

NEEDHAM PLANNING BOARD MINUTES

March 16, 2017

The regular meeting of the Planning Board held in the Charles River Room, Public Services Administration Building, was called to order by Elizabeth Grimes, Chairman, on Thursday, March 16, 2017 (rescheduled from 3/14/17), at 1:13 p.m. with Messrs. Jacobs, Owens and Alpert and Ms. McKnight, as well as Planning Director, Ms. Newman.

Correspondence

Ms. Grimes noted the following correspondence for the record: a legal notice from the City of Newton and a notice of a public hearing from the Town of Westwood noting an amendment to the By-Laws regarding marijuana.

Update on Inspection Fee: Rockwood Lane Definitive Subdivision: Wayside Realty Trust, Chris Kotsiopoulos, Owner and Trustee, 36 Rockwood Lane, Needham, MA, Petitioner (current owners: Hillcrest Development, Inc., and Elite Homebuilders, LLC), (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. Grimes stated she had a meeting with Ms. Newman, Town Engineer Anthony DelGaizo and the developer. At the last meeting the Board wanted more information on what was in the account. No one really knew. The accounting department was able to give the information. Ms. Newman stated the funds available were \$30,535. It was to be replenished when it got down to \$23,437. The work that needed to be done was discussed along with who would be responsible.

Ms. Grimes stated during the meeting it was found that anytime anything happened Beta was being called and the developer was being charged. This was not the Board's intent. In total the account was \$120,000. There is now about \$30,000. She suggested the Board stop having Beta involved until the work was done. If there is any issue Ms. Newman should be notified. At this time, Ms. Grimes does not feel there needs to be any additional funds. She stated it was eye opening to see Beta was being called with every instance. There is \$7,000 left before the replenishment is needed.

Ms. Newman noted all documents are available on line. Originally it was to be a 9 month timeline and it has gone on for over 2 years. Engineering has indicated they do not have the funds to do supplemental inspections. Mr. Jacobs asked if there was any sense of how much would need to be used to get the project done. Ms. Newman stated Engineering has indicated it will be more than \$7,000. Mr. Alpert noted it seems as though it will need to be replenished at some point. The Board could do it now or the applicant will have to be called back in. Jim Tomaiolo, representative for the applicant, stated he would address it at that time. He noted he came to the last meeting because the Town said there was no money in the account.

Ms. Newman stated she would like a sense from the Board of what work remains to get the job done. The Town has indicated they could do #2 and 11 on the list. Does the Board want the Town to have the consultant do the rest? Mr. Owens stated his understanding is the developer has changed. Ms. Newman stated that is correct. The new developer has only taken ownership 2 or 3 months ago. The applicants have done a good job of curbing the issues since the new developer took over. Mr. Owens asked if there is a scope of work document and was informed there was. He asked if it said Beta would do it all and the Town nothing or that Beta would supply assistance. Ms. Newman noted she did not have the document with her. Her understanding was the Town would oversee Beta. She feels the Town was not managing Beta but anytime something came up, it appears, Beta was contacted directly.

Mr. Owens stated if he was the contractor he would like to see the scope of work for Beta, then meet with the Town Engineer. He would want to see any invoice before it is paid. Mr. Alpert feels the contractor should go over the bills and see which should not have been paid and let the Planning Board know. Ms. Grimes noted there was one complaint regarding trash. She reached out to the developer and he got back to her to let her know it had been addressed. Mr. Jacobs asked Mr. Tomaiolo to review the letter. He would like all to come to an agreement. Mr. Tomaiolo commented a lot has been done already. Items 1, 2, 3, 4, 6, 7 and 8 are done. Item 9 was not on the original plan and not in the original scope of work. He agreed to do a small bit of sidewalk up to Rockwood Lane but it is not in the scope of work. That is item 9 and 10. The drainage system did have silt sacks and an inspection was done 30 days ago. The inspection sign offs will have to come after the grass grows. Ninety percent is already answered. He did not clear the town drains.

Mr. Jacobs stated he thinks further discussion is in order as the developer thinks some items are done. Mr. Alpert asked for outstanding items. Mr. Tomaiolo noted items 5, 11 and 12. Items 9 and 10 are not on the scope of work. Mr. Owens stated he would like the applicant and Town Engineer to sit down and discuss this. If the developer and Town Engineer are unable to have a meeting of the minds and the Town Engineer wants to spend more money someone needs to come back to the Board.

Mr. Alpert stated he wants to understand ownership. He stated Elite Home Builders and Hillcrest were the original owners. Mr. Tomaiolo noted the original owner started without Elite and Hillcrest. Once the plans were approved it has been Elite and Hillcrest.

Request to Establish Bond and Release Lots: 1001 and 1015 Central Avenue Definitive Subdivision: RRNIR LLC, 20 Beaufort Avenue, Needham, MA, Petitioner (Property located at 1001 and 1015 Central Avenue, Needham, MA).

Ms. Newman stated this was not ready to go. George Giunta Jr., representative for the applicant, stated this item is to establish a bond amount. The retaining wall is completed, the road is complete and the binder course is down. He spoke with the Town Engineer and he has not set a bond amount yet. He stated if there is any piece that could be authorized outside of the meeting he would appreciate it. Ms. McKnight asked what the security is now. Ms. Newman noted there is no bond, only the covenant. Ms. Newman stated the Board could set the bond at what Engineering says the Off-Street Drainage Bond requires, authorize her to accept that and she could prepare a lot release document.

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

VOTED: to set the bond at what Engineering says the Off-Street Drainage Bond requires, authorize the Planning Director to accept that and request she prepare a lot release document.

Report from Planning Director and Board members.

Ms. Newman noted 50 Dedham Avenue. The property was developed under the overlay district. There are 10 living units and retail on the first floor. She received an application to expand the photography studio. It was not picked up that it is allowed under the Zoning By-Law only if you have 6 or fewer residential units. The applicant is ready to go forward with the expansion. Ms. McKnight caught the issue and Ms. Newman is trying to fix it. If the use could be classified as a retail use it could go forward. The owner of the property is having trouble finding retail tenants due to the location. The Board may want to look at expanding the allowance of permitted uses under the Center Overlay District to 10 or more units.

Mr. Owens feels the Board made the decision and he is inclined to leave it alone. It would make sense to change the use table in the fall but he is inclined to leave this alone. Ms. Grimes stated the intent is to correct this. Mr. Alpert clarified Mr. Owens was saying the Board issued an amendment, it has gone through the appeal period and been recorded. Until a third party brings a complaint there is no reason to change it. Ms. McKnight feels it would be putting the Building Inspector in a difficult position to ignore this. The fact is consumer services are not

allowed. She finds it hard to see how a use such as this could be a retail use. The Board could have a special permit to allow this type of use.

Mr. Alpert stated a building permit has been issued. If the Building Inspector has an obligation to do something about it the Planning Board does also. If the Building Inspector does not feel an obligation to do anything the Planning Board should let it go. Ms. McKnight noted the building permit has not been issued yet. David Roche, Building Inspector, noted he has taken the application but he has not issued anything yet. His thought is in agreement with the owner. He would let the use continue as long as it is there unless the Board changes the By-Law. He feels it does have a retail component. Mr. Alpert stated he is inclined to leave it alone. He feels there is enough of an element of retail and the applicant has an amendment that has been recorded. He would like to see the By-Law broadened.

Robert Smart, representative for the applicant, stated it seems to be a good option to him. He will send a letter. He feels the owner should be allowed to put in any use that is good in the downtown. Ms. McKnight feels the only gray area is whether this could be characterized as a retail use. She needs Attorney Smart to send the letter and make the presentation this can be classified as a retail use. The Board should amend the Special Permit decision to introduce wording more consistent with the By-Law with all uses allowed for multi-use buildings with 6 or more dwelling units. Ms. Grimes stated the Board is going to just go with it then go back to change the By-Law.

Discussion of the hearing on Zoning Amendments for the May Annual Town Meeting.

Ms. Grimes noted Attorney Robert Smart submitted a red lined copy with comments. She noted Article 1 and asked if there were any issues or concerns. Mr. Alpert noted Mr. Smart's general comment on all regarded the amendment not being effective until 6/1/17. He feels it should be clarified. Ms. Grimes noted she feels it speaks for itself. Building Inspector David Roche agreed. Ms. McKnight stated it is spelled out in the General Law and the General Law has an effective date.

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

VOTED: to adopt Article 1 as has been drafted and place it on the Warrant.

Ms. Grimes noted Article 2. A 1999 amendment had 10 foot setbacks for nonconforming lots. Mr. Owens stated he wants to do this. Ms. Grimes agreed. Mr. Owens stated at the hearing the first article that came up for comment people jumped up to comment. He did not feel it was about this article. Mr. Jacobs agreed that was his feeling also. The problem was not this article. The people at the meeting wanted to hear it all.

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

VOTED: to adopt Article 2 with the footnote modification.

Ms. Grimes noted Article 3 and Attorney Smart's letter. Building Inspector Roche noted Attorney Smart suggested "measurements will be taken every 10 linear feet." Ms. Grimes feels it should be added. Mr. Alpert stated take street frontage, divide into 3 segments and take the average of the highest one third. Mr. Jacobs asked the average of what? The Board needs to add the word "elevation" after "average" so it says "which is the average elevation of the highest one third of the properties street frontage." All agreed. Building Inspector Roche stated, if this passes, he will have diagrams available after the fact. Mr. Jacobs thinks it would be helpful prior to. Mr. Owens noted diagrams could be for illustrative purposes only. Ms. McKnight noted it is not "will" but should be "shall." Also, add a comma before "and measurements shall be taken" and insert the word "elevation."

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

VOTED: to approve Article 3 with the modification discussed and send to the warrant.

Ms. Grimes noted Article 4 is FAR. Mr. Smart asked to apply to the Single Residence A (SRA) District. Ms. Newman stated she does not know why the Board would want to do this. The Board has not studied it and they do not have data on this district. All agreed. Mr. Jacobs requested Ms. Newman inform Mr. Smart it is a matter for further study. Ms. Grimes noted in 3d, Mr. Smart would like 12,000 or greater instead of 12,000 or more. Mr. Jacobs noted it says the same thing. Mr. Owens stated there will be lots containing 12,000 square feet or more. Mr. Jacobs noted it should say 12,000 or more square feet. All agree.

Building Inspector Roche stated if a builder decides to put dormers in the half story he wants to limit that. They could have gable ends on each end but he does not want them all over. Ms. McKnight asked if this is a clarification or tightening it. Ms. Grimes noted it was tightening it. Ms. McKnight noted she is concerned with that. She does not want to chip away at the exemptions. In footnote d, "for" should not be capitalized. Mr. Jacobs noted 3d and 4g should be 12,000 or more square feet.

Mr. Alpert noted Roy Cramer says the height requirement is talked about in SRA. The amendment as drafted applies to SRA also. Mr. Cramer asked why do that? If a person has a single family house the town does not want an unlimited height. Ms. Grimes stated it is now 35 feet.

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

VOTED: to approve Article 4 as modified with changes as presented.

Ms. Grimes suggested Articles 5 and 7 be discussed together. Ms. Newman feels they should be combined together. Ms. Grimes noted these increase the side setback and allow some architectural features. She noted Building Inspector Roche suggested making it one article and she agrees with him. Ms. McKnight asked, if the front setback is being kept at 20 feet, are we being too generous with what we are allowing in the set back. Ms. Grimes clarified the Board is changing the way measuring is being done.

Building Inspector Roche noted, in reality, the minimum front setback should have been 22 feet. He and Mark Gluesing feel if the front setback stays at 25 feet the builder will push the whole house back. Ms. McKnight asked how much farther from the 20 foot line. Ms. Grimes stated 2 feet. Building Inspector Roche noted the same thing happens in the rear setback. Only the sides have been adjusted. Ms. Grimes feels the 2 should be combined and tweaked in the fall. Ms. Newman stated she would introduce the lot coverage definition here. All will get imbedded in Article 5.

Mr. Alpert noted Article 7 and Mr. Smart's comments. Is the intent to measure to the foundation? That is not what the Articles are saying. Mr. Jacobs asked if what they were saying is the nearest part of the building at ground level. Building Inspector Roche noted the issue with saying "foundation" is the builder can then cantilever the side of the house 2 feet over the foundation. Do you say wall framing as it typically lines up with the foundation? Mr. Alpert suggested "excluding the elements permitted in front yard setback." Building Inspector Roche stated that is not enough. Mr. Jacobs asked where the Building Inspector would be measuring -- from the street to where. He cautioned the Board needs to be real careful here. Building Inspector Roche stated he would probably be measuring from the street to the exterior wall sheathing of the wall. He noted they are giving up to 6 inches of siding. This gives a little wiggle room. He noted this is Mass Building Code 364.780.

Mr. Owens stated when paragraph 1 in Article 7 and paragraph 2 in Article 7 are combined they become paragraphs 7 and 8 in Article 5. Mr. Alpert clarified 1 and 2 at the beginning of Article 5 and change 1-3 and 2-4. He suggested doing the definition first then change the numbers. All agreed. The new Article 5 -- technically change the heading to Amend Zoning By-Law -- Definition; Side Yard Setbacks Requirements. The first line is to see if the town will make the following 8 amendments. Ms. Newman stated the Board needs to talk about that. Under this Article 5, changing side yard setback, this is allowing people to put on additions as of right at the old setback line with no more than 50% demolition. Article 9 allows the applicant to do that with a Special Permit.

The Board should think about a Special Permit provision with regard to setback and put it in this article instead of having the Special Permit piece separate.

Mr. Alpert noted Article 9 only applies to building permits issued prior to June 1, 2017. Mr. Owens stated in Article 5, it is restricting the side setback to 10-12.5 feet. If a current house is at 10 feet, and is now nonconforming if you do not demolish more than 50%, you can build an addition to the existing side setback of the building. If nonconforming, the applicant can still build by right as long as the nonconformity does not get worse. In Article 9, if you demolish not more than 50% you can go to the ZBA to get a Special Permit.

Ms. McKnight stated she spoke with Building Inspector Roche earlier. She does not think Article 9 is clear enough. Footnotes i and j – may be altered or structurally changed -- only applies to alterations or structural changes. She asked if the Board needs () saying (not including reconstruction). Ms. Grimes asked if all members were comfortable with putting Articles 5 and 7 together. All members were in agreement.

Ms. Grimes stated Attorney Smart asked if Article 5 conflicted with 2b. Ms. Newman stated this overrides it but he feels it is not clear. Mr. Alpert stated it is clear to him. Mr. Jacobs noted to (the furthest extent of) and asked if they are confusing. Do we need them? Ms. McKnight stated she feels they are needed. She feels the furthest extent of the setback of the existing structure is what the Board means. The Board want to encourage additions. Mr. Jacobs asked if they mean the furthest extent of the building. Ms. McKnight noted the furthest extent of the existing structure within the setback. Mr. Alpert noted the language works. Ms. Grimes stated it does not exceed the closest.

Building Inspector Roche noted a nonconforming structure 10 feet to the overhang, extend the wall at 10 feet and allow a 2 foot overhang. Ms. Newman noted that was not accurate. Mr. Jacobs asked if the Board should be talking the side yard setback or should it be structure. Ms. McKnight suggested “further provided the structure does not extend into the side yard setback beyond the setback of the existing structure.” Mr. Jacobs asked if it should be the existing setback or closer to the side line than the structure or the furthest extent of the existing structure from the side line setback. Ms. McKnight added “provided the side line does not extend the side yard setback beyond the furthest extent of the existing structure side lot.”

The Board members further discussed specific language. Ms. Newman noted she will change it for the front and side setbacks. Mr. Owens noted it should be in 7 and 5 as well and “for which a building permit has been issued prior to 6/1/2017” should be added. The Board needs to clarify this is the original house. Ms. McKnight suggested “for which the building permit for the existing structure was issued prior to 6/1/17.” She noted the language should be changed everywhere it says 6/1/17. All agreed.

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

VOTED: to combine Articles 5 and 7 with modification discussed.

Ms. Grimes noted Article 6 pushes the garage back to 25 feet. Ms. McKnight stated she would like garages set back 5 feet from the house. Mr. Alpert stated he, personally, does not have a problem with it. Ms. Grimes stated the issue was with the garages that were pushed forward. Building Inspector Roche noted this does not tell you the garage has to be setback from the house. Ms. Grimes noted this accomplishes the Committee’s goals to get garages off the street. Attorney Smart commented attached garages shall have a minimum setback of 25 feet and the requirement is along both street frontages. All agreed to add this language.

Ms. McKnight noted footnote h on page 2. She was thinking this was not needed because the front yard setbacks in general are not changing to 25 feet but the purpose of footnote h is where you have existing, non-conforming attached garage setbacks. Should this be clarified by putting in the first line “existing single family and 2 family structures nonconforming for front yard setback.” All agreed. Ms. McKnight noted garage setback needs to be put in 2 places in that paragraph – in line 1 and in line 6 at the end. Ms. Grimes stated they are adding “of 25 feet” in 1g and 2f. Mr. Alpert noted in 3h also.

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

VOTED: to approve Article 6 as modified.

Ms. Grimes noted Article 8. The Single Residence B District (SRB) and General Residence District (GR) are different as lot coverage is only on new construction. This adds all lots to SRB and GR. Ms. Newman stated this also applies to additions. She noted she left out the word “lot” in 2j and 3i. Building Inspector Roche clarified it was any lot.

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

VOTED: to accept Article 8 with one change to add the word “lot” in 2 places as discussed.

Ms. Grimes noted Article 9, which allows the Zoning Board of Appeals (ZBA) to grant Special Permits. Mr. Alpert stated language talking about 6/1/17 and “for which an existing building permit has been issued” needs to be added. Ms. McKnight noted on footnote i, in table 4.2.3, 4th line, it says 12 which is a typo. Ms. Newman stated it should be 20. Ms. McKnight stated Selectman Dan Matthews believes there used to be a Special Permit process where the applicant knocked on the doors of his neighbors and asked them to sign a waiver. This puts the abutter on the spot. Ms. McKnight thinks people always talk to their neighbors. Selectman Matthews is objecting to a process by the ZBA to allow waiver. Building Inspector Roche stated it is no different from any other Special Permit process. Everyone is noticed. Ms. Grimes stated she was just raising an issue Selectman Matthews brought up.

Ms. McKnight noted the “altered or structurally changed” language. She feels “but not reconstructed” should be added. Mr. Owens stated he was ok with adding Ms. McKnight’s language. He noted in 1.4.7.2, “may be altered, extended or structurally changed (but not reconstructed)” should be added in 2i and 3j. All agreed. Also, change the 12 feet to 20 feet as discussed earlier.

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

VOTED: with the changes discussed, to accept Article 9.

Ms. Newman stated she did not mention in the first article there are other places where numbers will be changed as a function of the other changes. These are technical changes. Ms. Grimes noted she will ask Town Moderator Michael Fee what he will permit and what he suggests. She will give her idea of the Board’s thinking, give an overview and then put each article for an individual vote.

Mr. Owens stated Article 1 is not substantive changes but they are changing the whole article. Everything is in that article. He suggested Ms. Grimes could use it as the introduction and overview. The Board discussed options of how best to present the articles. Ms. Grimes will talk with Town Moderator Fee.

Mr. Owens stated he asked the Department of Assessing how much new growth there was. The Assessor gave him 10 years of residential new growth and the residential tax rate for each year. Ms. Newman stated she has data on teardowns and subdivision lots. Mr. Owens asked what the impact of these regulations is. He feels they will have no impact. Most things that drive values are things that happen outside of your lots. Ms. Grimes stated she feels this is an impossible question to answer. Mr. Owens stated the Board needs to answer this question even if it is speculation or hypothetical.

Ms. McKnight stated she never sees reconstructions as a negative. She feels it is a very positive thing. Mr. Owens noted a piece of it is additions, also. Ms. Newman discussed the format for the 4/13/17 meeting. She will have an overview presentation at the beginning. Ms. Grimes and Mr. Owens will meet and write the presentation.

There will also be slides. Ms. Newman stated she will make sure zoning is done, the explanation is done and invitations sent to Town Meeting members.

Minutes

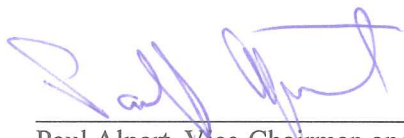
Upon a motion made by Ms. McKnight, and seconded by Mr. Owens, it was by the five members present unanimously:

VOTED: to accept the minutes of 12/20/16 and 1/10/17.

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

VOTED: to adjourn the meeting at 4:35 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Paul Alpert, Vice-Chairman and Clerk