

NEEDHAM PLANNING BOARD MINUTES

January 16, 2024

The Needham Planning Board meeting, held in the Charles River Room at the Public Services Administration Building and virtually using Zoom, was called to order by Adam Block, Chairman, on Tuesday, January 16, 2024, at 7:08 p.m. with Messrs. Crocker and Alpert, Ms. McKnight, Planner, Ms. Newman and Assistant Planner, Ms. Clee. Ms. Espada arrived at 7:20 p.m.

Mr. Block noted this is an open meeting that is being held in a hybrid manner per state guidelines. He reviewed the rules of conduct for all meetings. This meeting does not include any public hearings and public comment will not be allowed. If any votes are taken at the meeting the vote will be conducted by roll call. All supporting materials, including the agenda, are posted on the town's website.

ANR Plan – Gordon C. Russel, Petitioner (Property located at 12 and 18 Brookside Road, Needham, MA)

Mr. Block noted a letter from Attorney David Himmelberger stating this is to correct the property line for setbacks. Ms. Newman stated the lot line transfer would correct the deficiency. The plan is compliant.

Upon a motion made by Mr. Alpert, and seconded by Mr. Crocker, it was by a vote of the four members present unanimously:

VOTED: to endorse the ANR Plan as presented.

Determination of permitting process – Proposed revision to Major Project Site Plan Special Permit No. 97-12: Four Forty-Four Group, Inc., 444 Hillside Avenue, Petitioner (Property located at 442 and 444 Hillside Avenue, Needham, MA).

Ms. McKnight commented she had a concern that she is too close an abutter for this, but she does not feel it affects her property. Mr. Alpert has no issue with Ms. McKnight participating. All members agreed. Mr. Block noted a letter from Attorney George Giunta Jr., requesting a de minimus process. Mr. Alpert stated this is only adding parking as the applicant has added land to their parcel. The original permit dealt with the parking. Ms. McKnight and Mr. Crocker agreed. Ms. Newman is satisfied to advance this as a de minimus change.

Review of Needham Housing Authority Zoning Articles for May 2024 Town Meeting.

Mr. Block noted a letter from Town Manager Kate Fitzpatrick, dated 1/10/24, requesting the proposed Zoning By-Law not include restrictions related to age or disability. Attorney Robert Smart stated he made the changes discussed at the last meeting. He noted in Section 3.16.2, the clause with “regardless” was struck and Section 4.10 was an incorrect reference. It should be “through Section 4.11.” Mr. Alpert clarified that Section 4.1.5 was added. Mr. Smart added a definition in Section 3.16.3 © for multi-family housing. Ms. McKnight sees no reason for the definition of multi-family dwellings that still appears above. Ms. Espada joined the meeting at 7:20 p.m.

Ms. Block noted there was a definition for multi-family dwellings and Mr. Smart put in a definition for multi-family housing. Ms. McKnight feels “dwellings” should be “housing.” Mr. Smart noted the last sentence in Section 3.16.2 has multi-family development and that is not defined. Mr. Alpert stated the definition in Section 1.3 noted the project is defined as multi-family housing development and affordable housing units are defined. Ms. McKnight feels they would want to use that term. Mr. Block stated (b) multi-family dwelling will be removed and (c) multi-family housing definition will be moved to (b). Mr. Smart will add that in Section 3.16.2. He feels it should be multi-family “housing” development. All agreed.

Mr. Block asked if the Zoning Board of Appeals (ZBA) has permitting authority for multi-family housing. Ms. Newman stated it triggers site plan approval, so it is under the Planning Board. Mr. Block clarified the Planning Board shall be the permitting authority and multi-family dwelling shall be removed. All agreed. Mr. Smart noted, on page 2, Footnote 1, he

added “which setback shall provide a landscaped buffer” at the end. Mr. Crocker asked if the 0.5 parking spaces per unit was setting a maximum. Mr. Smart stated that is the minimum and there is no maximum. On page 3, Footnote 4, regarding mechanicals, he added “except roof-mounted solar energy systems.” Ms. Newman stated, in the Solar By-Law, they are getting rid of this language. She stated the reference for under roofs and the new phrase Mr. Smart added should be deleted. The Board discussed whether, if the proposed solar Zoning By-Law amendment Article passes, this would have to be deleted. Ms. Newman will do the solar Article first on the warrant, then this Article.

Mr. Block had no comments on the non-zoning article. Ms. McKnight expressed her concern at a previous meeting with removing the age and disability requirement. Now that the Select Board is in favor of removing it, she feels comfortable with removing the age and disability requirement.

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

VOTED: to send this Zoning By-Law, as presented to us tonight with the small changes made tonight, to the Select Board.

Ms. Newman feels the Select Board would vote at the next meeting to refer it back and the Planning Board can have the hearing at the 2/27 meeting. She noted the final draft of the map change and the new consolidated plan with the triangle piece of land included are in the packet. Engineering looked at it and she sent Mr. Smart the revised version. Mr. Smart stated the changes made sense to him. He felt it would be helpful to hear back from the surveyor if he was happy with the change. He has not heard back from him yet, but this is a minor point. Ms. Newman is fine with that. She noted the plans show concrete bound and iron rods in the updated package version that is online.

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

VOTED: to send the Warrant Article with the map change to the Select Board.

Review of Solar Energy Systems Zoning Article for May 2024 Town Meeting.

Mr. Block noted an email from Stephen Frail, Chair of the Climate Action Planning Committee (CAPC), dated 1/11/24, suggesting modifications to the small-scale ground mounted systems. Mr. Frail feels the Article as proposed violates state law. Mr. Block contacted the Town Counsel and he has written confirmation that the proposed By-Law as drafted is compliant with state law. He asked Town Counsel Chris Heep to summarize his understanding of the 2 violations Mr. Frail called out and provide guidance. Town Counsel Chris Heep said he does not feel violation is the right word. The existing zoning already allows small scale solar by right. He is not sure what the concern is. He understands the argument but does not agree with it. Ground mounted solar is not specifically allowed by 40A Section 3 or our current Zoning By-Laws. The By-Laws are silent on the use. His suggestion, if the will of the Planning Board and Town is to allow ground mounted solar in specific zones, is that a By-Law should be adopted and put in place, saying where it could go and how it could be constructed.

Mr. Block stated the Town can determine its own setbacks for by right use and if a use requires a special permit. Ms. Espada stated she and Ms. Clee looked at other towns and she does not remember any inconsistency with accessory use setbacks versus primary building setback as opposed to other setbacks. Ms. Newman is not sure. The applicants need to follow the applicable setbacks of the district. Sudbury requires a special permit if the solar structure is in the front yard. They have just said it must meet the dimensional setbacks of the district. All setbacks are different because of the lot sizes. Ms. Espada is concerned that, with a small lot, an applicant may not be able to do much. Mr. Block stated it is not broken out by conforming versus non-conforming lots. Ms. Newman stated the setback needs to be the setback for the district whether the lot is conforming or not.

Mr. Alpert’s recollection is as of right you can build to the primary setback. If closer to the lot line, it could be as close as the accessory setback and could be done by site plan review. Solar is in Chapter 40A, Section 3. Applicants make application to the ZBA. If it is impossible to meet the regular setback, the ZBA cannot deny it. It is not onerous and would meet state law. He feels the By-Law conforms. Mr. Crocker stated, in Chapter 40A, Section 3, ground-mounted is specifically called out and is a structure. Mr. Heep clarified the language of Section 3 in Chapter 40A has a number of

different uses. It says the Solar Zoning By-Law cannot prohibit or unreasonably regulate solar. It means they can reasonably regulate solar uses.

Mr. Crocker asked if a special permit would be considered unreasonable. Mr. Heep stated it would not be. It would leave it up to the Board to set the requirements. In Section 1.3 of the current By-Law there is no distinction between small, medium or large. The Planning Board needs to see how to regulate and where to allow. Ms. Espada understands for large solar there would be recommended regulations. For small solar the Board is making it more restrictive. Mr. Crocker noted there is nothing denying solar. Mr. Alpert stated that currently, the Zoning By-Law is silent, so a judgment call is made by the Building Commissioner. This gives him more guidance. Mr. Heep agreed with Mr. Alpert. The argument is small and medium scale are accessory use to residential. There are arguments for and against. It should be defined in a permissive way so property owners know where solar can go. If the Board and Town Meeting want to allow particular sizes and locations for solar facilities, it should be called out in the By-Law.

Ms. McKnight asked if they could say ground mounted solar arrays are allowed in the side or rear yard but not at all in the front yard. Mr. Heep believes it could be said under 40A, Section 3. Ms. McKnight noted, therefore, that granting by special permit is more generous than needs to be and is a reasonable regulation. Mr. Crocker stated in some situations where the only place it could be is in the front yard means the Town cannot regulate because it could not be anywhere else. Mr. Heep stated no property owner is entitled to put ground mounted solar in the front yard, but the Board could allow it in the front yard if they want to. Stephen Frail, of the Climate Action Plan Committee (CAPC), asked if the By-Law goes through with the proposed language, and the Attorney General determines it violates state law, would the whole thing be struck or just the language. Mr. Heep stated it would only be that part of the By-Law that gets struck.

Mr. Frail thanked the Board for all the work. The main reason he asked for this was to expand the use of solar. The former Building Commissioner had issued permits for ground mounted solar so there is precedent there. His feeling is Needham will be the test case for the state. He feels it is further restrictive of solar, saying it needs to be in the center of the property. He feels it would be found to be unreasonably restricting. The reasons for setbacks are for aesthetics and that cannot be regulated. If a special permit is required and it goes to the ZBA they cannot say no. He feels the Planning Board is creating a problem and would create a lot of work for the ZBA. He feels this is going in the wrong direction.

Ms. Newman stated the municipal uses could be left alone. Mr. Heep stated if it is allowed for municipal use it would need to be allowed for all municipal uses, if permissible for a certain size building, regardless of who the owner is. Ms. Newman noted there is a municipal exemption right now. Mr. Alpert noted to allow only on the other side of 128 would not be reasonable. There are buildings of that size in other areas of town. Mr. Heep feels there may be a policy-based argument to allow only for municipal. Ms. Newman stated it was originally allowed in the New England Business District, Mixed Use 128 District and Highway Commercial District. Then the Town wanted it for municipal buildings, so it was added for municipal. Special height requirements were put in those districts then added to municipal and there were special exemptions no matter where they are. Mr. Frail noted a 15-foot exemption for municipal is in the By-Law today. Canopies allow buildings to get closer to net zero.

Mr. Alpert stated the Town wants to improve municipal buildings. Roche Bros. and other buildings in town should be allowed to have the same as allowed on municipal buildings. If allowed on Roche Bros. he sees Maple Street residents filling the hearing. They could be talking about the roof of the hospital. Ms. McKnight feels it is fair to allow for municipal but not commercial buildings. She asked if the Town has an obligation to limit the carbon footprint of municipal buildings. Mr. Heep is not sure the Town has more of an obligation than anyone else. Ms. Espada commented money is received by MSBA for some projects. They require LEED and some other things, so this is heading toward net zero anyway.

Mr. Block asked who would support enabling building mounted roof canopies across all districts up to the height restriction of 15 feet above the current limit. A discussion ensued. Mr. Alpert noted applicants could have up to the maximum of the district. Ms. Newman noted the overlay is by special permit. Ms. Espada feels municipal buildings should be able to have up to 15 feet above and others should have by right up to whatever the overlay is. Mr. Alpert noted a building mounted canopy is a canopy. If it is within the height restriction of the zone it should be allowed without site plan review. If the building is at a by right height, the applicant should be able to put a canopy above that to the special permit height. Ms. McKnight stated with a special permit it could go to 48 feet. Mr. Crocker feels that is perfectly acceptable. Mr. Alpert

noted other districts can go up another 15 feet. Ms. McKnight feels they should be allowable in zones and can go to a higher height by special permit.

Mr. Alpert feels the canopies should be by right and it should say in the By-Law they are not buildings but accessory structures with zoning limitations. Mr. Crocker agrees. The Board discussed if a special permit would be necessary if the as of right height was 35 feet, the building height was 35 feet, the special permit height was 48 feet, and a solar canopy was installed above 35 feet but below 48 feet. Ms. Newman noted the current framework allows this on the other side of 128 and over municipal buildings. She asked if it could be expanded at a later date, as this solar zoning needs to get done. Mr. Block is concerned there will be amendments on the Town Meeting floor. All agreed the municipal exemption should not be changed.

Mr. Frail commented that the Board should make sure anything they write expands as of right for solar. Access to solar should not be restricted. Taking away the municipal exemption is going in the wrong direction. Mr. Alpert noted d) should say “in all other business and industrial districts building mounted solar canopy systems are permitted by special permit and also subject to site plan review” and add “may extend up to the applicable building height limits” and all by special permit. Mr. Frail asked what the setbacks are for canopies for municipal versus commercial and was informed there are no setbacks. Mr. Block stated on page 4, a flat roof with a predominantly zero pitch and asked if it should be a specific degree. Mr. Heep stated it is sufficiently clear for the Building Commissioner to apply.

Ms. Espada summarized the 3 issues: accessory setback, screening, and allowing in the front yard. Mr. Frail is saying it should be by right for all of it. Mr. Block stated he is ok to let the side and rear setbacks go to the setbacks for accessory structures. Mr. Heep noted the Board is allowed to regulate solar. It can say solar is not allowed in front yards and that will not be prohibiting solar. Mr. Alpert would leave it as it is with small-scale by special permit and medium-scale not allowed in the front yard. Mr. Frail feels that is a reasonable regulation and he would not challenge that. Mr. Block wants consensus of the Board. Mr. Crocker stated there needs to be clear space in front of the array. He does not have a problem if the array is screened. He feels that is perfectly acceptable. Ms. Espada is fine with a 5 feet setback on the rear and side with screening. Mr. Alpert agreed. Ms. McKnight would like to see some process if it exceeds 15 feet in height for ground mounted solar on page 5. Ms. Newman noted this language allows a 5-foot setback as long as it is no higher than 15 feet with a special permit over 15 feet. Mr. Alpert noted Sections 1.3 and 4.2 of the By-Law need to be changed. Ms. Newman asked what the intent is of the accessory setback as of right. Mr. Block noted in all districts small scale ground mounted systems can have a setback of no less than 5 feet from the side and rear yards provided at 5 feet there is screening. Ms. Espada added “up to the setback of the primary structure there needs to be screening.” Mr. Alpert clarified small scale setback is 5 feet and between 5 feet and the distance of the primary building setback there needs to be screening. He noted industrial business does not have 5-foot setback requirement for accessory use, so the property line is the setback for the district.

Mr. Heep stated if there is no site plan review in the By-Law it needs to say what the screening is. It should not be left undefined. Mr. Block noted it describes screening on page 5, Section 4 (c). It was agreed the height should be the height of the system. Mr. Heep stated all his issues have been addressed. Mr. Frail asked if a shadow is being created with screening if within the 5 feet. Mr. Crocker noted a fence should not be more than 6 feet high. There is no need to have the fence be 8 feet high. It was agreed the height of the screening should be 6 feet. Ms. Newman will make the changes and send out a new draft to all members and Mr. Frail. Mr. Frail thanked the Board for the great conversation tonight. Mr. Alpert would like Mr. Heep to look at Town Engineer Justin Savignano’s comments to see if they are reasonable.

Appointment to Charter Review Working Group.

Mr. Block stated the Select Board has an obligation to review the Charter. They are setting up a short-term committee and would like to set a time frame for regular reviews. He is willing to do that. The dates will be 2/7/24 and 2/21/24 at 5:30 p.m.

Upon a motion made by Mr. Alpert, and seconded by Mr. Crocker, it was by a vote of the five members present unanimously:

VOTED: to appoint Adam Block as the Planning Board representative to the Charter Review Working Group.

Minutes

The minutes will be reviewed at the next meeting.

Report from Planning Director and Board members.

Ms. Newman reminded the members there will be a HONE community meeting Thursday at 7:00 p.m. There are over 100 people signed up via zoom. Ms. Espada stated she would like all to participate.

Mr. Block stated it is becoming clear there is considerable dismay at the large house replacement of small homes in town. He recommends by the end of the summer the Planning Board come up with a plan to revisit the Large House Review. He feels it would be a vigorous public process. There would probably be 3 meetings before a community meeting. He reviewed the timeline he sees and the potential to set up a separate committee.

Correspondence

Mr. Block noted an email, dated 1/11/24, from Stephen Frail, regarding small-scale ground based solar arrays; an email, dated 1/10/24, from Town Manager Kate Fitzpatrick regarding Town Charter and By-Law Review; a notice from Westwood regarding a 1/9/24 hearing and a notice for a community workshop for HONE 1/17/24 at 7:00 p.m.

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

VOTED: to adjourn the meeting at 10:25 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Natasha Espada, Vice-Chairman and Clerk