

NEEDHAM PLANNING BOARD MINUTES

March 24, 2015

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, March 24, 2015 at 7:00 p.m. with Mr. Eisenhut and Warner and Mss. McKnight and Grimes as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Correspondence

Mr. Jacobs noted the following correspondence for the record: a legal notice from the City of Newton and a notice from the Dedham Planning Board. Ms. Newman stated these were just an FYI for the Board. She stated she has not had any discussions with Dedham.

Request for Temporary Occupancy Permit: Amendment to Major Project Site Plan Special Permit No 2012-07: Normandy Real Estate Partners, 99 Summer Street, Boston, MA, Petitioner (Property located at 66B Street, 360 First Avenue, 410 First Avenue and 37 A Street, Needham, MA 02494).

Roy Cramer, representative for the applicant, stated Normandy is getting ready to request a Certification of Occupancy for the Trip Advisors building. He is here to request the Board delegate to the Planning Director the authority to review and approval all documents and authorize the issuance of a permit per his letter dated 5/11/15.

Ms. Newman stated the Board may want to be involved in the Transportation Demand Management Study and the arrangements to be made for the shuttle service. Mr. Cramer stated he wanted to discuss that with the Board. Trip Advisors do not want to use the 128 Business Council Shuttle. Trip Advisors wants to use its own shuttle but the decision does not say that. The decision would need to be modified or this would need to be approved as an insignificant change.

Mr. Eisenhut stated the agenda says this is for a temporary permit, not permanent. Mr. Cramer noted the decision says the applicant needs to use the 128 Business Council Shuttle. They want to use their own Shuttle. Ms. Clee noted the Board has done in the past a valid blanket authorizing the Planning Director to issue permanent occupancy permits. Ms. McKnight noted this is not needed. The Board has already given the Planning Director authorization. Ms. Newman clarified the Board gave her authority to issue permanent occupancy permits and not temporary permits. Mr. Eisenhut suggested the Board vote to give the additional authority to issue temporaries.

A motion was made to authorize the Planning Director to use her discretion to recommend or authorize the issuance of temporary Certificates of Occupancy.

Mr. Warner asked why Trip Advisors wants to use their own and not the 128 Business Council Shuttle. Kevin Daly, representative for the applicant, stated Trip Advisors have their own shuttle that currently runs all employees at all work hours to the Red or Green Lines. It gives them control and it goes above and beyond what the 128 Business Council does. He stated he would like the decision modified. Mr. Cramer stated he would set up a meeting to discuss this with the Planning Director.

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

VOTED: to authorize the Planning Director to use her discretion to recommend or authorize the issuance of temporary Certificates of Occupancy.

Request for Temporary Occupancy Permit: Major Project Site Plan Special Permit No. 2012-06: Brookline Development, LLC, 3 Craftsland Road, Chestnut Hill, MA, Petitioner (Property located at 50 Dedham Avenue (formerly 36-58 Dedham Avenue), Needham, MA).

Ms. Newman stated this is a request for a temporary occupancy permit. The building is all done with the exception of some work on the outside. The applicant has requested a temporary occupancy permit. She stated she has a bond in an amount to cover the work.

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

VOTED: to delegate to the Planning Director the authority to issue a temporary Certificate of Occupancy for 50 Dedham Avenue.

Discuss zoning amendments and Town Meeting Articles for the upcoming Town Meeting.

Ms. Newman stated she has a recommendation on medical marijuana. Mr. Jacobs noted there is a red lined copy of the article and a clean copy with amendments made on 2/10/15 and language changes made on 3/20/15. There is also a further letter from the Board of Health, dated 3/24/15, urging the Planning Board to consider changing the article to provide for a 500 foot buffer from licensed day care facilities and where children congregate.

Ms. Newman noted the first version was revised on 2/10/15. She reviewed the revisions. She noted the first article names the Planning Board as the Special Permit granting authority. The second article names the Planning Board as the Special Permit granting authority if the site plan triggers a site plan review. Mr. Jacobs asked what "for an exception" means. Ms. Newman stated it was an exception from an as of right use. Mr. Jacobs stated it was confusing. He does not feel it is necessary. It should be under a Special Permit by the Planning Board. Ms. Newman stated she is trying to keep it consistent with the language of the document.

Ms. Grimes stated she feels "where children congregate" is vague and would be tough to regulate. Mr. Jacobs noted it should be a licensed day care. Ms. McKnight stated the Planning Board should avoid vague language. Children are never allowed to come and go alone from day care centers. Parents have to pick them up. Provisions are not in the same building but she does not see the necessity for 500 feet. Mr. Jacobs, Ms. Grimes and Mr. Warner all agreed. Mr. Jacobs stated the Board needs to be prepared to answer the Board of Health objections if they come up.

Upon a motion made by Ms. Grimes, and seconded by Mr. Warner, it was by four of the five members present (Mr. Eisenhut voted in the negative):

VOTED: to recommend this article to Town Meeting in the form of the 3/20/15 proposal with the modification as discussed striking the words "for an exception."

7:30 p.m. – Oak Street Definitive Subdivision: Oak Street LLC, 235 Billerica Road, Chelmsford, MA 01824, Petitioner (Property located at 66 Oak Street, Needham, MA). Please note: This hearing has been continued from the September 16, 2014, November 5, 2014, December 2, 2014, January 6, 2015, February 10, 2015, February 24, 2015 and March 10, 2015 meetings of the Planning Board.

Mr. Jacobs noted the Board has received additional information since the 3/10/15 meeting. He noted the following correspondence for the record: a letter from George Giunta Jr., dated 3/23/15; a copy of Robert Smart's letter, dated 3/9/15 with attachments; enclosure Exhibit A; a 3/23/15 email from Field Resources with the latest revision to sheet 2 and other information; an email from Fire Chief Dennis Condon, dated 3/24/15, with comments; a letter from Robert Smart, dated 3/24/15, the Board has not seen yet and will take a minute to go over; a memo from Fire Chief Dennis Condon dated 3/10/15; a letter from George Giunta Jr., dated 2/19/15; a letter from Robert Smart, dated 2/20/15; and a series of plans from the Town of Needham GIS system printed 3/10/15, which will be entered into the record. The plans show the subject site, Falcon Street, property off Great Plain Avenue near Carol Road, property off Frank Street and William Street, property off Harris Avenue and a property off Hillcrest and Wyoming for a total of 6 plans.

Mr. Giunta Jr., representative for the applicant, noted the 3/10/15 memo from the Fire Chief. He stated there was some concern with the width of the roadway. The proposal would need one driveway 18 feet wide but it is not clear from the memo. He reached out and had a conversation with the Fire Chief. Past practice is to allow narrow

pavement and sod and grass on the sides with a gravel and rock base underneath. There is no change in policy but there is a concern if the ladder truck could get down the road when there is snow if the road is only plowed by the pavement. He spoke of a permeable paver system on the sides and committing to having that plowed. The Fire Chief seemed fine with that and sent a letter to that respect. He stated his client has agreed to pave the whole width including the permeable paver area.

Mr. Jacobs noted the 3/10/15 letter from the Fire Chief that states a 400 square foot turnaround is not sufficient for fire equipment. He asked if Mr. Giunta Jr. had any thoughts on that. Mr. Giunta Jr. stated he does not agree with that but they have revised the plans to show that the turnaround is sufficient. Paul Beaulieu, of Field Resources, stated they now have a 47 foot turnaround. Mr. Warner asked how wide the street is. Mr. Beaulieu stated the street is 12 feet paved with 4 feet of pavers on either side. The road is 8 inches of compacted gravel base, then a 4 inch dense base course and 12 feet of pavement.

Mr. Eisenhut stated the applicant should do the whole road in pavers. Mr. Giunta Jr. stated he would like to but the Town Engineer is not in favor of it. He noted a 47 foot radius is a requirement in the current Subdivision Rules and Regulations. Ms. McKnight commented it looks like the turnaround area is part of the lot and not part of the street. Mr. Giunta Jr. noted it is part of the street and the lot. Ms. McKnight stated she would not vote if it is not part of the street. Mr. Giunta Jr. stated the turnaround portion does extend into the lot by about 20 feet. He stated the turnarounds have been used like this before. He noted Parkland Road was an example. In prior procedures the road was shifted to one side. The neighbors were not in favor so they put the road in the middle. It is difficult to get a 40 foot layout with the road location. There is not enough room to get a 40 foot strip off of it. In order to accomplish that they would need to shift the road over. They could do that but it does not make sense since this project is only one house and there is precedent. Mr. Beaulieu stated he would feel better if the road was pushed all the way to the side.

Ms. McKnight stated she has no issue with the owner but wants to see where in the Rules and Regulations is the exception for turnarounds. Ms. Newman noted it was Section 3.35. Ms. McKnight reiterated she wants to see it in the roadway. Mr. Beaulieu noted the Board wanted the applicant to not put the road to the right as did the abutters. He feels it is conflicting directions from the Board. Ms. McKnight stated she wants to see the hammerhead as part of the roadway. Mr. Giunta Jr. noted he will see what they can do and what would work. He noted the applicant may need to shift some of the pavement but that may become a modification of a plan. He will look at it.

Mr. Jacobs asked Mr. Giunta Jr. what the unusual circumstances were. Mr. Giunta Jr. stated this is an unusual and unique situation with an existing unconstructed paper street. He noted the 3/23/15 letter and how this decision will affect others in this situation. He only noticed one location that matched the criteria of an unconstructed private way with adjacent property that has sufficient length of frontage and sufficient area to create a lot. That was at 11 Falcon Street (Plan 2) and Oak Hill Road. There are 2 other similar situations in town but they are not applicable. He stated there are a lot of private ways around town that do not meet the requirements. He stated this is an area that is already laid out, already established by plan and mostly developed which is an unusual circumstance. He stated his client is exercising his right to build on his land.

Mr. Eisenhut asked Mr. Giunta Jr. if the Board allows his client to do this, what is the distinction of his client's locus as opposed to another person's locus. Mr. Giunta Jr. stated the paper street is not fiction. A person who is going to put in a new road has no layout. The Bird case says the Board should be mindful of people's property rights. As a practical matter, all lots that are large enough for development are on the periphery of town.

Ms. Newman noted she gave the Board a series of maps. There are a couple of incidents on the maps. On page 5, Glen Terrace is one example. Mr. Giunta Jr. stated he discounted Glen Terrace because it was already before the Planning Board and now exists on the ground. Mr. Smart stated the packet he submitted shows Glen Terrace and Mayo Avenue. Mr. Giunta Jr. stated it does not have the required 80 foot frontage. Mr. Jacobs agreed it would not work without a variance. He stated it is a misnomer to call it Glen Terrace. It is off Mayo Avenue.

Mr. Jacobs asked Mr. Giunta Jr. for his best argument for not needing to show the 60 foot turnaround required here. Mr. Giunta Jr. stated the regulations do not strictly require that. The Board can waive the requirement. The Board has, by a matter of policy but not by regulations in instances where big lots of land are being developed, has required the developer to show the layout first before they start talking about waivers. He stated this makes a lot of sense when dealing with a large piece of land. This has been a rough policy of the Board but the regulations do not strictly require it. This is a single house and it is not logical or practical to do a 60 foot circle for a single family house such as Parkland Road.

Mr. Eisenhut asked Mr. Giunta Jr. to run through his reasoning. Mr. Giunta Jr. stated it is a single lot with an existing layout. The applicant is not creating a new lot, is following the historical lot lines and it is already laid out on the land. Mr. Giunta Jr. stated the owner has certain property rights and has the right to build the whole road. This is a matter of right. Mr. Giunta Jr. asked, if the owner could build it today as a legal matter of right and if the Board can all agree the owner does not need a 60 foot circle to access a single home and Engineering and Fire have agreed as such, why is it not allowable to approve this layout? Mr. Eisenhut stated policies prevent overdense development. Mr. Giunta Jr. stated the area is already laid out. The lots around it are substandard and this will be less dense than the rest of the area.

Mr. Beaulieu stated many of the abutting homes are multi-family homes. Mr. Giunta Jr. stated this lot is 2 lots away from a General Residence District. Mr. Eisenhut noted he is concerned with waivers when it is a slippery slope. He asked how the Board can distinguish this. Mr. Giunta Jr. reiterated what he stated. It is an existing lot that is already there. He will look at Ms. McKnight's concern. He wants to address that.

Ms. McKnight stated she has a few other concerns. She wants to make sure this applicant has sole responsibility for maintenance of this way. She assumes that will be a condition and not a problem. Mr. Giunta Jr. agreed. Ms. McKnight noted on the turnaround easement, she assumes even if it is within the layout of the way, the owner of the lot will own the fee. She wants to make sure the owner grants a right to others who might have a right of access the right to use the turnaround also. Mr. Jacobs asked who that would be. Ms. McKnight stated 110 Linden Street could reorient their access. Mr. Jacobs asked Mr. Giunta Jr. if he had any problem with that. Mr. Giunta Jr. commented he will have to talk to his client.

Ms. McKnight noted this is a highly dense area but the houses are not that large. Perhaps a limit on the gross floor area so whatever is built is similar in size. Mr. Jacobs asked if the applicant is willing to commit to an FAR maximum. Mr. Giunta Jr. stated he is resistant to recommend that to his client. It could become limiting. The Board could limit the footprint of the house. He noted FAR limitations could be an issue in the future. Ms. McKnight stated she would like what is built to fit in. She sees an unusual circumstance here as the subdivision was approved previously. To show the 60 foot turnaround is a policy of this Board and not a regulation. She would be comfortable saying she would not require a 60 foot turnaround to be shown for this plan for the reasons discussed.

Mr. Beaulieu stated the applicant is paving 80 feet of frontage. It is not necessary. He asked if cutting out a section where would the 80 feet start? Is it the Board's opinion the applicant only needs to go as far as necessary for a turnaround? Mr. Eisenhut commented less pavement is always good. Ms. McKnight stated the applicant should have any revised plan approved by the Fire Department.

Attorney Robert Smart submitted a 4 page letter. He stated this is not the Bird case and is quite different. He has provided a sketch of the Bird case. That was treated as a subdivision but was actually 3 separate parcels where access of each is on the private way. The applicant's lot is one lot with frontage on Oak Street and can be developed on Oak Street. He sees this as no different than raw land. A road has never been built and frontage is on Oak Street. He reiterated this is not the Bird case.

Mr. Smart stated there is no reasonable economic expectation the Board would be denying it by turning this down. He suggests the Board has followed this policy and it has been the precedent of this Board for a very long time. An existing neighborhood has been this way for a very long time. He stated he would think the Board would feel more comfortable with an analysis done by the town department.

Mark Rosen, representative for the Trask's in lieu of Jonathan Levin, noted the letter, dated 2/20/15, from Town Engineer Anthony DelGaizo with comments and recommendations. He stated Engineering has not received a plan with a roadway with a 60 foot turnaround and that a plan has never been shown. Mr. Jacobs noted the Board is aware of that memo. Mr. Rosen asked if a storm water list has been submitted and was informed it has been. He noted the Trask's and D'Addesio's have a fee interest to the mid-point of the street. They do not want this developed. Mature trees will come down and it will change the complete parcel to benefit one person only. He asked what is the public interest served by this? How are the abutters benefitted by this? This property has frontage on Oak Street. He stated this is an economic benefit to this one individual.

Kathy D'Addesio, of 110 Linden Street, commented she hopes this Board honors the subdivision law and is respectful. This is a very dense area of town. The Board should respect the requirements of the other subdivisions like this. The area has changed and density is growing. The town is discussing expanding the senior housing in the future. She wants to maintain a neighborhood area. She is concerned with no parking on the way. It will be more visible and parking will be there. She stated it is a way and not just a driveway. There is no benefit to the neighborhood or the town. Too many variables have to be met to make this work. She hopes the Board will stick to the standard subdivision law and deny the request.

Mr. Warner asked how long the D'Addesio's and Trask's have been maintaining this property. Ms. D'Addesio stated her family has been maintaining to the center of the way since 1953. Ms. McKnight stated Ms. D'Addesio believes she has a right to park on this street. The developer of the lot can say they will not park there but cannot say others with a right to use it cannot park there. She is concerned the Board may not be able to have the no parking condition the Fire Chief wants. Mr. Eisenhut agrees. Mr. Jacobs stated he will want addressed, if the road is put in, whether the Trask's and D'Addesio's can park there.

Mark Gluesing, a friend of Ms. D'Addesio, noted the physical reality of this. It will look like a driveway but everyone has rights to it. The practical reality is it looks like a driveway and it has now created 2 corner lots on Linden Street frontage-wise that have setback requirements. Why not 20 feet of pavement? Would the Fire Department say parking is fine if it was constructed differently? He stated it is unusual that the sewer line is totally out of the paved area in what feels like Ms. D'Addesio's side yard.

Mr. Beaulieu noted there is a minimum separation between water and sewer. The applicant is putting in an additional manhole and 2 catch basins as a benefit to the town. Ms. McKnight stated she wants a response to the question of whether this will create setback problems for corner lots. This is an existing paper street. Mr. Giunta Jr. stated he has not spoken with Building Inspector Roche regarding this. Built or unbuilt it is a street and you need to honor the front yard setback so there is no change here at all. With the pavers it gives the best of both worlds. It looks like a driveway but also a lawn.

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

VOTED: to continue the hearing to 4/7/15 at 7:45 p.m.

Minutes

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

VOTED: to accept the minutes of 12/15/14.

Mr. Jacobs noted the 1/20/15 are in draft form. He requested the members submit any changes to Ms. Clee.

Report of the Planning Director and Board Members

Ms. Newman stated she has received a bond from the developers on Dedham Avenue. She requested the Board sign the bond agreement.

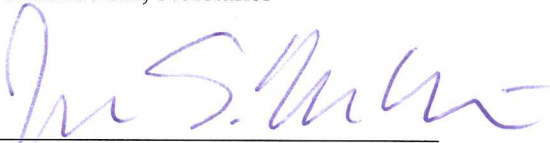
Ms. Newman noted the French Press dumpsters. She received an email with a proposal of the locations. There will be 6-96 gallon trash facilities places on the Highland Avenue side where pick-ups can be made. It is setback from the façade of the building where the cleaners is. There will be a wood enclosure painted white. Ms. Grimes stated she has no problem as long as it is enclosed. Mr. Jacobs stated they need to have the ability to walk by even if the doors are open. All agreed there is no problem.

Ms. Newman noted there will be a goal setting meeting on 4/9/15 from 2:00 p.m. to 5:00 p.m. at a location to be determined.

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

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

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Jeanne S. McKnight, Vice-Chairman and Clerk