NEEDHAM PLANNING BOARD MINUTES

May 26, 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, May 26, 2015 at 7:00 p.m. with Messr. Eisenhut and Alpert and Mss. McKnight as well as Planning Director, Ms. Newman, Assistant Planner, Ms. Clee and Recording Secretary, Ms. Kalinowski. Ms. Grimes arrived at 7:15 p.m.

Request to Extend Bond Agreement and Temporary Certificate of Occupancy: Amendment to Major Project Site Plan Special Permit No. 1991-3: North Hill Needham, Inc. (formerly known as Living Care Villages of Massachusetts, Inc.), 865 Central Avenue, Needham, MA 02492, Petitioner (Property located at 865 Central Avenue, Needham, MA).

Roy Cramer, representative for the applicant, noted the Board issued a Certificate of Occupancy in November and signed a bond agreement. The landscape work was to be done by 6/1/15. The applicant would like an extension to 9/1/15. He noted the applicant may come back for a modification because the slope is too steep. Mr. Jacobs asked if the applicant anticipates it will take the better part of 90 days. Mr. Cramer noted there is a dispute with the general contractor they hope to resolve. The applicant is looking for a new contractor. The plan was revised to build a retaining wall. He will talk with Ms. Newman to file that revised plan. He feels this is an opportunity to fix the slope. Mr. Jacobs commented there are only 2 meetings in the summer. Mr. Cramer noted it could possibly be an insignificant change. Mr. Jacobs noted it could be.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Alpert, it was by the four members present unanimously:
VOTED: to extend the deadline from 6/1/15 through 9/1/15.

Request to Extend Temporary Occupancy Permit: Major Project Site Plan Special Permit No. 2012-06: Brookline Development Corp., LLC, 93 Fisher Avenue, Needham, MA, Petitioner (property located at 50 Dedham Avenue, Needham, MA).

Ms. Newman noted this is a mixed-use building at the corner of Great Plain Avenue and Dedham Avenue. She received a letter from Jeff Feuerman. There is still some work that needs to be completed. Mr. Feuerman is requesting an extension of the temporary occupancy permit from 6/1/15 through 8/31/15. Ms. McKnight asked if the alarm is all set now. Ms. Newman noted it is in place.

Upon a motion made by Ms. McKnight, and seconded by Mr. Alpert, it was by the four members present unanimously:
VOTED: to approve the request to extend the temporary occupancy permit from 50 Dedham Avenue to 9/1/15.

Request to Extend Temporary Occupancy Permit: Major Project Site Plan Special Permit No. 2014-04: ONE Nation Fitness, LLC, 15 Kenilworth Road, Wellesley, MA 02482, Petitioner (Property located at 10-16 Charles Street, Needham, MA).

Mr. Jacobs noted the following correspondence for the record: an email from JC del Real requesting an extension of the temporary occupancy permit. The current permit expires 5/15/15. The Conservation Commission has set an order of conditions. For a reasonable completion date he would like an extension with the work to be completed by 9/1/15.

Upon a motion made by Ms. McKnight, and seconded by Mr. Alpert, it was by the four members present unanimously:
VOTED: to extend the temporary occupancy permit for 10-16 Charles Street to 9/1/15.

Ms. Grimes arrived at 7:15 p.m.

Endorsement of Plans: Rockwood Lane Definitive Subdivision: Wayside Realty Trust, Chris Kotsiopoulos, Owner and Trustee, 36 Rockwood Lane, Needham, MA, Petitioner (Property located at 36 Rockwood Lane and 5 adjacent parcels, Needham, MA, Assessors Plan No. 17 as Parcels 22, 23 and 24 and Plan No. 20 as Parcels 57, 60 and 61).

Ms. Newman stated the plans have been revised and engineering has reviewed. Engineering has estimated a bond of around $96,000. The Board will need a check before the applicant can start work. Town Counsel is reviewing the bond paperwork and needs to sign off. Also, the Stormwater Management Plan needs to be reviewed by Engineering.

Upon a motion made by Ms. McKnight, and seconded by Mr. Eisenhut, it was by four of the five members present (Mr. Alpert did not vote):
VOTED: to endorse the subdivision plans for Rockwood Lane not to be put into effect until all documents are submitted and approved by all appropriate officials.

7:00 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, March 10, 2015, March 24, 2015 and April 7, 2015 meetings of the Planning Board.***

Mr. Jacobs noted the following correspondence for the record: a new pavement detail plan dated 4/7/15 from George Giunta Jr.; a 4 page definitive plan showing the latest changes; a 5/20/15 email from Fire Chief Dennis Condon with comments: a 5/26/15 email from Assistant Town Engineer Thomas Ryder noting no comments or objection to parking; a 5/26/15 email from Assistant Town Engineer Thomas Ryder with comments and recommendations and a 5/26/15 letter from Attorney Robert Smart to the Planning Board with 6 points in opposition.

Mr. Jacobs asked Mr. Giunta Jr. if there was anything he had in addition. Mr. Giunta Jr. stated the plan changes were discussed at the last meeting. He has no other revisions. He reviewed the changes. He noted the applicant took out the bump out of the turnaround and made it part of Cypress Street. Permeable pavers have been added on either side of the paved surface which was in response to concerns of the Fire Department and abutters. They have extended the cross section of the road to reflect the fact the pavers will be going in. The driveway layout has been changed a bit because of the bump out of the roadway. Ms. McKnight asked if there was a change in the footprint or the location of the proposed house. Mr. Giunta Jr. stated the original house was proposed to be a front load garage. This house is an end load garage and gives them more space. The house has been reduced a bit and shifted a bit. He will add a house footprint to the plan.

Mr. Jacobs read from the 3/24/15 minutes part of a discussion regarding rights to park. Mr. Giunta Jr. stated the applicant will grant the rights if the Planning Board feels it is important. He does not feel it is necessary but they will not object to that. Ms. McKnight stated the rights were to be granted per the 4/7/15 minutes. Mr. Jacobs read from the 3/24/15 minutes regarding floor area to lot area (FAR) limitations. He noted Mr. Giunta Jr. stated at that meeting he was resistant to FAR limitations. Mr. Giunta Jr. noted he is still resistant to FAR limitations. He would prefer to stay away from FAR limits but would not mind a footprint limitation.

Jorge Oslan, applicant, stated there are no calculations for what the FAR is. Ms. McKnight asked if he would object to building the same size as the surrounding houses. Mr. Oslan stated he would object to that. He feels it would diminish or restrict him and is not consistent with the marketplace. Mr. Eisenhut asked the square footage of the footprint. Mr. Oslan stated 60 feet by 30 feet or 60 feet by 40 feet. He does not have a scale but that included garages. It could be 3,400 square feet including the garage.

Ms. McKnight noted it would be an FAR of about 3. She feels it is reasonable for what she has seen around town and economically reasonable. She would like an FAR of 3. She does not want a monster house but it does not seem the applicant is proposing a monster house. Mr. Jacobs asked if the applicant has a sense of whether fill will need to be brought in. Mr. Giunta Jr. noted the lot is pretty close to grade. Mr. Jacobs asked what the finish elevations are. Mr. Giunta Jr. noted the grade is 252 in the middle, up the slope, left to right. The finish grade is 256 in the back and 255 in the front. Some fill has already been brought in. Mr. Eisenhut asked that the applicant go through what new construction rights the developer has if the subdivision approval is not granted. Mr. Giunta Jr. noted there are none. The applicant has the right to build the entirety of Cypress Street but it does not give any zoning rights.

Robert Smart, attorney for Kathy D'Addessio, stated the plan does not comply with the requirement of the Subdivision Rules and Regulations. The applicant is asking for discretionary relief. The applicant needs to show unusual circumstances and there are none here. Mr. Jacobs asked what is an unusual circumstance? Mr. Smart stated he does not know how to answer that. It is a rectangular lot which is not unusual. There are not a huge number of lots this could happen on. The burden should be on the applicant to show it is unusual. If there are changes to the subdivision rules the applicant needs to go through the process. He does not see any public interest to make infill lots around town. This area has been wooded or grassed for a very long time.

Mr. Jacobs stated the town may end up with Cypress Street anyway and a mcmansion. Mr. Smart stated he sees their point but the neighbors do not want to see this. The Fire Department has not recanted their comment that the turnaround is not sufficient. The neighbors have a right to park on the proposed street. The Fire Department has not said they are fine with this. The applicant has the ability only to build off Oak Street under the Byrd case. The applicant is not being denied the right to build. There is no reasonable economic expectation in this case for 2 lots. He noted the Coolidge case. He stated this is not truly a subdivision. It is 2 ANR lots. It is within the Board's rights to approve only if they find it is unusual circumstances.

Mark Rosen, attorney for Karen Trask, noted he has concerns, if this is approved, what kinds of conditions need to be attached so that plowing and maintenance are done by the owner and if there are drainage issues who is responsible. He asked who would be responsible if there was damage to adjacent properties when constructing Cypress Street and who will take care of things after. He noted the builder is taking down mature trees. That changes the character of the neighborhood. These are concerns of the adjacent property owners. He does not think there has been a guarantee all issues have been addressed. He feels this is a bad development in the sense of the overall change in the character. He stated there is only one buildable lot there now.

Mr. Jacobs noted it was reported the drainage will be an improvement for the entire neighborhood. If that is true, it will be a benefit to all. Mr. Giunta Jr. noted on the Assessor's map Cypress Street is shown on the map. This is not a run of the mill issue. He asserted there is only one other lot in Needham with the same factors and circumstances. It is highly unusual and highly unique. This project more than meets the "unusual" regulation.

Mr. Giunta Jr. stated Section 3.35 noted there shall be a turnaround or backup area. Alternative layouts may be permitted. It does not say the applicant has to do a circular turnaround. The Board has developed this as an unofficial policy. This is not raw land. It is an existing paper street and the owner has a right to build the road. He feels it is appropriate to approve this. Engineering has signed off as has the Fire Department.

Ms. McKnight stated she wants to review all waivers being sought. She stated she had a question about granite curbing. Mr. Giunta Jr. stated there will be cape cod berms rather than granite curbing. Ms. Grimes commented she is struggling with this. She is not convinced only a few lots in town pertain to this. This makes her nervous. She stated there is a large vocal minority that is against big homes. She does not think this is approvable as a subdivision. The applicant is only creating one lot. She does not see this as a subdivision under the Planning

Board rules and regulations. She commented she is opposed to hammerheads. Mr. Giunta Jr. stated the subdivision control law does not make distinctions.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. McKnight, it was by four of the five members present (Mr. Alpert is not participating in this hearing):
VOTED: to close the hearing.

Mr. Eisenhut commended the attorneys for their fine presentations. He stated he always has a problem with waivers. Mr. Smart's argument about waivers in general is a good one. Waivers should have an implied determination it is in the public interest. Catch basins are in the public interest. Also, the limitation of the footprint is in the public interest. It is not in the public interest to have this type of infill. He is very conflicted on this. He feels he has to weight the public benefits. Ms. Grimes added the interlocking pavers for aesthetics on Cypress Street are a benefit. Ms. McKnight stated the offer with regard to the design of the house with the garage on the side is a benefit. Mr. Giunta Jr. noted the applicant would create a turnaround on Cypress Street that will be available to abutters. Mr. Oslan stated the drainage is a real benefit.

Mr. Eisenhut noted the increased density and the questionable right of abutters to park on the drive. Ms. McKnight noted the road needs to be kept plowed to the pavers. She is satisfied it is a subdivision per the definition in the Subdivision Control Act, since the land division cannot be approved as subdivision Approval Not Required (ANR). Some waivers do not seem controversial. Requiring a plan showing a 60-foot circular turnaround as a precondition of waiver is a practice of this Board. Armen Way was an exception. She noted the Board does not have to apply this practice blindly in every circumstance. There was an analysis of the paper streets done by the staff and the developer. She is convinced there are not many out there. It does make this unusual. The recorded plan in itself is unusual. She is convinced it does meet the "unusual" standard. The drainage, footprint limit and pavers are all benefits. She stated she is satisfied in general.

Mr. Jacobs stated he agrees with Ms. McKnight's comments. He does not see it as a substantial departure from prior practice. He feels it is unusual circumstance. Mr. Smart stated 2 houses would be more dense than one large house. He does not buy that the applicant may otherwise build a 5,000 square foot house. Mr. Rosen noted the Coolidge case decision comments on paper streets on a definitive subdivision plan previously approved by the Planning Board and notes ANR approval for the same plan is not guaranteed. Ms. Newman stated no definitive subdivisions plans were previously approved.

A motion was made to request the Planning Director draft a decision that approves the Cypress Street subdivision and draft a Certificate of Action for Cypress Street that includes the conditions that have been discussed in the recent hearing. Ms. Newman reviewed the conditions discussed and added language as to why there are unusual circumstances. Mr. Jacobs suggested the Board take a straw vote to see if there is a consensus. Mr. Jacobs, Ms. McKnight and Mr. Eisenhut are in favor and Ms. Grimes is not. Mr. Eisenhut stated he wants to see everything spelled out in excruciating detail. It was noted the summer meetings will be 7/7/15 and 8/11/15.

Upon a motion made by Ms. McKnight, and seconded by Mr. Eisenhut, it was by three of the four participating members present (Ms. Grimes voted in the negative):
VOTED: to request the Planning Director draft a decision that approves the Cypress Street subdivision and draft a Certificate of Action for Cypress Street that includes conditions that have been discussed in the recent hearing and includes the rationale for unusual circumstances.

Review of the Tree By-Laws from other municipalities.

Ms. Newman stated she has put together information for the Large House Review Committee. The towns of Lexington, Wellesley and Newton regulate trees. In Newton, owners of existing houses can do what they want as to trees. Lexington and Wellesley are similar, regulating trees taken down in front, side and rear setback areas. She gave all Board members copies of the regulations she has and will follow up with Wellesley to get their regulations. Ms. Grimes noted the Committee discussed that in Wellesley you pay into a fund and who manages the fund. Mr. Eisenhut stated he wants to avoid that can of worms. Ms. Grimes agreed. Ms. Newman stated she has heard from the Wellesley Building Department it is hard to administer this By-Law. She has not heard from the Planning Department of the town how they see it. She needs to research more.

Mr. Jacobs asked if Tree Warden Ed Olson has seen this. Ms. Newman stated he has. He informed her as to what the other towns were doing. He will be involved in this. Mr. Alpert stated he would like someone from the Conservation Commission brought in to discuss this. Ms. Grimes stated a majority of this is not within the purview of the Conservation Commission. Ms. McKnight noted the Town of Needham only has the Scenic Road By-Law and has no regulation of trees. Mr. Alpert noted trees in public ways and on town owned property are ok. If there is demolition, major construction or sales if it changes hands, the Board can regulate on private property. The Board could have a look back period. Mr. Eisenhut stated he likes the look back period.

Ms. Grimes noted Lexington has a 12 month look back period from the issuance of the permit. Mr. Jacobs asked if 12 months is enough or is 18 months better. Ms. Newman noted Newton is 18 months. Ms. Grimes stated Newton says tree replacement must be within 18 months. Mr. Alpert stated the Board may need to develop a tree manual. Mr. Jacobs asked what the next steps are. Ms. Newman stated she will try to create a small working group with 2 members of the Planning Board, Tree Warden Edward Olsen, one landscape architect and one person from the Conservation Commission. Mr. Eisenhut stated he likes Lexington's proposal. He stated Ms. Newman should check and see if it is working and if it is overly burdensome.

Ms. McKnight stated Lexington is a General By-Law, Wellesley is part of the Zoning By-Law and Newton is part of the General By-Law. Mr. Jacobs stated the Planning Director should make sure the Selectmen are on Board with this if it is to be proposed as a General By-Law. Ms. McKnight commented she would look at Wellesley and how they do it. She can do a presentation on what their By-Law is. Mr. Alpert suggested the Planning Board take pieces from all of these. Mr. Jacobs noted the Board would talk about it July 7.

Minutes

Upon a motion made by Ms. McKnight, and seconded by Mr. Eisenhut, it was by four of the five members present (Mr. Alpert is not participating):
VOTED: to accept the minutes of 2/3/15.

Report from Planning Director and Board members.

Ms. Newman stated she had a meeting with Normandy this morning. Mr. Jacobs was present as well. She had some concerns. They were proposing 2 new parking garages behind the TripAdvisor building with a path between the buildings. There is a long distance between garages without any active uses on the first floor. There were also concerns about the general aesthetics of the garages themselves; they read like garages, not like finished buildings with nice facades. The applicant had some suggested changes and will email the drawings. They have proposed to make the existing parking garage larger and got rid of the third parking garage. They now show a hotel with retail on the first floor. Normandy will improve the facades with some design elements to bring down the scale.

Mr. Jacobs stated the revised plans are better but there is a downside. The parking will be massive and all in one area. It will be mostly hidden behind everything. He noted the applicants are trying. They certainly did not do everything the Board asked.

Ms. Newman noted for 200 First Avenue the Board approved the site plan. The applicant was going to preserve the existing hedge. Tree Warden Edward Olsen stated 2 trees are dead and need to be taken down. Mr. Olsen will recommend replacements and it will be handled that way.

Reorganize

Ms. Newman noted the Board will reorganize on July 7.

Upon a motion made by Mr. Alpert, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to elect Ms. McKnight as Chairman and Ms. Grimes as Vice-Chairman effective 7/7/15.

Upon a motion made by Mr. Alpert, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to adjourn the meeting at 9:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Jeanne S. McKnight, Vice-Chairman and Clerk