noted he hears the point on the As-built but would like a letter from the petitioner that the work has been accomplished. Mr. Cramer stated he would do a certification from the petitioner that the work has been completed.

Ms. McKnight stated she would like an As-built and pictures of the fence and guard rail. Mr. Cramer stated that is an expensive item and if they certify when it is done with pictures that should be fine. Ms. McKnight noted the approved plan shows 7 spaces not 8 and a landscape area with a tree. They have been shown nothing. She would like a few decent looking plants put in. Mr. Cramer stated they would put something where the bump out is.

Ms. Newman reviewed the changes: a condition for certification of the fence, curbing and railing; a landscape area; the height of the fence dropping to 4 feet at Mellen Street and an exhibit to reference the original plan. Mr. Cramer stated the height is consistent. Mr. Ruth noted they should add a sentence at the end of condition 4 that in all events the petitioner will be obliged to adequately screen with approximately 4 to 6 feet of fencing.

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

VOTED: to grant the requested amendment to the original decision with the changes discussed tonight.

Review and Approval of Easement: Major Project Site Plan Review No. 2011-01: Wingate Senior Living, 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).

Ms. Newman noted they are not ready to go forward. Ms. McKnight noted the easement limits the obligation on the petitioners to maintain the sewer line. Roy Cramer, representative for the applicant, stated the intended obligation was to maintain the sewer line beginning at Wingate and it going until it met the municipal sewer. It should be geographical. It should not be "until" but "at the point." They never thought it would become a public sewer and always thought it would be A to B.

Mr. Cramer clarified in the decision Wingate has the right to go in and do it. He noted they could do a conveyancer's affidavit to clarify the ambiguity. Mr. Eisenhut stated he did not think they need it on record but a letter to the Board to put in the file should be enough. Ms. McKnight stated if they could get it recorded then a future buyer of the property doing the title would see the affidavit. Mr. Cramer stated he will prepare an affidavit. He feels if they can get it on record that would be good. If all else fails he will do an amendment.

Minor Project Review for Outdoor Seating: Petit Needham, LLC d/b/a Petit Robert Bistro, 298 Harvard Road, Bolton, MA 01740, Petitioner (Property located at 45 Chapel Street, Needham, MA).

Raji Spencer, the applicant, noted this is for outside patio equipment. They were requested to submit a formal application. There are certified drawings from the architect as well as approval from the Design Review Board. They are using the existing chairs that have always been there. There will be 8 tables, 30 inches in diameter, enclosed by a 36 inch high fence that is removable. They are trying to get umbrellas in but need to speak with the manufacturer about drilling the holes in the tables.

Ms. Newman noted one issue is the access is not compliant with the American with Disabilities Act. They need to have a 48 inch clearance. This needs to be ADA compliant. Mr. Spencer stated the architect told him the area by the door was ADA compliant. Two tables were removed to make it compliant. Ms. McKnight clarified the total number of seats existing inside is 100 and 20 outside. She asked if that is ok with the decision. Ms. Newman stated it is compliant.

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

VOTED: to delegate to the Planning Director the authority to grant approval outside the meeting for ADA compliance and 16 seats.

8:10 p.m. – Article 1:PB Amend Zoning By-Law – Definitions
Article 2:PB Amend Zoning By-Law – Dimensional Regulations
Article 3:PB Amend Zoning By-Law – Off-Street Parking Requirements
Article 4:PB Amend Zoning By-Law – Definition of Structure

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Devra Bailin, Director of Economic Development, stated they held a public hearing before and these were put off. She noted artist is defined in the By-Law as a professional but the Building Inspector determined they are not. She stated it is a fairness issue and this is an attempt to restore the balance in the By-Law. She noted the By-Law defines a professional but not a studio. Mr. Ruth asked if it is a moot issue. Ms. Bailin does not think so. There is an institutional practice they continue to follow. Mr. Eisenhut asked if artists are going to be able to put up a sign. Ms. Bailin noted she feels they could. There is no restriction on the professional use. Mr. Jacobs stated his problem is the definition of professionals. An artist does not belong. For all others state certification is required. He does not think this belongs in the professional listing. He is not sure this is a good way to fix the problem. Mr. Warner commented if an artist is teaching he is doing a public service.

Upon a motion made by Mr. Ruth, and seconded by Ms. McKnight, it was by the five members present unanimously:
VOTED: to close the hearing on Article 1.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by the five members present unanimously:
VOTED: to recommend to Town Meeting adoption of Article 1 as worded.

Ms. Bailin noted they held a hearing on Article 2. It clarified the grandfather protection status for inadvertent takings. In the Highland corridor they anticipate takings. Mr. Warner clarified it prevents landowners from being punished. Mr. Eisenhut noted for the record there were no members of the public at the hearing.

Ms. McKnight noted by this taking you may render properties non-conforming. They should have something like this adopted in the By-Laws. She noted the hyphen should be removed between third and party.

Upon a motion made by Mr. Warner, and seconded by Mr. Ruth, it was by the five members present unanimously:
VOTED: to close the hearing.

Ms. Bailin noted Article 3 is a parking lot illumination correction and has been discussed before.

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.

Ms. Newman noted Mr. Jensen is the petitioner for Article 4 and he is not here tonight. She would like to continue this hearing.

Upon a motion made by Mr. Ruth, and seconded by Ms. McKnight, it was by the five members present unanimously:
VOTED: to continue the hearing for Article 4 to April 9, 2012.

Discussion about Proposed Zoning By-Law Amendments:

- **Flood Plain Amendment**
- **Mixed Use 128 Dimensional Changes**

Ms Newman noted this is the FEMA line versus the town flood plain lines around Fuller Brook primarily and along the Charles River. There is a small change in the line. The flood line is the 100 year line FEMA established. Mr. Warner suggested it be billed as a correction. FEMA has gone over the proposed new lines and the Board should go along with it.

Mr. Ruth stated his concern is there are substantial land use implications. This is always a moving target. There are no right answers to this. Ms Newman suggested they could embed FEMA's maps in the towns' district.

Ms. Newman noted the relief valve is still there in both cases. Option one is adopting FEMA. Option 2 is keeping in place the town district and calling out FEMA. Mr. Ruth stated he is arguing to not make a substantial change. Ms. Newman stated she did not know the history of how the districts were created. Mr. Ruth commented he did not want to look at it any further. Ms. McKnight commented it is a flood plain area. On page 58, they should just take out the 100 year flood plain elevation. All agreed.

Ms. Newman stated she will take Option 2 and put it for a public hearing in April. They could do Norfolk County Flood Insurance Rate Map and the Town of Needham Zoning map. This was agreed.

Ms. Bailin noted further research was needed for the Mixed Use 128 Dimensional Changes. They held a symposium last month and not a lot attended. She noted there was a consensus density and height should be the same as the New England Business Center. All agreed. She has created parity between the 2 districts.

Mr. Ruth commented he fears it does not do anything because the lots are so small. Mr. Jacobs noted he was part of the CEA and has already contributed. Mr. Eisenhut thinks they need to slow down. This is only the tip of the iceberg. He feels they are not at all similar. There are physical constraints and smaller lots. The area should have smaller more restricted dimensional changes. They need to look at this more carefully. Ms. Bailin noted there are some major players who are looking for changes on this side. Studies have already been done of what can be built.

Mr. Eisenhut stated he feels it is best for the town not to have massive buildings next to small buildings. He feels it is premature. He commented he is not opposed to changes but not to this extent. Ms. McKnight commented they should look at what they did with the downtown overlay district for Mixed Use 128 for those over one acre and leave the current use alone. Mr. Eisenhut stated it was an excellent idea but they cannot do it for May. Ms. McKnight agreed.

Ms. Newman noted they have decided to go forward with the downtown study. Mr. Jacobs stated he feels Ms. Bailin is accurately portraying the results of the symposium except there was not a great turnout. It is a very limited sample. Ms. McKnight noted she never read the Goody Clancy reports and feels she should. Mr. Eisenhut noted they should aim for the fall with this. Mr. Ruth would be willing to try for November but does not feel they are ready. Ms. Bailin will tell the CEA they do not want to take it up now but will try for November.

Amendment to the Subdivisions Regulations and Procedural Rules of the Planning Board.

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

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

Ms. Newman noted under Chapter 44 Section 53B they request applicants to pay fees at the Planning Board discretion to get outside consultants to assist. Mr. Eisenhut noted the e-mail from Mr. Jacobs was not incorporated. The Zoning Board of Appeals and the Conservation Commission already adopted this.

Mr. Jacobs stated if the Planning Director received an application and feels it needs a peer review he would not question her. He would delegate the authority to her. He does feel that his comment 8 in his email that suggests in section (b) they use the language as written as opposed to the more limited language in the introductory paragraph is important. Mr. Warner and Ms. McKnight agreed.

Mr. Jacobs stated the language he suggests in comment 9 that says “and to ensure compliance with all relevant laws, ordinances and regulations” should be used. Comments 10 and 11 are small points. Comment 12 is a small point but for due process they should have something in there with a Board of Selectmen requirement. Ms. Newman noted comment 5 and asked if she can make a determination for peer review. The Board members agreed. She added in the language of comment 9 they should insert “all relevant By-Laws.”

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

VOTED: to approve with the changes discussed.

Board of Appeals – March 29, 2012

Charles and Kerry Hurwitch, 46 Edgewater Drive, Needham, MA – 46 Edgewater Drive.

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

VOTED: “No comment.”

Discuss MBTA Service Cuts and Fare Increases.

Ms. McKnight proposed the Board send their own letter to the same 3 people listed on the MBTA letter stating the Board on 3/20/12 reviewed the letter from the Board of Selectmen and the Town’s Transportation Committee to the Senators and Representative and concur with the comments and recommendations in the letter. All agreed.

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

VOTED: to send the letter as discussed.

Conversation about Deminimus Change processes.

This will be tabled until next time.

Minutes

Ms. Clee stated she will give out the minutes in advance of the meeting. The members can give her any changes at the meeting. She will make the changes and send them in the next packet for a vote.

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

VOTED: to approve the minutes of 11/1/12 and 12/6/12.

Report from Planning Director.

Ms. Newman noted a fall course is likely with MIT. She has given the members a draft of the 40B draft guidelines, which are being revised again. She wanted to give them a head up she will be putting it on an agenda for a future meeting. They want to know where the Board feels it would be most appropriate for higher density housing or larger projects.

Ms. Newman noted the fitness center on Dedham Avenue is ready to go in.

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

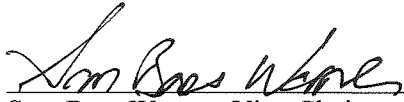
VOTED: to authorize the Planning Director to issue an occupancy permit when she receives the architects' certificate.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, 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 cursive script, reading "Sam Bass Warner", written over a horizontal line.

Sam Bass Warner, Vice-Chairman and Clerk