# NEEDHAM PLANNING BOARD MINUTES

## February 21, 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, February 21, 2012 at 7:30 p.m. with Messrs. Warner, Jacobs and Ruth and Ms. McKnight as well as Planning Director, Ms. Newman.

**Correspondence**

Mr. Eisenhut noted the following correspondence for the record: a letter, dated 2/8/12, from Barbara Lovely regarding large homes; an email from Susan Anderson, dated 2/9/12, with concerns with the rail trail and a second email from Susan Anderson, dated 2/9/12, regarding the extension of the MBTA green line.

Ms. McKnight commented on the Bay Colony Rail Trail. She noted when the rail trail easements are granted by the MBTA they always reserve the right to reestablish the rail. The MBTA never gives up that right.

Mr. Ruth stated they should put on a future agenda to talk about the mansionization and what the Board members think they should do. Mr. Eisenhut commented they should talk to Wellesley and see what their experience has been. Ms. Newman will let Ms. Lovely know they will put a discussion on mansionization on a future agenda.

**Diminimus Change: Major Project Site Plan Special Permit No. 2011-04: Permanent Public Building Committee for the Town of Needham proposed Senior Center, Petitioner (Property located at 300 Hillside Avenue, Needham, MA).**

Steve Popper, representative for the applicant, stated he wants the Planning Board to rejudicate on the enhancements that were made to the drawings, none of which departed from the drawings. He thought the Board should see the final construction documents. He stated they have had issues with the building permit not being issued because the construction documents and the Planning Board special permit were not exactly the same.

Mr. Eisenhut asked the Planning Director if she had any issues. She noted she had no issues. The plans were reviewed by the engineering department and they are satisfied. Mr. Eisenhut noted the following correspondence for the record: a letter from the Town Engineer, dated 2/21/12, with no comments or objections.

Ms. Newman stated they are looking for a diminimus change to approve the changes now on the drawings because they go beyond the changes articulated in the Planning Board decision. They would also like the Board to authorize the Planning Director to issue a building permit when she has reviewed the drawings once they are stamped from the development team.

Ms. McKnight noted a reduction in the number of plantings by one third along the train tracks. She asked if there are still going to be plantings of 8 honey locusts as shown. Ms. Newman noted the one reduced is the arborvitae. The spacing had been every 2 feet and will now be every 3 feet.

Ms. McKnight noted the shade trellis on the roof deck has been eliminated. Deborah Robinson stated that was for cost reasons. The bids came in last week and there is money to put that in the bid. Mr. Popper stated there will be a change order to the contract. The trellis was not in the base bid. There will be a change order to include the trellis. Ms. Newman stated it would be a diminimus change in the plan modification.

Mr. Ruth stated they should verbally say it is a potential add alternate they approve. The applicant may decide to spend the money elsewhere. Mr. Popper stated they are making a verbal commitment to put in the shade trellis. Ms. Newman commented they could say they authorize it be reinstated. They would do that in a memo.

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

VOTED: to authorize a diminimus change to approve the changes now on the drawings, to authorize the Planning Director to issue a building permit when she is satisfied and to issue a memo as discussed.

**Appointment**

**7:45 p.m. – Ken Mackin: Discussion about Theater Block project.**

Mr. Eisenhut explained to the public this is just an informal discussion about a project that may never come before them. Mr. Mackin stated he has engaged in negotiations with the abutter to get an easement to share the drive. They have no formal agreement. He stated if there is no easement agreement they will only develop Dedham Avenue. Instead of 9 units it will be 10 units. They would eliminate the first floor residential unit and there will be 1,600 square feet of retail with 2 retail spaces of around 800 square feet each. There will be 4 residential units on the second floor, 4 units on the third floor and 2 units on the fourth floor. There are still 28 parking spaces. He has put together a conceptual design with a fourth floor. The fourth floor is set back 12 feet from the street so it reduces massing and is pulled in 5 feet on the other side.

Mr. Mackin stated it is a much smaller footprint and has much more appeal. The exterior is changed from wood clapboard. They would look to do condominiums rather than apartments. It is a smaller project and the exterior would be brick and the fourth floor metal panel. It would be somewhat like the hospital.

Mr. Jacobs stated he was curious if the problem on the Great Plain Avenue side was the easement or something else. Mr. Mackin stated he does not have a finalized easement agreement. There are some structural issues but he needs the easement first.

Mr. Eisenhut asked if the mechanics are buried somewhere. Mr. Mackin stated on the side of the buildings themselves and some on the roof but they will not be seen. They have relocated the elevator to the center of the building so it will not be visible. He commented the building has been vacant for 5 years. They need to move on it.

Mr. Jacobs asked what he is looking for from the Board. Mr. Mackin noted he wanted their thoughts on the project. The fourth floor on one street is different from 2 four story buildings. Mr. Eisenhut asked if the parking is exclusively on site and was informed it was.

Mr. Ruth stated he would like to see them without the easement issue with the abutter. He asked if it would help for a town official to be a broker. Mr. Mackin commented he thought it may help. He will take it up with Ms. Newman if it is not resolved.

Ms. McKnight stated during the process of the review of this project she was never inherently opposed to a 4 story building. She feels a lot of thought has gone into the final design of the three story buildings. It would be a shame if it could not be carried out. She stated she is familiar with case law that the holder of an easement cannot just refuse to relocate the easement to prevent construction. She asked if he has thought of a lawsuit to relocate the easement. Mr. Mackin stated he has not thought of that. He does not think it would be productive. He feels things are unlikely in terms of a resolution but he is still looking at it.

Mr. Eisenhut asked if there are still affordable units and was informed there will be one. Mr. Eisenhut stated his concerns about Great Plain Avenue were canyonization and shadows on other building. He was the one that expressed those concerns with that location. Certainly the concerns are minimized with the Dedham Avenue building especially with this design. It is allowed by the zoning and is aesthetically pleasing. They would have to revise the shadow studies but he thinks it has less impact than what was originally proposed.

Tony Caruso stated there was a nice penthouse apartment. Mr. Mackin commented, in fairness, he has not discussed it with the abutters yet. They are just exploring the options. Maybe the issue will be resolved but it has been 6 months. They were hopeful to be breaking ground now.

Mr. Warner stated he is very much a 3 story person. He feels it is the nature of the town. He noted one of the occasional features of being on the Planning Board is watching the individual land owners not work together. In a sensible world it would seem they should get together and work together. He is in favor of Mr. Ruth's suggestion of the town assisting with the discussions.

Mr. Ruth stated it has been 6 months. From the town's perspective it has been years. He feels all need to be thoughtful about getting something done on that site. Mr. Mackin noted if someone seconds Mr. Warner's sentiment they would only be allowed 3 stories and that would be it.

Mr. Jacobs stated he is ok with four story possibility. Mr. Eisenhut stated there is a distinction between Great Plain Avenue and the Dedham Avenue side. Mr. Ruth noted they need to be flexible and think about it. He does not think anything is off the table.

Mr. Mackin commented he just wanted to give a sense of what was going on. He noted there are other issues on Great Plain Avenue for anyone who develops downtown.

Ms. McKnight asked if the unit size would be changing. Mr. Mackin noted there is no change on the second and third floors. The fourth floor is currently 1,500 square feet and would be 1,800 to 1,900 square feet. It would be strictly condominiums and no rentals.

Ms. Newman asked how the drainage would work. Mr. Mackin noted it was an additional expense. There is no advantage to changing it now; they've already done engineering work. They would not change anything but he is exploring options.

Mr. Eisenhut reiterated for the public this is not an application or a hearing but a concept. He asked if anyone from the public had any questions.

Gil Cox, an abutter, noted the permit given allowed 2 buildings. He asked if they would now need a removal of the permit on Great Plain Avenue or would it still allow 2 additional stories? Would they have to come back to the Planning Board? Mr. Mackin noted he understands the concern. He would simply look to do one building. He would need to go in and do reinforcements to buildings right away. They have already done reinforcements in the former Abode space.

Louis Wolfson asked how this is in keeping with the downtown study and bringing affordable units to downtown. Mr. Mackin noted affordable housing is limited to one unit per every 10 units so it is a reduction by one half. There will be more buildings in the future. Mr. Mackin stated this is in keeping with the study but it will be taller than other buildings on either side. Mr. Wolfson stated that the Selectmen have asked for a study of downtown conducted by the Planning Board to discuss downtown and height. Mr. Mackin said he is looking at what they need to do to make the project a little more feasible and he noted some concerns are height, traffic and parking. The traffic is less and all parking is on site. The height is less of an issue than on Great Plain Avenue.

Mr. Mackin asked Ms. McKnight what her sense is. Ms. McKnight stated she was never opposed to the concept of a 4 story building. She is disappointed all the effort that went into the plan has come to this point. She is willing to consider what they bring back.

**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 there is no opinion from the Town Engineer yet. She has an opinion from Town Counsel but not from engineering. This will be continued to the next meeting. Ms. McKnight stated it talks about maintenance on page 3. It states the grantee shall be solely responsible for maintenance of the sewer line until it connects to the new municipal sewer line. She asked why would there be any limit on the time for the grantees responsibility to maintain. Why would it end at that point? Ms. Newman noted it is a private sewer easement. She will ask Town Counsel to look at that.

Ms. McKnight stated she assumes someone has looked into subordinations by mortgagees. They need to be aware of the risk. Easements could be wiped out by mortgage foreclosure. Ms. Newman will look into it.

**Discussion of proposed Street Banner By-Law.**

Ms. Newman noted the Board of Selectmen is interested in proceeding with this. She asked if the Planning Board wants to join them in the article and can the Selectmen issue those types of permits for business men to put up banners for special events. Ms. McKnight stated she thinks it is within the province of the Selectmen. She feels if they want they should carry it forward. The Planning Board has enough on its plate.

Ms. Newman noted she does not see it as a problem. Mr. Eisenhut stated it is not a problem but he does not want to join. Mr. Jacobs stated they should send a letter saying they would support it. He feels it is within the Selectmen's discretion to issue permits. Mr. Eisenhut noted he has no objection in principle.

**Board of Appeals – February 29, 2012**

Ms. Newman noted they are all continued cases.

**Report from Planning Director**

Needham Gateway – proposed new tenant.

Ms. Newman stated she wanted some feedback. The Verizon store is going out and they want to put in a Super Cuts in 1,000 square feet of the 1,600 square foot store. They want to get rid of the Highland Avenue entrance and only have one entry in the back. She noted they allowed this for Omaha Steaks through an amendment to the Special Permit. The language of the By-Law is designed to encourage street entrances on both sides. They now have a situation that is taking the focus off the street side and having another access in back. She noted they would like feedback from the Board if there is support for that.

Mike Moskowitz, one of the owners, noted the Verizon Store closed in November. The reality is none of the stores has the front door open during the day except Panera Bread and that closes at 7:00 p.m. He noted Aronson Insurance closed the office and they are looking for a tenant. There are 465 square feet and 600 square feet behind Super Cuts. He noted leasing 1,000 square feet is easier than 465 square feet.

Ms. Newman asked if these 2 spaces would have no access from Highland Avenue and was informed they would not. Mr. Moskowitz noted he has no prospective tenants for this space. Mr. Jacobs commented the reality may be no direct access along Highland Avenue.

Mr. Ruth stated in the process they are in with Newton they are looking for upgrades of the streetscape. He asked how the pedestrian vision fares in that process. Ms. Newman noted the streetscape improvements in Needham are looking at a 4 lane cross section, sidewalks and, if the money is available, for the undergrounding of the utilities. She noted the plans for the Highland Avenue/128 corridor envisioned buildings close to the street with sidewalks in front with pedestrian uses happening on the first floor. The grading on this site makes it difficult the way it was built.

Mr. Ruth asked if they were still pursuing the grant for the municipal part and still looking at pedestrian access. Ms. Newman stated they were. It calls for sidewalks on both sides. The state is advancing that. There will be design funds for the bridge and design funds for the light at First Avenue. Mr. Moskowitz noted there is a fair amount of foot traffic that walks up from Highland Avenue. He noted Section 3.11 of the decision says the Board can waive the requirement.

Ms. McKnight stated she does not see how what is in the By-Law can even be applicable. It assumes a primary entrance on Highland Avenue. The building was never arranged to comply with the second paragraph of Subsection 3. Ms. Newman stated they need an amendment. It should be the same process as FW Webb.

Digital Realty Trust

Ms. Newman noted they are installing some cooling systems that will vent up through the ceilings. To implement that they are looking at installing a venting system on the side of the building that will pull air through the building to cool the system and vent it up through the roof. She asked if that change is going to require a formal amendment or can it be processed as diminimus. The view is minimized by the ventilation along that side. This is the new building they will be building and the original design did not have this.

Ms. McKnight asked what the plans showed for that wall. Ms. Newman noted it was a solid wall. She clarified the louvers will allow air to be pulled in to cool things. Mr. Eisenhut asked who would be around that would complain. Ms. Newman clarified only their own building was near there.

Ms. Newman noted she is hearing it is more appropriate to do this as an amendment due to the noise issue. She has no documentation if the noise will be increased or not. She has been told it will not but there is no documentation. Mr. Ruth noted if the applicant sends an engineer's letter saying that noise will not be increased, he is ok with it. Mr. Jacobs and Ms. McKnight agreed. Ms. Newman will make it a diminimus change with the documentation.

Zoning

Ms. McKnight provided a handout. She has looked at all the zones and the sizes of the zones. She is looking at the Needham liquor store zoning controls. She noted the first 4 zone districts are residential zones – RRC/SRA, SRB, GR and A1, 2 &3 – and no retail is allowed. In the I zone retail is also not allowed. The IND 1 zone is the area off Gould Street where Muzi's is. A number of businesses are in that area but there is not a lot of frontage. The Industrial zone is between the railroad tracks and Hillside Avenue. There is an office park there. With the use regulations it seems the use is allowed but she does not think it is a good place for a liquor store.

Ms. McKnight stated there is a small area industrial zoned on Crescent surrounded by general residence and a small area of Hillside Avenue and the railroad tracks. There are some duplexes in the area. Also, down off Maple Street there is a small industrial area. She put "no" in all those industrial zones. There is also one along Reservoir Street that is inaccessible.

Ms. McKnight noted Industrial 1 is at Muzi's and she felt they should ~~allow~~ be able to allow liquor stores there. In all districts there should be provisions that no liquor stores are permitted if the lot abuts or is located across the way from any lot located in any residential district unless separated by a railroad right-of-way or a state highway. Her assumption is the only state highway is 128. Mr. Ruth noted also 135/Dedham Avenue still belongs to the state. He suggested they change it to "limited access state highway." Ms. McKnight agreed it should be changed.

Ms. McKnight noted on Gould Street if a liquor store fronted on Gould it would be across from a residential area. She feels it is fine in here but really not fine on Gould Street. She noted she could not find IND P on the zoning map. Ms. Newman clarified there is no more P Section.

Ms. McKnight stated the Business Zone B is limited now to an area between Highland Avenue and the railroad tracks. At the very end on Rosemary is zoned residential and at Sudbury Farms at the end across from the High School is a residentially zoned area. Ms. Newman noted Memorial Field sits in front of the High School. Ms. McKnight noted she was not sure if the Business Zone B was across from the High School or across from a recreational facility.

Mr. Jacobs commented that Memorial Field is certainly used for school purposes. Mr. Ruth noted they may want to say "athletic purposes." Ms. McKnight asked if they think it is important to have no liquor stores on a lot that is within a certain number of feet from a school. Mr. Eisenhut noted, politically, he thinks it is essential. Mr. Jacobs agreed. Ms. McKnight asked what number of feet. Mr. Eisenhut asked if other towns have it. Ms. Newman stated Chicago has 100 feet. Ms. McKnight stated Rockland has a special permit. She is trying to stay away from that. It is either allowed or it is not.

Ms. McKnight stated if they preclude liquor stores across from residential zones that would take care of the High School. Mr. Warner asked where they could have it and asked if only at Muzi Ford. Mr. Ruth clarified also downtown.

Ms. McKnight noted she is proposing Avery Square Business be allowed but no big liquor stores. They should be under 1,500 square feet. They could have a small store between Hunnewell Street and the park. Mr. Warner asked if Roche Bros. could have it. Ms. McKnight stated they could as she did not want to preclude Sudbury Farms or Roche Bros. Mr. Ruth asked about Trader Joe's. They are big wine sellers. Ms. Newman stated it is not allowed there. Mr. Eisenhut asked why allow it in supermarkets at all. Mr. Warner agreed. Ms. McKnight stated she thought the Selectmen wanted that. Ms. Newman informed the Board Trader Joes is going to expand into the Finagle a Bagel space.

Mr. Warner asked Ms. McKnight to clarify where liquor stores could be located. She clarified in the Muzi area, any size, accessory in a grocery store, Highland Avenue B Zone where Sudbury Farms is, small or accessory in Chestnut Street Business area where Roche Bros. is, Center Business district could have a small one, Avery Square Business could have a small one or an accessory liquor store in a grocery store, Hillside Avenue Business no liquor stores there and a small one in the NE Business Center.

Mr. Ruth commented he thinks they are way ahead of themselves. He feels Ms. McKnight has done a great job but why go from being dry to inviting liquor super stores. There is no cap on the size.

Mr. Jacobs stated in the Business Center it is limited to ground floor 15,000 square feet. Mr. Eisenhut stated they cannot limit competition of liquor stores.

Ms. McKnight noted the Selectmen are going for a special act. They may create some special limits. Mr. Ruth noted they should put a cap on the maximum size. Ms. McKnight noted the Upper Falls liquor store in Newton is 7,000 square feet. They could say 1,500 to 7,000 square foot maximum. It is not allowed in any neighborhood district. Highland Commercial goes from 128 to the river on both sides. A liquor store up to 7,000 square feet could be allowed.

Mr. Jacobs stated he is in agreement with Mr. Ruth. It is good presenting another tool to the Selectmen but he is uncomfortable presenting to the Board of Selectmen. He does not want them to think this is the Planning Board's firm recommendation. It is just a discussion issue and nothing more. He does not know how they will perceive it. Mr. Ruth feels they should make sure the Selectmen know the Planning Board has not endorsed this.

Ms. McKnight stated they should have blow ups of the areas that say "big store", "little store", "accessory store" and let them talk about that. A visual rather than words. Mr. Eisenhut stated he liked that better. All agreed.

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 9:20 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Sam Bass Warner

Sam Bass Warner, Vice-Chairman and Clerk