NEEDHAM PLANNING BOARD MINUTES

April 1, 2008

The regular meeting of the Planning Board, held in the Selectmen's Meeting Room at the Needham Town Hall, was called to order by Devra Bailin, Chairman, on Tuesday, April 1, 2008 at 7:30 p.m. with Messrs. Eisenhut, Handel and Jacobs and Ms. McKnight as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Public Hearings

7:30 p.m. – Major Project Site Plan Review Amendment No. 2005-08: Needham Gateway, LLC, 1208 VFW Parkway, Boston, MA 02132, Petitioner (Property located at 100 Highland Avenue, Needham, MA).

Upon a motion made by Mr. Handel, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Rick Mann, representative for the applicant, noted this is a request to amend a Special Permit. Upon completion, they found 3 slight encroachments into the rear yard. The Special Permit had a 24 foot setback but this could be reduced to 20 feet. They are slightly over by 1.2 inches and would like the setback decreased. Mr. Mann noted Paul Dawson, a certified architect, told them all encroachments are cornices which fit within the new guidelines. He added when they met with the Board back in June they pointed out an inadvertent omission in the Special Permit relative to the uses that were allowed within the shopping center. The Board agreed this was an inadvertent ommission. The relief was for a particular use and they want to amend the uses. John Negoshian, abutter, noted he represented First Choice Management. He stated he remembers the 24 feet actually held the project up. He noted he did not understand what Mr. Mann was saying about the use issues. Mr. Mann explained the use issues for him. The purpose of their proposed amendment is to have language put in the conditions section which was inadvertently omitted. Ms. Bailin clarified the way the conditions read they are limited to retail uses only and that was not the intent. Mr. Negoshian noted a fence in the rear was put right on the lot line on a wall and weeds grow on the homeowner's side. He brought it up before and wants this addressed. He added water runs downhill to his property. They put another panel under the fence which makes it larger than 6 feet and non-conforming so he feels they need a permit for it. The setback was originally 24 feet and he will accept no less. He noted trash comes underneath the fence onto his property. He suggests they relocate the fence one foot closer to their lot, lower it to the ground and landscape. He would also like the water diverted. He noted the dumpster stays open 24/7 and has a 6 a.m. pickup every morning. He suggests it have a side door to walk in and the truck driver open and close the gates when he comes. There are also no signs put up that say "No Parking" on the street. Ms. Bailin noted they agreed to trash pickup at 8:30 a.m. but the fence is shown on the site plan. Mr. Handel asked if there was not a way to resolve this given the magnitude of the issues. Mr. Mann stated the issues are not new and have been addressed time and time again.

Mike Moskowitz stated they have met with Tony DelGaizo specifically on the water issue and have reviewed the solution they installed. Mr. DelGaizo thought it was a good resolution. They had offered other solutions but Mr. Negoshian had refused them all so they went to the Town Engineer. The dumpster is an issue but it is a management issue. They lowered the first 2 sections of the fence due to complaints from Mr. Negoshian. This is the first he has heard there is still an issue. He added signs were not part of the permit. Ms. Bailin suggested Mr. Negoshian meet with Mr. DelGaizo if he has water concerns. Mr. Negoshian stated they do snow removal early in the morning and that is not fair to the abutters. This is a simple fix. He wants the Board to hold off on a decision so they can sort it out. He feels it is a simple issue. Mr. Mann asked when the last time issues were mentioned to Mr. Moskowitz. Mr. Negoshian noted it could be not more than 6 months ago. Mr. Mann stated he has not heard anything of these issue for 6 months or longer. He does not see this being held up. Mr. Negoshian stated the fence is 6 feet in the air. Ms. Bailin asked Mr. Negoshian if they have permission to go on his property. He stated there was no need for them to go on his property to address their issues. They can move the fence one foot or lower it. Mr. Eisenhut asked if they are attempting to resolve this and was informed they were. Mr. Negoshian reiterated they should move it one foot and they can get in. Ms. Bailin noted they cannot maintain it with a one foot change and asked again if he was willing or not to let them go on his property. Mr. Negoshian stated he has no problem with them coming onto his property for maintenance purposes.

Ms. Bailin noted the following correspondence for the record: a memo from the Assistant Director of the DPW with no comment; a memo from the Fire Department noting no problems; and a memo from the Police Department noting no safety concerns. Janice Epstein, of 75 Highland Terrace, stated she was told signs would be put up. Ms. Bailin informed her she needs to contact the Board of Selectmen regarding the limitation of parking on the street. Ms. Epstein asked what type of business is going in. Mr. Mann informed her he did not know but they would not like anyone precluded. Ms. McKnight stated she felt it was a reasonable question looking at the language in the Zoning By-Law to give an example of the kind of tenant that might meet that criteria. Mr. Mann noted it would be service. Ms. McKnight clarified service such as insurance and was informed yes. Mr. Jacobs noted for the record he was not voting due to a conflict.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the four members present unanimously:
VOTED: to close the hearing.

A motion was made to grant a Special Permit to reduce the setback by one additional foot under Section 4.5, Dimensional Regulations for Highland/Commercial/128 District. Ms. Bailin offered clarification that they are not actually reducing the setback but recognizing the change in the By-Law definition of setback and that it still applies. Ms. McKnight noted that was the direction she was going in also. The amendment to the motion was accepted.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the four members present unanimously:
VOTED: to grant a Special Permit to recognize the change in the By-Law definition of setback in Section 4.5, Dimensional Regulations for Highland/Commercial/128 District that would allow them to reduce the setback by 1 foot.

Ms. Bailin requested the applicant discuss the issues with the abutter and assist Ms. Epstein with respect to the parking issue.

7:45 p.m. – Major Project Site Plan Review No. 2008-02: Lauren Johnston d/b/a Sew Easy, P.O. Box 480, Needham MA, Petitioner (Property located at 908 Great Plain Avenue, Needham, MA).

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Ms. Bailin explained the process. Roy Cramer, representative for the applicant, noted this is a school that teaches sewing. They have been there 9 years and the permitting issue came up last year. In a discussion with the Building Inspector he noted a need for a handicap bathroom so she has temporarily relocated. There will be 600 square feet on the first floor and 600 feet of basement storage. The classes were accessory but now they will be primary. They would like a Site Plan Review for a private school with an accessory retail use and parking waivers. There are 18 to 20 parking spaces in the back but they are unstriped. They have made an assumption not to commit spaces. There will be 8 to 18 kids per class and 26 in the summer class. They would like a waiver of 9 spaces during the school year and 13 during the summer. The parents either drop off or park and shop in downtown. They are asking the hours be 9:00 a.m. to 8:00 p.m. during the week and 9:00 a.m. to 5:00 p.m. on Saturday. He noted after school is the primary time and with the expanded hours they are hoping to expand the operation. They would like to open the retail operation during those hours. There will be 2 employees during the year and 3 in the summer with a 4th sometimes. They feel this is a low intensity use. Ms. Bailin asked if they were teaching any adult classes. Lauren Johnston, owner, noted they had 2 8-week sessions last year. She noted she does not enjoy adult classes. She likes the kids. Ms. Bailin noted the following correspondence for the record: a memo from the DPW with no comment; a memo from the Fire Department noting no problems; a memo from the Board of Health noting no comments; and a memo from the Police Department noting no safety concerns.

Upon a motion made by Mr. Handel, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to close the hearing.

Ms. Bailin stated the Planning Director had prepared a draft decision. Ms. Newman noted she had received some comments from one of the members she would like to share. Ms. McKnight clarified when she was reviewing the application, after she had sent the comments, she noticed why the Assessor's plan was referenced. She asked if it was customary to include the application and letters in the plan. Ms. Newman noted she usually picks up everything that constitutes the applicants' filing. Ms. McKnight stated it was not clear in the draft decision that it would be a 13 space waiver. Ms. Newman will clarify this. Ms. McKnight asked, on the floor plan in Condition 3.2, do they really care about the interior floor plan. Mr. Eisenhut noted it was because of the basement that it is a concern. Ms. Newman will change the wording to "The fixtures shall be installed substantially as shown on the Architectural Plans as submitted, although minor movement of fixtures is permitted" as suggested by Ms. McKnight. Ms. McKnight noted Condition 3.3 should state "No classes shall be scheduled" rather than "will be scheduled." She suggested Condition 3.4 should be one sentence rather than 2 sentences as it is more declarative if it is one sentence. Ms. Bailin noted the camp hours could be from 9:00 a.m. to 8:00 p.m. The camp hours sentence should be removed or it should state the camp hours "may be" between 9:00 a.m. and 8:00 p.m. the same as the regular hours. It was agreed by all to remove the second sentence in Condition 3.3. Ms. McKnight noted Condition 3.5 should be more explicit as to the dates. Ms. Johnston noted it would be the first week in June through the second week in September but it really depends on school. Ms. McKnight noted it should state "from September 1 through May 31" and during the summer months should be "from June 1 through September 30." Mr. Cramer noted it should state in Condition 3.5 it should not exceed 18 except for the camp program.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Major Project Site Plan Special Permit under Section 7.4 of the By-Law.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Special Permit under Section 3.2.2 of the By-Law for more than one non-residential use on a lot.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Special Permit under Section 3.2.2 of the By-Law for a sewing school in the Center Business District (Private School).

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Special Permit under Section 1.4.6 of the By-Law for the alteration of a non-conforming structure.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the Zoning By-Law (Off-Street Parking Requirements).

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to grant a Special Permit under Section 3.2.2 for accessory retail sales of sewing machines and related equipment incidental to a lawful, principal use.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Handel, it was by the five members present unanimously:
VOTED: to adopt the draft decision with the changes discussed.

Board Deliberation: March 18, 2008 public hearing on proposed Amendment to Zoning By-Law, Map Change to Single Residence B.

Ms. Bailin noted she has received a letter from the Krawiecki's. She instructed the Board members not to review it as the hearing was closed. She noted she also received a response to the letter from Mr. Cramer but she informed him it was not being considered as the hearing was closed. She also received a letter from Mr. Cramer outlining the details of the concessions the applicant agreed to make. She had asked him to submit it in writing and he did that. She also noted she had submitted a letter to Town Counsel with an objection to the vote taken by the Selectman prior to a hearing on this matter.

Ms. Bailin noted Steve Popper was there and she was going to allow him to go before the deliberations.

Major Project Site Plan Review Deminimus Change: Major Project Site Plan Special Permit No. 2007-09: High Rock School, Town of Needham, Petitioner (Property located at 77 Ferndale Avenue, Needham, MA).

Mr. Popper noted they have submitted drawings, pursuant to the discussions regarding additional drawings to satisfy the desire of a Building Official. To expedite the process, they have brought the drawings to the Planning Board as a deminimus change. One exception was a shed on the property. It was shown on the building permit set but they have now taken it out and made it a separate item. Ms. Bailin noted correspondence from Tony DelGaizo noting the modifications do not change the intent of the project.

Upon a motion made by Mr. Handel, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to approve the revised set of drawings and endorse them at the end of the meeting.

Board Deliberation: March 18, 2008 public hearing on proposed Amendment to Zoning By-Law, Map Change to Single Residence B (continued).

Ms. Bailin informed the public there would be no public comments. The hearing was closed and this is the deliberation part. Mr. Handel noted he can understand an argument for reducing the total number of units that may occur in the district as a result of the change. He is reluctant to recommend a change to Town Meeting with a majority of those it affects against it. Ms. Bailin noted she would like to make a comment. She feels there may be a misunderstanding of when the zoning changes were done. The question in her mind is whether of not this is a leftover parcel from the 800 acres that were originally rezoned. The history is fairly well outlined and she feels what they applied to Riverside is applicable here. She thinks what happened is a swath was taken for 128 and a portion was left on Riverside. She does think it is a leftover piece of the zoning that is not necessarily consistent with the zoning. Mr. Eisenhut noted he is not convinced by the history of this. He noted they need to look at the current conditions and decide if there is a rational basis for changing the current condition zoning. He feels it is an overinclusive zone but he sees a rational basis for wanting to rezone property that substantially borders a major highway. There are advantages owing to the vegetation, it is a little further away from the highway and there is less density basically creating a buffer from noise pollution. He feels it is rational. He stated even if it did occur as a result of a historical oversight, the proponent pointed out 35 pre-existing, lawful lots and not one of those owners spoke in favor of this proposal. To him, to change the zoning map carries a very heavy burden. He does not feel you should change the rules of the game unless there are clear and convincing reasons to do so. He feels what they should look at is if it is substantially and compelling to the public interest. He noted a 40B project may be more conducive to rational planning than 16 single family homes. The lines are not well drawn. He feels there is no compelling public interest to put this forward to change.

Ms. McKnight noted when she looks at the pattern of development across Greendale Avenue, between 10,000 and 20,000 square feet, to her that looks like the kind of development that is appropriate for this area. She is concerned with the extent of the proposed rezoning especially as it goes deeper toward 128. She noted the town owns some land that provides a buffer in that area although they do not own all the land that provides a buffer in that area. She prefers to see a buffer. She does not see any harm to lots that are the same size as the ones across the street. She feels it looks fine and is a good pattern of development for the town. The proponent has proposed he will come forward first, that he would restrict his land to say that he would come forward first with a cluster development that does not go deep into the land but is in front. She is speaking in favor of rezoning this area for 10,000 square foot development but not going as deep down towards 128 as proposed. Mr. Handel asked Ms. McKnight if she feels there is a compelling public interest or a benefit that includes this proposed change that trumps the desire of virtually all the property owners abutting to oppose this. Ms. McKnight noted she feels the empty nesters wanting to scale down cannot afford the kind of new development they are seeing in Needham with million dollar homes. It would be nice to have affordable homes in the $500,000 range in this area. This provides the new construction of houses that is not currently available. She feels they should encourage zoning to have this kind of housing. Mr. Eisenhut noted he does not feel cluster houses would be in the $500,000 range, more like the $650,000 to $700,000 range. He does not feel the market would allow very expensive homes. Mr. Jacobs noted the natural intuition would be that if you down zone from one acre to a quarter acre it would lead to greater density. Given what they have been told, with the parties intentions, they may end up with less density. He is not sure the neighbors appreciate that is a real possibility. That is something he has struggled with. He believes they heard the kind of housing the main proponent would put in is a different type of housing and probably less expensive housing and he counts that as a reason to support. In the end, he does not feel the case is a compelling one. He sees some reasons to do it but does not see it as compelling. His position would be that he would neither support nor oppose it.

Mr. Handel asked if the Board has historically ever brought a zoning article before Town Meeting without a recommendation. Ms. Bailin noted the recommendation of the Planning Board would be that the Planning Board was split and the draft recommendation would reflect that. Mr. Handel asked if they could make no recommendation. Ms. Bailin stated she feels it would make more sense to draft a recommendation that would give the views of the members with Ms. McKnight and herself on one side, Mr. Handel and Mr. Eisenhut on the other and Mr. Jacobs' comments. The pros and cons should be given to Town Meeting. She feels they have an obligation to make a recommendation. Mr. Handel stated, realistically, he does not think it would pass at Town Meeting. Ms. Bailin noted Ms. Newman will draft the opinions of the Board.

Discussion League of Women Voters' Warrant meeting Planning Board room assignments.

The Board discussed the room assignments. Mr. Jacobs will take Precincts G and H, Mr. Handel A and B, and Ms. McKnight E and F.

Minutes

Upon a motion made by Mr. Handel, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to approve the minutes of 2/26/08.

The Board decided to hold on the minutes of 3/4/08 to give the members time to read them.

Request to authorize the Planning Director to review and approve plans after the appeal period has expired so that a building permit may be granted: Major Site Plan Review No. 2008-01: Frozen Custard New England LLC, d/b/a Abbotts Frozen Custard, 2 Thoroughbred Lane, Sherbourne, MA, Petitioner (Property located at 934 Great Plain Avenue, Needham, MA).

Ms. Bailin noted there is no plan modification as a function of the decision.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Eisenhut, it was by the five members present unanimously:
VOTED: to request the Planning Director draft a letter allowing the Building Inspector to proceed outside the meeting.

Informal Presentation: current project through HOME Consortium: Analysis of Impediments to Fair Housing Choice.

Ms. Newman noted Alex Clee has created a working committee. There will be representatives from the Planning Board and the community to come up with recommendations and solutions to the issues facing Needham. Ms. Clee noted they have to do this as a requirement to continue getting HOME funds. She added no housing staff or no housing department is a hindrance. This project will create a focus group of some stakeholders to brainstorm. They have jumped in quickly but it will require a public hearing with the Board of Selectmen. They have had one meeting to date. She is doing some supplemental research and of other communities. She is beginning the writing process. The group will meet again then she will meet with Ms. Newman and the Board of Selectmen to let them know about the impediments found, etc. They will have a hearing on May 13. Ms. Bailin asked the date it needs to be submitted by and was informed May 15 but she has requested an extension. Ms. Clee is hoping for the end of May. Ms. Newman commented they were hoping the patterns in Newton would be similar to here. Mr. Handel noted the Housing Authority was not really a town department. He asked what their role is in other communities where there is a separate department. Ms. Newman noted other communities have committees. Mr. Handel commented a committee is more palatable than a department. Mr. Jacobs noted the first meeting was unfocused. He stated the Building Department is an issue for all and asked if anyone was talking with the Selectmen. Ms. Bailin stated the Building Inspector stands by his sub inspectors and gets support from Mr. Tobin. She added at times he is making it up and the language is not in the codes. There is no interdepartmental review and they end up with issues that should have been brought up during the permitting process. There is very little guidance in part by Town Counsel. There is a lack of sophistication. She noted they need to look at what they are doing. They make decisions without research and without checking the codes. A discussion ensued regarding past issues with the Building Inspector and the Building Department. Mr. Jacobs asked if the recommendation is they need to determine impediments but also recommend changes.

Ms. Newman noted they should do like Lexington where one person is making the calls and one person is doing the inspections. There is a Zoning Enforcement Officer and an inspector. Ms. Bailin reiterated they need interdepartmental analysis. Ms. McKnight commented on the Garden Apartments on Linden Street. She was told this would be a wonderful resource for the handicapped. It is good for the younger handicapped who can go up and down stairs but does not work well for older people with physical limitations as there is no elevator. They should be looking at housing for the elderly and handicapped in that area. Ms. Newman noted they are looking at upgrading that facility. Mr. Jacobs stated any thoughts to impediments or solutions are welcome and commented it is going before the Board of Selectmen.

<u>Planning Board Member Assignments for Town Meeting Articles.</u>

Ms. Newman noted there will be 4 articles on May 5 and asked who would like to present each. Mr. Jacobs will present Definition of Structure, Ms. McKnight will present the Home Rule parking fund, Mr. Ruth will present the Citizen's Petition for Mr. Barker and Mr. Handel will present the zoning change from tonight.

<u>Report of the Planning Director and Board Members. (Chairperson to sign Surety Rider).</u>

Ms. Newman noted they reduced the bond on Andrea Circle and Gerber Circle and the insurance company wants the document that does that. It needs the Chairman's signature and she has to get it back to them.

Upon a motion made by Mr. Handel, and seconded by Ms. McKnight, it was by the five members present unanimously:
VOTED: to adjourn the meeting in honor of Devra Bailin's long years of service and teaching to this Board on the many nuances of land use law and judgment at 9:35 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Jeanne McKnight, Vice-Chairman and Clerk