

## NEEDHAM PLANNING BOARD MINUTES

January 22, 2013

The regular meeting of the Planning Board held in the Charles River Room at the Public Services Administration Building was called to order by Bruce Eisenhut, Chairman, on Tuesday, January 22, 2013 at 7:00 p.m. with Messrs. Warner and Jacobs and Ms. McKnight as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski. Mr. Ruth arrived at 7:05 p.m.

**Request for authorization of Permanent Occupancy permit: Major Project Site Plan Review No. 2008-09: Town of Needham Permanent Public Buildings Committee, Petitioner (Property located at 484-500 Dedham Avenue, Needham, MA).**

Ms. Newman noted the noise study is done. A substitute generator was installed that meets the requirements of the law. It is compliant with state law but goes above the sound limit of 31 DBAs set as a permit condition. Hank Haff, of the PPBC, gave a handout. . They went through the public bidding process and he listed the 3 who bid.

Mr. Ruth arrived at 7:05 p.m.

Mr. Eisenhut noted in 3.4 it says it shall not exceed 31. They are exceeding that and need a de minimus change. He asked if any abutter showed up at the hearing. Ms. Newman stated no abutters showed. Ms. McKnight noted it was an emergency generator and asked if it was tested occasionally. She was informed it was.

Mr. Eisenhut stated they did not give notice of a de minimus change. Ms. Newman stated it could be an insignificant change under the policy. Mr. Jacobs noted the letter submitted by the PPBC did not say the levels would be 39. It says it will go up to 39. Mr. Eisenhut stated they need to re-notice to have a de minimus change. Mr. Ruth commented the real issue is it should not be obnoxious to neighbors. The town should be a leader in being nice to the neighbors.

Mr. Haff stated they have the ability through metering to see what the sound level is. The amount of noise generated is very low. In the future they would ask it not exceed the state required decibels. The other option is they could increase the height of the separating wall. This would block the sight line view of abutters. To increase to 13 feet in height would get about a 5 DBA reduction.

Mr. Warner stated they could put a meter by each house and measure the noise. Mr. Haff stated they will have to run the generator for 48 hours. The quietest time varies. Ms. McKnight commented that the PPBC submitted a letter saying they have calculated the sound levels up to 39 DBAs. That should be satisfactory.

Mr. Eisenhut reiterated they should re-notice the hearing to change to 40 DBAs in 3.4 and as a de minimus change. Mr. Haff stated they have been doing weekly testing from 7:00 a.m. to 7:30 a.m. on Wednesdays and have had no complaints. Mr. Jacobs commented he expected a measurement and is surprised there will be none.

Mr. Ruth would like to know what cost effective options are available to bring it back to the original levels. Mr. Warner stated they should have a simple measurement as a rule.

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

VOTED: to give notice to the abutters and re-notice the hearing for a de minimus change.

### **Appointments**

**7:00 p.m. – Discussion of Proposed Zoning By-Law Amendments for May 2013 Annual Town Meeting.**

Ms. Newman noted the first 5 proposed changes on the list are from Building Inspector David Roche. Mr. Jacobs asked what the goal is regarding these. Ms. Newman stated the issue is if they want to advertise a public hearing to proceed with them and which ones do they want to move forward with?

Mr. Eisenhut stated the first article is an increase in the residential setbacks by one foot (or whatever they decide the acceptable overhang should be) so they are measured from the foundation and allow for up to one foot of overhang. He noted years ago he had spoken with Mark Gluesing and he had an issue with the one foot due to a lack of architecture creativity and now they are talking 2 feet. He noted it is a little more complicated than it appears. He feels this issue may fit nicely with the large house study. Ms. McKnight agreed. She stated that she would agree with putting it off. Mr. Ruth stated they should not go forward with all 5 without the mansionization. It should be a package related to mansionization.

Ms. Newman stated there was no definition for lot width. It makes sense to define it. Ms. Bailin stated there are 2 front setbacks on a corner lot then they have a side and rear. She noted the more standard way of viewing this in other towns is to say front, front, side, side. They should give the Building Inspector a definition so it is clear. They could do it as a technical amendment. Other than that they are changing what they are doing and need a discussion. Mr. Eisenhut noted they are codifying their historical past practice. Ms. Newman commented it has always been that the rear is the side opposite the door. Ms. McKnight stated they would want to address this. Mr. Eisenhut noted if the Building Inspector wants that then he agrees. Mr. Jacobs stated he feels that way about all 5.

Ms. Newman noted the one about setback is complicated and should be included with the large houses. Ms. McKnight stated they should deal with providing a definition/clarification for corner lots as to rear setback line and lot width definition/measurement both of which deal with lots. Ms. Bailin noted they should put the words "in all districts" in the clarification of Half-Story to make clear that it applies to single-family detached dwellings and two-family detached dwellings. The first part is a technical change. Mr. Eisenhut feels it is fine as written in the list given to them.

Ms. Bailin stated people are talking about accessory structures and issuing permits for living spaces in these structures. They are 5 feet from the property line. They can go up beyond one story but need to comply with whatever setback is closest to the structure. The other issue is use in the accessory structure. It should not be a living space. It is complicated but they need to go back to accessory structures. Ms. McKnight stated it lends itself to an overall study. She feels #1 and #5 should be put off as part of a study and they should deal with #2, #3 and #4. Mr. Eisenhut agreed that makes sense. Mr. Jacobs stated if the Building Inspector thinks they are important he would take up any of them. Ms. Newman stated they should do #2, #3 and #4. Mr. Eisenhut agreed. Mr. Ruth asked when they are coming forward with the mansionization study. Ms. Newman stated probably in November. Ms. McKnight commented she would not like to wait until next spring.

Ms. Bailin noted the zoning changes for the spring. She gave the Board an amendment she prepared for a change in setback due to eminent domain, conveyance for public purpose, or subdivision decision (Section 4.1.3). She stated she and Roy Cramer had discussed this. They tried to call out specific zoning violations when she was on the Board -- to create some sort of amnesty and to accept as pre-existing, non-conforming and go forward from there. At some point they need to accept the validity of the situation. She wants the Board to think about that. Mr. Jacobs stated he would not like to formalize in any way any kind of implied obligation for the Planning Board to call out any possible zoning violation. Ms. McKnight agreed and noted whatever they do would need to be in compliance with the current By-Laws. She commented she feels this is going too far. She does not want to take it up at all.

Mr. Jacobs asked what ANR endorsement by a third party is. Mr. Bailin stated the case she discussed was court ordered. Ms. McKnight feels they should leave that language out. Mr. Jacobs agreed they should leave it out. If ordered by a court for a third party it should say that. Ms. Bailin requested that it be advertised with that language, then hear it, then they could take it out. Ms. Newman will advertise as is.

Ms. Bailin stated for the Mixed Use-128 Dimensional Changes and the Mixed Use-128 Residential Overlay the Goody Clancy Report had an FAR of 1.8 and up to 5 stories. Ms. McKnight stated 25% affordability was a high percentage in the residential overlay. Ms. Bailin noted they still have work to do on the residential overlay. Research still needs to be done. She clarified this is a rough draft. She noted Winhall is the only one that has any interest right now.

Mr. Jacobs stated it would be a mistake to understand the residential overlay as a preference by the Council of Economic Advisors. They are not pushing it. Ms. Bailin stated they are offering it as an option. Mr. Eisenhut stated 2 towns recently denied 40Bs because there were at the 10% affordable housing. The question is should they use this.

Ms. Bailin stated she highly recommends the deletion of Section 4.7.4 (Dimensional Controls for Exempt Uses) because it violates the Dover Amendment. It left out a piece. She stated they cannot have strict requirements for exempt uses. Ms. Newman noted the lot requirement is 15% for institutional and 25% for other uses. Mr. Jacobs stated he is ok with it.

Ms. Bailin feels the correction of the Use Table for Industrial and Industrial 1 to allow indoor athletic or exercise facilities; and Industrial 1 to allow Personal Fitness and clarifying section 1.4.6 to preclude the introduction of new violations under the pretext of modifying preexisting nonconforming structures is premature. She stated it is a mess but could be fixed. It is still a Special Permit use. She feels they should put in the Use Table for Industrial and Industrial 1 but not the clarification of 1.4.6. That is controversial.

Ms. Newman stated the food truck is premature. Ms. Bailin noted the Planning Director does not want them on private property. The Fire Chief does not want them on the streets. There is no place for them. If they put it on in May it is not effective for the summer period. She feels it could be done on a minor site plan basis. She noted they cannot compete with mortar and brick restaurants. They should not be allowed in the heights or downtown although there is no consensus among town departments.

Mr. Eisenhut asked why they are regulating competition. Mr. Jacobs stated he does not view that as the issue. The food trucks have an unfair advantage over brick and mortar. There are no real standards as to what constitutes an area under served by restaurants. Mr. Eisenhut asked if handling through licensing would not be better. Mr. Warner stated they should speak with the Selectmen and see what they think.

**8:30 p.m. – Deminimus Change: Major Project Site Plan Review Special Permit No. 1995-09, Highland Montrose, LLC, 159 Cambridge Street, Allston, MA 02134, Petitioner (Property located at 922-958 Highland Avenue, Needham, MA).**

Gregg Eaton, of Micozzi Management, Inc., stated the existing fence is 6 feet with slats. He noted the vinyl slats will not last long. They are suggesting replacing this fence with a 6 foot bamboo fence. He stated the Design Review Board is excited about the bamboo. Ms. Clee stated she sent a notice to all abutters within 300 feet but no one is here. Mr. Eaton clarified they will leave the chain link fence and will tie the bamboo to the chain link. They will treat the bamboo so it stays the same color as bamboo. It should last 25 to 30 years as it is a very durable product. Mr. Jacobs stated it looks a lot nicer than what is being taken out. Mr. Eaton showed the Board a sample and noted it will be the height of the current fence.

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

VOTED: to approve a deminimus change to Major Project Site Plan Special Permit No. 1995-09 for the substitution of a bamboo fence for a vinyl fence.

**Decision: Major Project Site Plan Special Permit No. 2013-01: Urgent Care Centers of New England, Inc., 2 Adams Place, Suite 305, Quincy, MA 02169, Petitioners (Property located at 922-958 Highland Avenue, Needham, MA 02492).**

Ms. Newman reviewed the changes to the draft decision. The financial offices are specified as upstairs in 1.1, they are open 7 days per week and the hours are in 1.6 and 1.10 and they do not need a license under 3.2. Ms. McKnight noted the parking study analysis in 1.14 and asked if it includes the first floor retail that is vacant now. Robert Smart, representative for the applicant, informed her it did.

Ms. McKnight noted in 3.4, it should say "shall usually be fully correctable" or they could say "anticipated." Mr. Jacobs commented they could delete the whole sentence. Mr. Eisenhut stated they should put a period after "acute nature." Mr. Jacobs stated the decision does not say anything about testing and check ups. That is not acute. Ms. McKnight stated they refer to emergency departments. They should say "hospital" in front of emergency in 3.4 and 1.6. Ms. Newman agreed.

Ms. McKnight noted they determined the 2 spaces just outside the back door were to be marked employee only. In 3.1 they could say prior conditions apply and this should be called out. Ms. Newman will put it in as a condition. Mr. Ruth requested if they grant the relief they should get a copy to the Selectmen as soon as possible. The Selectmen will have a requirement for liquor stores in the vacant space and he wants them to have knowledge of this decision and the parking determination. He wants them to be aware of this.

Ms. McKnight noted in 3.7, second sentence, they should delete the word "other." In the fourth line it should be "shall be permitted."

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

VOTED: to grant the Major Project Site Plan Special Permit and adopt the decision in the form presented tonight with the changes discussed.

### Minutes

Ms. McKnight gave her proposed changes to Ms. Clee.

### 7:00 p.m. – Discussion of Proposed Zoning By-Law Amendments for May 2013 Annual Town Meeting -- continued.

Ms. Newman stated she met with the Selectmen regarding medical marijuana. They want the Board to put forth a moratorium, not only on dispensaries but also on growing like in Cambridge. They are looking to do a full year.

Mr. Eisenhut stated he does not feel they should sponsor this. He is very against it. He sees no zoning issues. He noted this is a personal issue for him. His sister benefited from medical marijuana. He feels it is very benign and is heavily regulated by the Department of Public Health. They also need a doctor's certification. He noted the Selectmen are not concerned with zoning issues but with police issues. The only issue in Maine was a smell concern with those that grew it. He feels they should be welcoming to this type of use. They should not make it difficult for terminally ill patients to get it. He asked why they are spending limited time and resources on this. He reiterated the Planning Board should not be the sponsor. There is no zoning issue but police power issues. The zoning is already in place that restricts locations and the current zoning can handle it. He stated he finds it troubling the Selectmen want a moratorium and for the Planning Board to put zoning restrictions. He is opposed to sponsoring the moratorium.

Mr. Jacobs stated Mr. Eisenhut makes a good case. He asked if Mr. Eisenhut would ask the Planning Board to oppose. Mr. Eisenhut stated no, he would ask the Planning Board to remain neutral. Ms. Newman stated the Board of Selectmen can initiate their own article. Ms. Newman would write it for Town Manager Kate Fitzpatrick and the Selectmen would refer to the Planning Board for a hearing.

Ms. McKnight stated she attended the Town Manager meeting with two Selectmen, Board of Health members and the Police Chief. The moratorium came up. She noted the DPH regulations for use are not out yet. They have not been able to answer the Selectmen's questions on where they will be allowed in the zoning. It is not a clinic.

The fall back is it is a retail store. They need to see the DPH regulations. She noted it may be defined closer to the Board's clinic definition. She feels they should wait until the regulations come down. She sees no reason not to sponsor a moratorium for the cultivation of marijuana. She would say it is accessory and presently there are no facilities. She thinks the Board of Health is concerned with the "grow your own" aspect. They should give it a 6 month or 9 month time period to study. It is a cautious approach to have a moratorium.

Mr. Eisenhut stated it is a medical clinic. Mr. Jacobs stated they need a doctor's note or a prescription. Mr. Eisenhut reiterated it should be accessible to vulnerable people who use it. They could determine under the existing zoning what the use is. Mr. Ruth commented the town wants a moratorium so the other towns will be the first 35, then it is in effect, a permanent moratorium. Mr. Eisenhut stated he does not want to sponsor it. Mr. Jacobs agreed.

Upon a motion made by Ms. McKnight, and seconded by Mr. Ruth, it was by one of the five members present:  
VOTED: to sponsor and propose a moratorium similar to that enacted by the City of Cambridge for a period of 9 months.

The vote did not pass – Ms. McKnight voted for; Messrs. Ruth, Eisenhut, Warner and Jacobs voted against.

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

VOTED: to adjourn the meeting at 9:15 p.m.

Respectfully submitted,  
Donna J. Kalinowski, Notetaker

  
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Sam Bass Warner, Vice-Chairman and Clerk