

# NEEDHAM PLANNING BOARD MINUTES

August 14, 2024

The Needham Planning Board meeting, held in the Charles River Room of the Public Services Administration Building and virtually using Zoom, was called to order by Natasha Espada, Chairman, on Wednesday, August 14, 2024, at 7:00 p.m. with Messrs. Alpert, Crocker, Block and McCullen, Planner, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. Espada noted this is an open meeting that is being held in a remote manner per state guidelines. She 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.

## **MBTA Communities (Section 3A of MGL c. 40A) Zoning Initiative**

- **Overview of Comments Received from Executive Office of Housing and Livable Communities (EOHLC), Lee Newman, Director of Planning and Community Development and Town Counsel, Christopher Heep.**
- **Presentation of staff recommended MBTA zoning by-law revisions required to address comments received from EOHLC and Attorney General, Town Counsel, Christopher Heep.**
- **Presentation of Revised Zoning Changes Requested for 100 West Street, Tim Sullivan**
- **Overview of Site Plan Approval Framework and Planning Board Permitting Authority, Town Counsel, Christopher Heep.**

Ms. Newman stated a letter was received from the state with comments regarding livable communities. She had a conversation with Town Counsel Christopher Heep and Assistant Town Manager Katie King, who were there to clarify responsibilities, and she feels they are in good shape. There were some discrepancies with labeling. With the 110-foot setback for 100 West Street she wanted to make sure the state would allow the full 187 units on that site. The state assured her that would not be a problem and did not see the setback as an impediment. There is no change to that. The Board set the affordable housing provision at 12½%. The state staff looked it over and were comfortable with that percentage.

Town Counsel Christopher Heep noted the definition of family. The existing definition in the Zoning By-Law caps the number of unrelated occupants to either 3 or 5 and allows for up to 2 others. The EOHLC's position is the MBTA zoning cannot include a cap on a number of occupants. Section 3A notes all housing under the MBTA Zoning needs to be suitable for families with children and cannot be capped. Mr. Alpert commented he is amenable to have a provision for children but does not want to jump and say any number of college students. A discussion ensued regarding what prevents this from becoming a rooming house. Mr. Crocker noted there was something like a half-way house on Webster Street with multiple people living there. Mr. McCullen noted that was licensed by the state. Mr. Alpert stated it was allowable as an exception to the By-Law. Mr. Heep stated that is protected by state and federal law and unrelated to the MBTA Zoning. He noted, under EOHLC, age, or the number of occupants, cannot be limited. He was told by EOHLC they cannot impose a cap, and they would need to address the definition of family in other respects. The easiest is to eliminate the cap on occupants in the MBTA Zoning.

Mr. Alpert noted the Board could pass the zoning with the current language and have the state come back saying the zoning does not comply. Mr. Heep stated a lot of work went into this and very few comments came back. It would be a shame to take all that work and still be out of compliance. Ms. Espada noted the Massachusetts Building Code, and the Health Department, has a limit on the number of people. Mr. Block noted the Board should proactively call out the restrictions at Town Meeting. It would be productive and helpful for Town Meeting to know what other controls there are to prevent this. Mr. Alpert stated he has never seen a provision that the size of a bedroom can be limited and asked why they are concerned about that. Other issues noted were the numbers in the model dwelling unit per acre should not have been there, there are fields missing in the GIS fields and Town Counsel was asked to look at the site plan approval process the town has. Mr.

Heep stated he reviewed it but did not find anything wrong. He asked the EOHLC and was informed that was a boilerplate comment. He reviewed it and is comfortable.

Ms. Espada reviewed the draft and did not see anything that stuck out. Mr. Heep walked through the changes from the EOHLC comments, and the Attorney General comments. He noted a definition is being added to 3.17.3 for multi-family housing. The Board already has a definition of multi-family dwellings. There was a comment to reconcile the 2 comments. He took out multi-family housing from 1.3 and put in a new Section 3.17. Everything is internally consistent and 3.17 only complies to the MBTA Communities. On page 6 there is a change to 3.17.5.5. Changes were made due to a comment regarding a cap on occupants from a prior discussion. The language as drafted says the Town of Needham cannot impose age restrictions. Mr. Alpert noted a developer can restrict age. The question is can a developer put in a senior living community in an MBTA Community. Mr. Heep will look into the question of whether an applicant can put in an age restricted project. This should not be drafted as an age restricted project now. Mr. Alpert stated the job right now is to pass a zoning by-law that complies with the guidelines in the statute. The rest can be dealt with if a site plan review comes in front of the Board. Mr. Crocker feels it is better to know up front. Mr. Block would like Town Counsel to speak with the state and resolve if it is compliant for a developer to choose to restrict age and what the authority is for determining the parking standard. He wants the state to comment as he feels that is important.

Mr. Alpert commented that he reads the statute as they cannot have age restrictions on multi-family housing in the MBTA Zoning. Mr. Crocker noted the Board has to find out, if an applicant comes in with age restrictions, what happens. It will be good to get clarity. Mr. Heep noted multi-family housing is the use allowed for this zoning and multi-family housing does not allow age restrictions. Mr. Block feels it should say multi-family projects shall prohibit age restrictions. Mr. Alpert noted the definition of multi-family housing will be in this By-Law. He would suggest in the definition it include multi-family housing that complies with MA General laws Ch. 40A, Section 3A and the rules and regulations there under. Mr. Heep feels that is sufficient to address this concern. He noted “a building with 3 or more residential dwelling units in each building, that complies with the requirements of MGL Ch. 40A, Section 3A and the regulations and rules there under.”

Ms. Espada noted Section 3.17.9.1 on page 9. Mr. Heep stated the changes were in response to the Attorney General’s comments. He wants to make it extra clear that site plan review is under Section 3.17 only and not under Section 7.4 of the existing Zoning-By-Law. There is no harm in making it clear. In Section 7.7, the Design Review Board (DRB) section, it is intended MBTA projects will be subject to design review. That needs to be made clear. There will be a time constraint, so the DRB need to get their comments back quickly. Mr. Heep noted there are 2 map change warrant articles. The MBTA Overlay District is changed to Multi-Family Overlay District for consistency. In the Neighborhood Plans, the definition of mixed-use building in Section 1.3 has been revised. The existing definition speaks to districts where you can do that. This needs to be added into the existing definition as it is allowed here.

Mr. Heep noted the changes in 3.17.4.1 and 3.17.4.2, for the use of personal fitness establishments, which copies exactly the use in the existing district now. It duplicates exactly how it appears in the underlying zoning. Mr. Block stated a concern he has is a mixed-use building with residential above and a commercial use on the first floor. There is a high likelihood a parking waiver would be required. He is ok requiring that as a function of a special permit but does not want to make the use effectively prohibited. Mr. Heep noted it does not prohibit as it is permissive with a special permit. Section 3.17.4.1(b) makes clear a mixed-use building in the MBTA Communities must have commercial only on the first floor and mixed-use housing on all upper floors. This is not necessarily true for other mixed-use districts, so he wanted to make that clear.

Mr. Alpert stated the definition of a mixed-use building in the mixed-use overlay and other districts states retail must be facing the street. Ms. Newman feels that should be left alone. That definition was created for other districts that we do not want to change. Mr. Block noted where Bertucci’s is located is not street facing. Mr. Alpert stated if they want multi-family housing there it can only be done under the multi-family overlay and Bertucci cannot be there as it is not street facing. In 3.17.4.2 it should say “a mixed-use building containing commercial uses listed below on the ground floor whether facing the street or otherwise and provided that all upper floors shall be used as multi-family housing. In the revised definition of mixed-use in 1.3, a defined term subject to additional qualifications that may be included in the applicable overlay district. All members agree.

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

VOTED: to accept the recommendations with the changes made this evening.

Ms. Espada noted Attorney Tim Sullivan, of Goulston & Storrs, sent an email, dated 7/31/24, with some questions the Board had incorporated. Mr. Sullivan noted a number of things had been talked about, he revised the draft to address those and has submitted a revised draft. The first change incorporated was to clarify allowing for flexibility on the maximum front setback. It is 70% of the main datum line of the front façade and will maintain that 15 feet and, if more than that, it would need a special permit. Ms. Espada clarified the Board had the number recommendation at the last meeting. Mr. Sullivan noted there was a recommendation to require a special permit if there was a new curb cut on Highland Avenue or West Street proposed. He noted the requirement that the height overrun for roof top mechanicals be capped at 15 feet was put in so it is consistent with other districts. He noted an applicant can ask for a special permit for a fourth floor if peaked, stepped back or has another architectural element incorporated. In the prior draft it only referred to Highland Avenue, so he clarified it also applies to West Street. Ms. Espada noted that is also a recommendation the Board made.

Mr. Block stated this is the one site across town ready for change yet consultants for HONE stated it is unlikely to turn but we are imposing significant restrictions. He feels this is a defeat to the underlying principal act and could be problematic for the market. Ms. Espada stated the fabric of that area has to be followed. Mr. Block feels they should loosen the restrictions but Ms. Espada stated the Board has loosened restrictions. This is just clarifying some final issues. Mr. Block noted this pushes into the special permit process. Ms. Espada clarified only for the fourth floor and curb cuts. She noted at the last meeting the FAR was increased from 1.3 to the 1.7 that was requested and other things that were asked such as the height overrun and the datum line. These are some recommendations they requested to make it better and are now back to clarify. A discussion ensued.

Mr. Sullivan noted all changes talked about are for multi-family housing and not memory care/nursing. Mr. Alpert asked if, by having the fourth floor by special permit, is the Board violating the MBTA zoning law that says there cannot be a special permit. Mr. Sullivan stated no, as they are getting credit for only the 187 units that are as of right. Mr. Heep stated, to comply with the MBTA zoning, they need to set a floor for the amount of housing that can be built. If the Board wants to allow for more than that number, it can be done by special permit. Mr. Alpert noted all amendments are to Section 1.37 only. Mr. Heep stated there are a couple of options developers can choose from. They can choose one or the other but cannot mix.

Mr. Sullivan stated the initial comment on parking garages should be excluded for FAR. There was concern by the Board, if excluded in an as of right scenario, the garage would have to be screened. The change he proposed is garages that are screened, or parking in the interior portion of the building, would be excluded from FAR. If trying to exclude something else such as a portion of the garage that is not screened there would need to be a special permit requested. He feels they do need to carve a garage out of the FAR on this site due to how constrained it is. They are trying to work within that and address the Board's concerns with screening so that is what he is proposing. Ms. Espada feels that is fine because it is a small site and there is not much left of it. They should say "no part of the parking garage should be on either of the two streets." Mr. McCullen agrees with Mr. Block they are imposing restrictions counter to what is needed. He does not have a problem with any parking structures not being included in the FAR. He feels the garage would be along the tracks and not on Highland Avenue. Ms. Espada is fine with the way it is.

Mr. Alpert stated Highland Avenue is a pedestrian area. He agrees with Ms. Espada. With a screen people will still see a parking garage. Ms. Espada asked if the Board has a say in what the screening would look like. Mr. Heep noted that could be addressed in a couple of ways. Mr. Crocker noted a minimum standard objective could be spelled out. He asked why the Board is giving an allowance for parking they do not really want. Ms. Espada stated most are ok with parking not included in the FAR. She does not want to say no parking garage on either Highland Avenue or West Street. Mr. Sullivan commented the garage is not going to be on Highland Avenue and the housing units on the tracks. The site is only so wide. There will need to be structured parking on this site but how is it determined if it is on Highland Avenue or not. Ms. Espada suggested saying "screening compatible with the building." Mr. Heep noted screening could be many things such as vegetation or slats between the floors. If there is something in mind it is better to include it in the instructions. Mr. Alpert

does not like to do that. Screening today may not be available in 3, 4 or 5 years from now. It is aesthetics. Mr. Sullivan suggested using the language Ms. Espada proposed “screening compatible with the building.” Flexibility is important. It could be “screened in a manner compatible with the architecture of the building from Highland Avenue to West Street.” Mr. Crocker commented he would have to see what the public says.

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

VOTED: to accept the changes as recommended by Attorney Tim Sullivan with the added changes tonight.

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

VOTED: to send the Article to the Select Board, as revised under 40A, for the purpose of holding a public hearing on 9/5/24 on zoning at the Broadmeadow School.

**Review and approve final MBTA Communities zoning language for transmittal to Select Board and initiation of the public hearing process.**

Ms. Espada gave an overview of the site plan approval framework. Mr. Heep gave a brief rundown of site plan review, how it works, what the Planning Board power and authority is and he flagged some differences between site plan review and special permit review. It is important for the purposes of MBTA zoning. The MBTA can require site plan review but not a special permit. There is long-standing practice in Needham of the Planning Board doing both at the same time. The special permit type of zoning relief authorized under 40A, Section 9 applies to a use that may be allowed in some cases and may be disallowed in other cases. It turns on the discretion of the permitting Board. A site plan review type of review is a use by right. It does not exist in 40A. It was invented by numerous local by-laws all over Massachusetts some time ago. This is a use by right and can only involve reasonable regulation of the use and it can just about never involve an actual denial or rejection of use. He gave a quick history noting Prudential versus Westwood. Reasonable regulation and not outright prohibition is the first thing to keep in mind.

Mr. Block asked what is reasonable regulation and what did the court mean when it refers to reasonable regulation? Mr. Heep stated it involves imposing conditions on a use that are responsive to specific impacts associated with the use on a particular piece of property and that does not go so far as to interfere with the use itself, the density of use allowed under the zoning or what is effectively the use allowed by right. He gave the example of Castlehill Apartments versus the Town of Holyoke in 2006. He noted there are 2 exceptions to the rule: 1) when the applicant fails to submit the information required under the By-Law and 2) which is very rare, the project presents a problem that is so big it cannot be solved through the imposition of conditions on the project. An intractable problem is the term for this type of issue.

The Board discussed storm water and traffic impacts on and off the property and what the Board can do to mitigate off-site impacts. Mr. Heep noted the Board has some leverage through site plan review to require some off-site traffic improvements, *if* they are feasible and sufficiently affordable so as to not make the project uneconomical, and something that can be achieved by the applicant, and is specifically responsive to the specific impacts contributed to the road system by the particular project. Mr. Heep clarified that this list is not meant to be exhaustive or definitive, but rather examples. This would be studied on an application-by-application basis, supported by an expert traffic report, and reviewed by Town staff as well. Mr. Block feels the need to provide the framework that Mr. Heep just identified which includes there be a professional that has identified a specific problem arising as a result of these plans or as a result of a particular development. Mr. McCullen does not feel the Board would ever be able to have a traffic analysis done during the site plan review timeframe. Ms. Newman noted there is a 6-month timeframe but the Planning Board is usually much quicker than that.

Mr. Alpert stated, once 100 West Street is built, the Board knows there may not be issues at Central and West but there will be issues at Highland and West, especially West and Hillside and to some extent the MBTA crossing. He feels all members should keep that in the back of their minds. These are problem intersections now and the building is empty. Ms. Espada commented they should include that the Board wants the project done by a professional engineer. Mr. Alpert feels the intersection of Hillside and West will be a huge issue. Mr. McCullen informed the Board the Select Board approved a 4-

way stop, recommended by the Transportation Safety Board, last night. They are looking at the issue of whether doing a study of the queue of cars would back up onto the MBTA right of way and are looking at grant money to have signals coordinated. This would be happening anyway even without 100 West Street.

### **Board of Appeals – August 15, 2024**

#### **6 Brook Road – Tail Waggers Pet Care, Inc., applicant**

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

VOTED: “No comment.”

### **Discussion of & Vote to approve Large House Study Committee charge and committee composition.**

Mr. McCullen stated he took a look at the membership and the number 13 is an unwieldy number. Ms. Espada stated the Board reviewed the charge and composition at the last meeting. It was agreed to take off the Historical Commission as information can still be received from them. Mr. Block stated he spoke with Town Counsel and the Ethics Office regarding his occupation and if he can participate. He has accepted a position as Director of Real Estate for a non-profit based in Boston that develops low-income housing. He is no longer an active Real Estate Agent so he is not trading in Needham. On that basis he feels he can participate without conflict. He also feels such a large committee is not needed. He would support reducing the number of people. He sees the role the Zoning Board of Appeals (ZBA) plays and the Board can consult with the Historical Commission but he is not sure about the Finance Committee. There would need to be a fiscal impact analysis on the value of the acquired lot and the value of the new home to be sold on the market. This is not affordability or sustainability. They are talking about reducing the size of a home.

Mr. Block stated he would strike the last sentence that says “to the detriment” on page 101 of the packet. A discussion ensued. Ms. Espada asked if the Board should say they heard from Town Meeting the town goals on affordability or per the Housing Study Master Plan. She would recommend referring to the Housing Plan rather than saying “detrimental to the Town.” Mr. Alpert suggested “to the detriment of the housing goals as stated in the Housing Study Master Plan.” Ms. Espada agreed. The Housing Plan has one whole section on large homes. Mr. Block stated the purpose is to reduce the size of the home and not to make them affordable. Ms. Espada noted the charge of the group is to try to incentivize people to not tear down homes. Mr. Block stated this Board needs to give clarity to the Housing Committee, so they know what their goals are. It does not sound like the members are clear as a Board. The Board needs to set out quantifiable goals. Mr. Alpert stated there is a committee to determine what those quantitative goals should be. Mr. Block feels the Board is giving ambiguous directions. Tying this into affordability and sustainability as goals is a mistake. He disagrees with that. Mr. Alpert suggested taking out “overly permissive.” All agreed. It should say “may not appropriately regulate house size. This is to the detriment of the Town’s goals as set forth in the Town of Needham Housing Plan previously adopted, December 2022.” Ms. Espada noted the Large House Committee can then go through the housing plan. She is comfortable with the changes.

Ms. Espada noted the Finance Committee can be asked for information so they can be removed from the group. Mr. Alpert feels whether to have the Finance Committee is a political question. The Board did it for Muzi and for HONE. They felt having a member of the Finance Committee was important. He does not want the Finance Committee saying they were blindsided by this. Ms. Espada would recommend getting rid of the Historical Commission and one Citizen at Large. All agreed. Mr. Alpert would like to see Joe Matthews on this committee but not be the only Citizen at Large. Ms. Espada wants the members assigned by the Planning Board. Mr. Alpert wants diversity of opinion and feels 2 citizens makes sense. The Committee will have 12 members and “appointed by the Planning Board” will be added. Consultant services will be provided on an as needed basis. Ms. Newman stated she has an appropriation of \$80,000. Mr. Block suggested adding “budget consulting expenses to the extent possible will be paid out of the department budget or such other appropriation as needed.” All agreed.

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

VOTED: to accept the charter as amended.

### **Minutes**

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

VOTED: to approve the minutes of 6/18/24 as written.

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

VOTED: to approve the minutes of 7/11/24 as written.

### **Correspondence**

Ms. Espada noted the following correspondence for the record: a letter, dated 8/13/24, from Susan and Michael Herman regarding 100 West Street; an Open Meeting Law Complaint, dated 8/2/24, noting the law was not violated; and a press release on ADUs. There may need to be a few changes made.

### **Report from Planning Director and Board members**

Ms. Newman stated GPI has completed a traffic study for the likely build out under HONE. She invited them to the next meeting for a presentation. There will be a public hearing at the Broadmeadow School on 9/5/24 for HONE.

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

VOTED: to adjourn the meeting at 9:56 p.m.

Respectfully submitted,  
Donna J. Kalinowski, Notetaker

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Artie Crocker, Vice-Chairman and Clerk

