

NEEDHAM PLANNING BOARD MINUTES

December 15, 2014

The regular meeting of the Planning Board held in the Charles River Room, Public Services Administration Building was called to order by Martin Jacobs, Chairman, on Tuesday, December 15, 2014 at 7:10 p.m. with Messrs. Eisenhut and Warner and Mss. McKnight and Grimes as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Public Hearing:

7:00 p.m. – Major Project Site Plan Special Permit No. 2014-11: French Press, LLC, 45 Chapel Street, Needham, MA, Petitioner (Property located at 74 Chapel Street, Needham, MA).

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

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

Peter Barbieri, representative for the applicant, noted this is a retail building with existing space of 1,858 square feet. This application is a conversion to a bakery with eat-in and take-out with 28 seats. It is retail to retail. There will be an awning change for signage and a door is the only other exterior change. The hours will be 6:00 a.m. to 6:00 p.m. 7 days per week. There is no site plan review as there are no exterior changes. There are 45 parking spaces for the overall building. There is no parking on site. He noted the By-Law does not allow more than one non-residential use.

Jay Spenser, owner and operator of Petit Robert, stated this request will be moving their bakery and pastries to this spot. They will be moving the bakery out of the 45 Chapel Street shop to 74 Chapel Street with the addition of coffee to go along with that. They will typically be open 7:00 a.m. to 4:00 or 5:00 p.m. depending upon demand and need. He may extend the hours which is why he is asking for longer hours until 6:00 p.m. He will see how the business overlaps with his current business. He stated there will be a limited food component – croissants, scones, muffins, take away cakes and things like that.

Mr. Jacobs noted the following correspondence for the record: a letter from Attorney Peter Barbieri, dated 12/8/14; a letter from Attorney Roy Cramer, representative for the applicant, dated 12/8/14; an email from Tara Gurge of the Board of Health, dated 12/8/14; an email from Police Lt. John Kraemer, dated 11/26/14, noting no safety concerns; a letter from Town Engineer Anthony DelGaizo, dated 12/11/14, with no comments or objections; a letter from the Needham Business Association/DiscoverNeedham.com, dated 12/12/14, in support; a draft decision and a second draft of the proposed decision.

Ms. McKnight asked whether this proposal is in the area where Taylor Stationary is and was informed that is where the proposed space is. Ms. Newman noted trash pickup and stated the existing dumpster is on the sidewalk. Mr. Barbieri stated the bakery will have 6 gallon trash barrels. He noted in the alley half way back the bakery will have an enclosure for barrels. Ms. McKnight asked about trash pickup. Mr. Barbieri stated the applicant will have to wheel the barrels out. Ms. Newman asked if the existing dumpster will be staying. Mr. Barbieri noted the dumpster would be staying. The dumpster belongs on the adjacent property.

Mr. Jacobs noted in Section 1.5 the applicant is installing an awning with signage. In Section 1.6, it should be seven days not six. In Section 2.1b, the word “footage” is missing. Mr. Barbieri noted in Section 2.1a there is no dumpster. There will be a large barrel. Mr. Jacobs noted in Section 3.7, the applicant has tidied up the language. Mr. Barbieri noted in Section 3.10, the baker will usually be in around 11:00 p.m. There may be an assistant a few hours later. The municipal parking is too far and the applicant would not like that. He suggested the section should say “parking passes for those employees who do not have public transportation.” Mr. Jacobs stated no member of the Board has an issue with municipal parking. Ms. McKnight asked how do you monitor public transportation riders.

Ms. Grimes stated it does not make sense to make the applicant buy passes. Ms. Newman suggested a condition that acknowledges the applicant transports. Ms. McKnight asked if passes are provided on an annual basis and was informed they are. Ms. McKnight asked if the Board could get an annual report on the passes issued. Ms. Newman stated the town is trying to get employees to park in satellite lots. Mr. Jacobs noted the decision could say Lincoln Street and Dedham Avenue lots and not the locations noted above. Ms. Newman agreed.

Mr. Barbieri stated Section 3.11 is moot as all utilities are already in. Mr. Jacobs noted in Section 3.14 there is no title to the Petitioner. It should be the owner. Mr. Barbieri noted in Section 3.12 the dumpsters should be changed to barrels and in Section 3.13 the trash pickup should be as needed not 2 times a week. Mr. Jacobs stated the precedent is 2 times per week and he would like to leave it.

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

VOTED: to close the hearing.

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

VOTED: to grant a Major Project Site Plan Special Permit under Section 7.4 of the Needham Zoning By-Law; the requested Special Permit under Section 3.22 of the By-Law for an eat in/take out establishment accessory to a food retail operation in the Center Business District; the requested Special Permit under Section 3.22 of the By-Law for more than one non-residential building and use on a lot; the requested Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Off-Street Parking) and grant a waiver of 45 parking spaces.

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

VOTED: to accept the draft decision with the modifications and changes discussed.

De Minimus Change: Major Project Site Plan Review No. 2012-05: MMM Property LLC, 7 Harvard Street, Brookline, MA 02445, Petitioner (Property located at 916-932 Great Plain Avenue, Needham, Massachusetts).

Robert Smart, representative for the applicant, noted after the last meeting he filed an application for further site plan review asking for deminimus modification of the 2012 decision. He stated the applicant is looking for a permanent Certificate of Occupancy so the owner can sell the Great Plain Avenue building. He feels the applicant has done everything he can and there is no reason to hold up the Certificate of Occupancy. Mr. Smart noted the audio visual equipment has not been installed. The applicant will continue to lease parking spaces off-site for the 2 tenants until the installation is done.

Ken Mackin, owner, stated he has striped the lot and added signage including one that prohibits a left hand turn. A final As-Built has been filed. Ms. Newman stated the Board should approve a deminimus change. The utilities are all in, they have given an As-Built plan, the parking lot is striped and all signage is in. In the interim, the applicant will give monthly affidavits regarding the continuation of employee parking. She would like the Board to authorize her to issue a Certificate of Occupancy once the Building Department has gone out and inspected.

Mr. Mackin stated the audio will be installed by the end of the month. Mr. Smart stated he would like the relief not be contingent upon the other owner. Ms. McKnight commented she does not see a need for a condition if the applicant agrees not to use the driveway. Mr. Eisenhut stated he agreed with that.

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

VOTED: to determine the request for a modification to a Major Project Site Plan decision is a de minimus change.

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

VOTED: to authorize the Planning Director to issue a permanent Certificate of Occupancy once Engineering has gone out and done a site inspection and informs her the site has been completed in accordance with the As-Built plan.

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

VOTED: to grant an amendment to the modification of the Major Project Site Plan decision as outlined in Attachment A.

Public Hearing:

7:30 p.m. – Rockwood Lane Definitive Subdivision: Wayside Realty Trust, Chris Kotsiopoulos, Individually and as Trustee, 36 Rockwood Lane, Needham, MA, Petitioner (Property located at 36 Rockwood Lane and 5 adjacent parcels, Needham, MA, Assessors Plan No. 17 as Parcels 22, 23 and 24 and Plan No. 20 as Parcels 57, 60 and 61). Please note: This hearing has been continued from the June 10, 2014, August 6, 2014, September 2, 2014, October 7, 2014 and November 5, 2014 meeting of the Planning Board.

Mr. Jacobs noted the following correspondence for the record: a letter from Gregg Fradkin to Planning Director Lee Newman, dated 12/8/14, regarding his property at 99 Tudor Road; a letter from John Lee and Susan Liang, of 85 Richard Road, dated 12/8/14, to the Planning Board with concern with the drain in front of the property; a packet of documents including a draft Quit Claim Deed, a draft Declaration of Trust/Homeowners Trust and a draft Declaration of Restrictions; an email, dated 12/15/14, from Don Boroson, of 139 Tudor Road, to Planning Director Lee Newman and Assistant Planner Alex Clee, with comments; a letter, dated 12/15/14, from Robert Smart to the Planning Board, with comments and proposed further edits to the documents; and a letter, dated 12/15/14, from Town Engineer Anthony DelGaizo noting no objections to the endorsement of the subdivision plans. Mr. Jacobs noted there had been a request by Ms. McKnight for the Board to be supplied with the minutes of the meetings where this matter has been taken up.

George Giunta Jr., representative for the applicant, stated there were 2 major areas after the last meeting. One had to do with the documents. He stated, as the Board knows, they had a good working meeting with regard to refining the documents and he feels comfortable with them. He noted the other issue was Engineering had not completed their review. Engineering has now completed their review and have no comments or objections to the design.

Mr. Eisenhut noted there should be an escrow discussion. Peter Barbieri noted they put a requirement in the Trust that the applicant needs a capital reserve of at least \$5000 at all times. Ms. Grimes stated Robert Smart is suggesting the town hold \$10,000. She noted the Town does not want to hold money. The Town would like the Association to hold the funds but the Planning Board would have the right to use the money where needed. The Board has that right within the documents. She stated the Town has found \$5,000 was an adequate amount.

Mr. Giunta Jr. noted Mr. Smart requested a full set of restrictions be attached to every deed. He has an objection to that. He noted Mr. Smart had an issue with the 85 Richard Road drainage and the effect on the catch basin. They have looked at that issue. It was determined the drainage is decreased to that catch basin and is not likely to be an issue.

Alicia Zukowski, of Samiotes Engineering, stated she has provided calculations to Engineering. The Town Engineer has reviewed and agreed that because of the drainage structure, with a regrading of the site, it will take longer for the rain water to get to the basin. The calculations show about 10% less water than existing conditions.

Mr. Giunta Jr. stated, with regard to the landscape letter for 99 Tudor Road and Lots 4 and 5, he feels the landscaping provided is adequate. The applicant is not inclined to add more.

Michael Radner, landscape architect, stated he feels they have provided an adequate landscape buffer with the addition of 40 trees. There is a mix of evergreens and deciduous trees along that edge placed on the high side of the retaining wall so they sit level with the neighbor's property. Mr. Jacobs stated he would like Mr. Fradkin to look at the landscaping. Mr. Fradkin stated there is a gap in the center that led him to believe there was inadequate screening. Mr. Radner noted the applicant is not touching the existing woods but they will space the trees out so there is no gap.

Janet Bernardo asked how big the trees will be. Mr. Radner stated the arborvitae will be 4 to 5 feet and other trees will go in at 8 to 10 feet at the time of planting. Ms. Newman stated the applicant will need a plan modification or she can put a condition in the decision that the buffer cannot be seen through.

Mr. Radner stated there was a concern at the last meeting about a condition of the drainage ditch construction and what happens before the final vegetation is planted and grows in. Mr. Radner stated he did a letter that lays out the construction sequence in a very general way. It states first the erosion control goes in, then the grading happens on the site, then the retaining wall will be built, the existing soil is taken out and the new soil is brought in. Then they are building foundations. He stated the point is at no time during construction did the rate of run-off exceed what is in the pre-existing conditions. Vegetation will be established during construction. He noted infiltration happens all the time during construction. Ms. Newman stated she is ok with a condition that there will be no increase in run off. This was agreed.

Ms. Bernardo stated she was hoping Town Engineer Del Gaizo would weigh in on the sequence. Mr. Jacobs stated he was sure the Town Engineer will comment. Ethan Cash, of 67 Richard Road, stated the Declaration of Restriction has one paragraph that says all single family dwellings will have a minimum of 3,800 square feet of living space exclusive of garages, breezeways, attics and accessory structures. He asked why there is a minimum and no maximum. Mr. Barbieri stated there was a common scheme that was created and those numbers were in the footprints.

Ms. McKnight stated there were some restrictions in the documents that were not asked for by the Board. The Planning Board is not asking for a minimum of 3,800 square feet but has no objection. Mr. Cash asked if there should be a maximum that follows the minimum. Mr. Jacobs asked if there is a maximum in the By-Law. Mr. Barbieri stated that any change required the approval of the Homeowners Association as well as the approval of the Town Engineer or the Planning Board.

Mr. Jacobs stated the town has the right to have a say on any change that will affect drainage. The town has the ability, and the right, to go in and fix any issues with the drainage and charge the land owners for the work. He does not want to say no accessory structure can be put in because some may not impact drainage. Lynn Feigenbaum, of 88 Richard Road, asked how anyone would know this. Ms. Grimes noted to put up a shed would need a permit and the Building Inspector would know. The applicant would have to prove there would be no negative impact. Mr. Barbieri stated the town also has annual inspections. A gentleman asked if there were any penalties to the homeowners. Mr. Eisenhut stated the town would charge the homeowner for any work. Mr. Jacobs stated the documents are setting standards for the lot owners.

Linda McNeilly, of Tudor Road, asked if there were any types of structures people can build without getting approval from the town. Mr. Jacobs stated all construction requires approval from the town and noted the neighbors will be the Board's eyes and ears.

Dan Boroson, of 139 Tudor Road, stated this is a residential area. He asked the Board to consider that if this was a 10 year project it would be industrial. He feels 2½ years of construction is industrial. Mr. Jacobs stated construction taking place on site does not change the zoning on site. The Board has included quite a list of conditions about how the applicant can go about doing this project. The applicant will do the best they can. Ms. Newman commented 2 years with an extension is common for this type of project.

Joe Lovett, of 59 Richard Road, asked for an update on if there will be blasting and chipping. Mr. Barbieri stated there would likely be some. There will be pre-blasting notifications and inspections so everyone will know. Mr. Warner stated the Fire Department follows all the blasting rules.

Bonnie Shur, of 37 Richard Road, asked if the drainage system and road systems were the 2 things that are the first to go in. Ms. Zukowski noted the first thing to happen is soil erosion control so there will be fencing, a silt fence and hay bales to protect the abutters from construction. After soil erosion is in place, there will be catch basins to protect the street then the clearing will start.

Ms. Shur asked about the timeline and when all that will happen. Mr. Barbieri stated once the project is approved it will move forward. He is thinking it will be this spring. Mr. Giunta Jr. stated within one year a good part of the infrastructure will be done. About 2 months after that the rough grading on each lot will be done. Ms. Newman stated it would be helpful to merger the timeline with the sequence to get a better idea.

Ms. Feigenbaum stated last Tuesday brought a complete flooding of her basement. She had no issue last year. She appreciates the consideration the Planning Board is giving to the project but this is a serious issue. Janis Sklar, of 60 Richard Road, asked who will be responsible for damage done like this when it was probably because of what has already been done. Mr. Jacobs stated she may want to speak with a lawyer or her insurance company.

Ed Rubin, of Richard Road, stated he has been there for 25 years. He has no sump pump but had water rising. He put in a pump and it pumped for 12 straight hours. He attributes this to the clearing going on. He has a small pond in his yard. He feels there should be no further construction until the swale is completed and they see if it works. He does not feel the other parties have been prepared. Mr. Jacobs encouraged everyone to think about the past as separate. The Planning Board had nothing to do with what happened 2 years ago with the tree cutting. He noted the Board is here to look at the application before them. The abutters may have rights as a group but the Board is not looking at that here. Mr. Rubin stated the Board needs to address problems before the applicants do any more work. Mr. Jacobs commented he is hearing the problems should be reduced once the applicant starts the work.

Martin Sklar, of 60 Richard Road, asked if the Board could break off a portion of the project and approve a subset of the project immediately and ok the drainage first since this is an immediate issue. Mr. Eisenhut stated the Board has to act on the application before them. There are certain parameters the Board has to work with. Ms. Sklar stated everything is interconnected. Mr. Sklar stated the owner went ahead on his own and caused this problem. He should be made to put the drainage in and address the issues. Mr. Eisenhut stated he does not believe the Planning Board has legal authority to piecemeal this project.

Ms. McKnight stated the covenant will not allow the sale of lots until all work is done in accordance with the plans or a bond will be set and no lots released. Mr. Warner stated the owner was removing trees and breaking rock and somebody stopped him. He asked who stopped him. Ms. Newman stated the town did. He wanted to remove soil and was told he could not do that. He then filed a subdivision application. Mr. Sklar stated he is not asking anything be done. He wants them to advance the drainage piece of the project and get it done as soon as possible. Mr. Jacobs stated he is not sure the Board has the authority to do that. He asked if it makes sense or is it all interchangeable. Ms. Bernardo noted the swale should be one of the first things done at Richard Road.

Stacy Blasberg, of 59 Richard Road, stated a variety of issues have come up. She wants a site overseer appointed and protection for the existing trees. She wants to make sure they are not lost. Ms. Newman stated she will have money in a fund to hire a construction manager to be on site. Mr. Jacobs asked if anything has been done about the stop sign. Mr. Barbieri stated the applicant has no problem doing a stop sign but they do not want to do a speed bump on the private portion.

Ms. Blasberg asked about the timeline of the decision. She asked if the abutters get to see it and she asked how they can appeal. Mr. Jacobs stated the Board will take a vote at some point, possibly tonight. The Planning Director will write a decision with all conditions and a draft will be passed around. He stated a copy could go to

Attorney Smart and the abutters could review it. It will then be signed by the Board, put with the Town Clerk and there is a 20 day appeal period. If there is no appeal, it can go forward. If it is appealed it is in the hands of the court.

Ms. Clee, Assistant Planner, stated anything received in the file is public record for viewing. Kurt Lockwood, of 131 Bird Street, stated the decision is a legal document. Ms. Newman stated it includes all exhibits, plans and any modifications and lays out the conditions imposed. An abutter stated they appreciate the time, effort and thought going into this. He asked why there is no body that protects a homeowner without having to hire a lawyer. Mr. Jacobs stated the Building Inspector is charged with enforcing issues. He noted much of what goes on between neighbors ends up in court. Ms. Newman stated there are other towns that have By-Laws that deal with erosion control and storm water management. Needham is in the process of moving in that direction. They all realize that is a hole that needs to be filled.

Mr. Sklar commented this is all predicated on work that was done illegally. This is not a neighbor to neighbor issue. This has been exacerbated by the work that was done illegally and without authorization. Mr. Jacobs stated everyone understands that. Mr. Sklar stated the question is why should the abutters have to fight it. It should be dealt with by the town. Ms. McKnight noted it was brought to the attention of town officials and the officials put a stop to that.

A motion was made to close the hearing but hold it open for the limited purpose of accepting information and sequence with a timeline to be reviewed by engineering and correction of legal documents. Ms. Bernardo stated the Board should make sure all know that once the hearing is closed the Board will not accept any more information. Mr. Fradkin noted the landscaping, also. Ms. Newman stated it will be part of the modification and included as part of the vote.

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

VOTED: to close the hearing but hold it open for the limited purpose of accepting information and sequence with a timeline to be reviewed by engineering and correction of legal documents.

Ms. Newman stated it will be continued to January 20 for the review of the draft decision. Ms. Blasberg asked if a copy could go to Attorney Smart.

Discuss Zoning Amendments for Annual Town Meeting.

Ms. Newman stated there is a request by Mike Tedoldi to do something similar to what Bob Rinaldi did in Needham Center. The applicant wants to be able to put housing in the half story and extend the dormer provision to that half story so he can utilize it along Chestnut Street. She noted the draft zoning article allows for that. Ms. Newman reviewed the amendment. She stated there have been some problems with the 30% dormer rule. Building Inspector David Roche is recommending the 30% rule be measured as a function of the total length of the story or the total length of the second story. There is also a provision that it be set at a different plane level than the story below. She noted there are 2 different definitions – one for residential and one for what is happening here. She noted the 2 ideas need to get merged. She wanted to give the framework.

Ms. Newman noted the unit at Great Plain Avenue and Maple Street turned out very well with this provision. She knows there is a concern with Garden Street. She asked if the Board wants her to advance this and submit it to the Selectmen. Ms. Grimes stated the Board wants it merged with large houses. Ms. Newman agreed. She stated the Board should wait to make sure the two are consistent.

Request for Reduction of Bond: Major Project Site Plan Special Permit No. 2012-04: Needham Bank, 1063 Great Plain Avenue, Needham, MA, Petitioner (Property located at 1055 & 1063 Great Plain Avenue, 10 Eaton Square, 232 & 244 Garden Street, 0 Garden Street, 0 Eaton Square, Needham, MA).

Ms. Newman stated she has a letter from Engineering and one from Delphi Construction. Some lights installed were damaged. The applicant has ordered the parts for the repairs. One tree also needs to be replaced. She feels the Board could release all but \$25,000. Mr. Jacobs asked if the bank has seen this recommendation. Ms. Newman noted the bank has not seen the DPW recommendation.

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

VOTED: to release the bond as set forth in the Town Engineer's letter of 12/15/14 recommending holding \$25,000.

ANR Plan – Town of Needham, Petitioner (Property located at 300 Hillside Avenue, Needham, MA).

Ms. Newman noted this was off the agenda.

Report from Planning Director.

Ms. Newman noted there is discussion of a budget and consolidation of the Planning Board and Community Development Departments. In the reorganization in 2010 the goal was to bring all together under one roof, share information and reviews and to have everything done in one place. There is a strong desire on the Town Manager's part to treat as one department. There is a concern with keeping Planning as separate. She is being asked again to merge into one department.

Ms. Grimes asked why the Planning Board would allow someone else to have control over their money. She feels it is prudent to keep the Planning Director with her own budget. Mr. Jacobs stated Ron Ruth had concerns giving up control of the money as an elected Board. At the time, Mr. Ruth had a concern the consolidation would pull the Planning Directors' time away from planning. Ms. Newman stated it has. She now works for the Town Manager. She used to work for the Planning Board. Mr. Jacobs stated he has never been asked for input on Ms. Newman's evaluation in the 7 years he has been on the Board.

Ms. Grimes stated she does not agree with consolidating departments and budgets. Mr. Warner noted the Planning Department is understaffed. The Selectmen are doing planning and are not equipped to do it. He stated the town needs more staff for planning. Paul Alpert, of the Conservation Commission, stated he was fascinated with this discussion. The Conservation Commission was not asked to have this discussion and no one has asked their opinion. He is glad to hear the Planning Board members do not want to merge. He feels the Board will get absorbed rather than the other way around. Mr. Jacobs stated he sees no strong reason to do it. Ms. McKnight stated Town Meeting can always reallocate funds. Mr. Alpert stated the Board would have to wait for Town Meeting in the spring. That is a problem if an issue comes up in December. Mr. Jacobs stated the consensus is they will not do it.

Minutes

It was noted Cultech was a brand name. It should be capitalized and one word. All edits will be given to Ms. Clee.

Correspondence

Ms. Clee noted the packet includes assessor's maps from Newton. One is where the playground is and the other is where the tower is. Ms. McKnight noted she wanted to comment on the meeting schedule. She is planning a trip in March but will catch up. She will be spending June in Colorado and it is too far to go back and forth. In August she is going to the cape for a month.

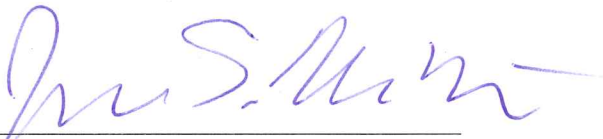
Mr. Jacobs asked if anyone had any thoughts on James Hugh Powers' letter. Mr. Warner noted one thought was to contact the VFW or to contact the Town Hall as he has helped them. Ms. McKnight stated she does not feel a

response from the Planning Board is necessary. She feels Mr. Powers should be called and told to contact his state representative. Mr. Warner commented they can help him individually but not as a board.

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

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

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Jeanne S. McKnight, Vice-Chairman and Clerk