

NEEDHAM PLANNING BOARD MINUTES

September 17, 2019

The regular meeting of the Planning Board held in Powers Hall, Needham Town Hall, was called to order by Martin Jacobs, Chairman, on Tuesday, September 17, 2019, at 7:00 p.m. with Messrs. Alpert and Owens and Mmes. McKnight and Grimes, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Public Hearing:

7:10 p.m. – Article 1: Amend Zoning By-Law – Highway Commercial 1 Zoning District

Article 2: Amend Zoning By-Law – Map Change to Highway Commercial 1

Mr. Jacobs noted there are 3 public hearings. He gave an introduction of the articles and noted the first 2 articles are the Muzi site and Channel 5 property. This will create a new zone called the Highway Commercial 1 zone, which is a portion of the Industrial 1 zone. He noted the first 2 hearings will be presented together by Ms. Grimes. The Board wants to hear comments and questions after the presentation but does not want a debate.

Ms. Grimes stated this is intended to upgrade and modernize the Highway Commercial 1 District. The goal is simply to unlock the economic development potential and upgrade the gateway to Needham. The Planning Board feels the development is consistent with the best interests of the town. This parcel is bounded by Highland Avenue, Gould Street, the railway right of way and the Route 128/Highland Avenue interchange. The principal uses have been substantially unchanged for 50 years. There is ready access to the highway. The Board feels there is great potential for commercial development which contributes substantially to revenue and taxes for the town and reduces the need for overrides.

The Board feels this is a major opportunity and economic initiative. The Board is looking at traffic safety for the entire site. This site has been looked at for years with input from other Town boards. The Board is hoping to submit these Articles to Town Meeting on October 28. A two thirds vote is needed to approve the Articles. She stated the principle features are that this allows for greater density and heights. This will be a special permit process. She clarified there are no specific development proposals in front of the Board. She showed the current and proposed zoning. This increases retail by right, allows for more than one use on a lot and prohibits all single family residential uses.

Ms. Grimes then reviewed the dimensional changes. Larger heights will be set back from Gould and Highland. There is a significant downward slope toward the highway. She reviewed the special permit process for approval. Traffic analysis and traffic mitigations will be done for any large projects. She showed the existing conditions, as of right buildings and special permit buildings that could potentially be done. She also reviewed the setbacks for development.

Ms. Grimes showed real examples of what could be done with 20% open space and an FAR of 1.0 with a parking garage in the middle. There could be a 42 foot height along Gould and Highland and a 70 foot height along the back. She showed a 3D model with an FAR of 1.75. She stated she does not feel this could be realistically done (due to parking requirements and other dimensional zoning constraints) but it is theoretically possible. This would be a special permit with 2 buildings on the site with an FAR of 1.75.

Mr. Jacobs opened the hearing for public comments or questions. Ford Peckham, Precinct D, asked if there was still a helipad at Channel 5 and would a 70 foot building height interfere with that. Ms. Grimes stated she believes there is still a helipad there and feels that is an important question. She is not sure if it would interfere but does not believe so because of the topography. She will look into this. Eric Bailey, of Precinct A, asked Ms. Grimes to review the setbacks on Highland and Gould again. Ms. Grimes stated the drawing is not showing a specific proposed development, but she wanted to give the public an idea of what could be there. There could be 65% lot coverage with 20% open space. She reviewed the setbacks.

Ms. Grimes stated the proposed zoning has designated a 20 foot landscape setback along Gould and Highland. Heights are restricted along Gould and Highland. This has been designed to create a lower profile along the street edge. She noted 70 feet is approximately 5 stories. The streetscape will have a comparable height to Wingate of 3 stories on Gould and Highland. Kim Nichol Tierney, of Precinct H, asked if the front setback on Highland was 5 feet if height is less than 40 feet. Ms. Grimes noted there is a 20 foot landscape buffer that is always required. It was noted Muzi now has a garden, then parking, with no building up front. Ms. Grimes was asked how big the current garden is so people could have a sense. Ms. Grimes was not sure but felt it was less than 20 feet in depth from Highland Avenue.

Joni Shockett, of Precinct A, stated she lives on Evelyn Road and is concerned. If all the trees are cut down it will take out the noise reduction. She is concerned with the traffic impact. She stated there could be a Super Stop and Shop or light manufacturing and warehouse. She feels there would be large trucks passing through and that would be unfair to all of us. Rob Dangle, of Precinct A, echoed the noise and traffic concerns. He has not seen a widening of Gould Street or traffic mitigations. Gould Street is already overwhelmed. Ms. Grimes stated with any proposals developers would need to do a traffic study and mitigation. The town did its own traffic study in 2015 and had a lot of suggestions for improvement that could be done.

Mr. Dangle stated there should be regulations regarding hours of use. He hears trucks at all hours. Mr. Jacobs stated it is routine for the Planning Board to put conditions in special permits and enforcement is always an issue. The Board relies on the neighbors to let them know if there are issues. Mr. Alpert reviewed the allowed uses. He stated the Board deliberately kept grocery stores limited by right and up to 25,000 square feet by special permit. The Board does not want large supermarkets in this location and he does not think warehouses would be allowed here. The uses are limited. Susan McGarvey, Precinct G, asked if it is in the Planning Board's power to require trees. Ms. Grimes stated the Board requires landscape plans and tree planting plans.

Phil Murray, Precinct D, asked about the contrast to the other side of 95 with this type of development. Ms. Newman stated this is similar to the Mixed Use 128 District on Wexford Street. Ms. McGarvey asked if the zoning would have an impact on the rest of Gould Street beyond Channel 5. Ms. Grimes clarified the zoning is currently restricted to this site alone. Ms. Shockett asked if there would be an entrance on Highland Avenue or if all entrances would be on Gould Street. It was noted this would depend on the developer and the use of the lot. Mr. Jacobs reiterated there is no project proposed as of now. His concern is there is not a lot of room coming off the ramp to Gould Street. He would be skeptical with an entrance off Highland Avenue. Ms. McKnight stated that portion of Highland Avenue is a state highway. It is not easy to get an entrance off a state highway.

Doug Fox, Precinct F, asked if the property was in single ownership and what the assessed value of Muzi's was. He stated the Board needs to look at traffic in this town. It is getting worse and he feels it should be looked at before adding something like this. He stated this is the gateway to Needham. He would like to keep the current zoning and for the town to take it over and make a park. Ms. Newman noted there are 4 parcels with Channel 5 having 2 lots assessed at \$11 million and the Muzi property is assessed at \$6.9 million. Mr. Fox stated he is concerned with anything the town puts there but the bigger problem in town is traffic.

Mr. Peckham asked for an explanation of the differences between restrictions as of right as opposed to special permits. Ms. Newman explained that as of right projects still need a site plan special permit. The Board could look at impacts of traffic and has authority to make sure the site functions and does not have negative impacts on abutters. Theresa Thompson, Precinct J, stated she lives on Utica and has traffic backed up at 5:00 p.m. She asked if there was any thought to expanding the street and taking land by eminent domain. She has lived here for 18 years and never seen the traffic so bad. Mr. Jacobs stated the Board is aware of traffic and it would be a major concern to anyone coming in.

Adam Block, Precinct B and Chair of the Council of Economic Advisors (CEA), stated the CEA has also been working on this for 7 years to unlock the economic potential in town. He stated \$2 million in revenue could cover a lot of town budgets. He commented it sounds like the Planning Board has been very sensitive to public hearings over the last 7 years. Increased traffic activity is a result of a whole of the region not just Needham. He stated the public process is 2 fold – analysis of traffic and the Department of Public Works (DPW) reviews the traffic. Also the residents comment on the proposal. Factors are balanced. The original vision was not to have a use like Amazon come in; rather, to build a couple of 3 story buildings with additional height on the down slope so it is

basically the same from Gould and Highland. They will be looking at proposals that balance the town. He appreciates the effort the Planning Board has put into this.

John Connolly, asked if there has been a study of cars in and out of TV Place versus the projected. Ms. Grimes stated the last study was done in December 2015 and shows the trips in and out of TV Place. Mr. Connolly asked how many spaces will be in the parking garages. Ms. Grimes stated with an as of right with one building, there could be 500 garage spaces and 500 underground spaces, based on the use. Mr. Connolly asked if there has been a financial analysis done with current and projected tax revenue with the existing and the proposed. Ms. Grimes stated the Planning Board has engaged someone to prepare a fiscal analysis. It will be ready before Town Meeting and will be posted on the website. Mr. Connolly asked if the Board has been working on this for 7 years why is it taking so long for a financial analysis to be put forward.

Mary Meixner stated she spends a lot of time driving on Gould Street. Muzi is the gateway, but this is not a good use or aesthetically pleasing. This should be tasteful, have proper setbacks and needs to be up zoned properly. She feels putting a development on this site would increase livelihood in that area. People need to have an open mind. Rob Dangle, Precinct A, noted electric vehicle infrastructure is lacking. He asked if the Board would require developers to put in infrastructure for electric vehicles as well as solar.

Article 3: Amend Zoning By-Law – Accessory Dwelling Unit

Mr. Alpert recommended everyone read the summary provided by the Planning Board. It will help them understand better. He then explained what an ADU was. He noted the Planning Board has studied this for the past 3 years. This is a separate apartment within the single family home. The Board studied what other towns have done and what worked and what did not. As a policy they have decided to stay small. It can always be expanded by Town Meeting vote in the future. The Planning Board is comfortable with restrictions put on as a good starting point. The real difference between an illegal apartment and this proposal is whether there is an oven/stove.

Mr. Alpert described the intent to allow the older generation to stay in town and allow multigenerational living in the home. The house has to be owner occupied and keep the integrity of a single family home. He spoke of key regulations as to size and occupancy and allowing for temporary absences of up to 9 months. He reviewed the definition of “family” and “caregiver.” The ADU can have a separate door as long as it does not detract from the appearance of a single family residence. There must be an interior door between the apartment and the house. There will be no outside staircases. The Board does not want it to look like a 2 family house with 2 front doors. The ADU must meet all permitting requirements. The permit will be good for 3 years with application required for succeeding 3 year periods and the permits are not transferable.

Mr. Jacobs asked Mr. Alpert to discuss nannies. Mr. Alpert stated nannies are not caregivers. They are not taking care of elderly or disabled. He added that bedrooms for nannies are allowed in the house now. Ms. Shockett stated this is a wonderful idea. She asked what would happen if she had 950 square feet. She feels 850 square feet is arbitrary. Some houses are already set up for this type of thing. Mr. Alpert stated there is no flexibility for over 850 square feet. He added that any number the Board comes up with would be arbitrary. Kim Nichol Tierney, Precinct H, asked if an elderly person who owns a home brings a caregiver into an approved ADU, then transfers the home to a child to protect their finances when moving into a nursing home, what would happen. She asked if that could be incorporated into this. Ms. Grimes stated there is no mechanism that provides for this. Ms. Tierney asked if there could be an interim period for this.

Phil Murray, Precinct E, asked if anything prohibits people from taking on caregivers currently. She was informed not as long as there is no second apartment. Mr. Murray commented this was much ado about nothing. He feels this is more bureaucratic process. Housing affordability is a more pressing matter. The town needs to think about more affordable housing for people who want to stay in Needham. He feels the Board is wasting time on ADUs. This is the same basic article as last time and he suggested the Board think about this before moving forward. Mike Cohen, Precinct F, stated, basically, the key thing is a second stove. Mr. Alpert confirmed that and stated it also needs to be a discreet unit. Ms. Newman stated it functions as a separate independent unit. Eric Bailey, Precinct A, noted this is exclusively changing the single family zone only.

Larry Cohen, Precinct F, asked if this would be subject to landlord/tenant laws and was informed the ADUs are not for rental. Ms. McKnight stated if an employee is living on the property as a condition of employment, if the employee is terminated they are out. Mr. Cohen stated an argument could be made this is a tenant and would be up to the courts. Mr. Jacobs stated he is not aware of any appellate cases that have dealt with this. Mr. Cohen asked if the assessed value of a house could be modified because of this. Mr. Alpert feels this is unlikely because it is only for 3 years and is non-transferable. Mary McMann, Precinct F, asked why nannies are not allowed within this article. There are many more young families moving to town than elderly that need assistance. The town needs to be forward thinking. She feels this is a missed opportunity to not include nannies.

Ed Cosgrove, Chairman of the Board of Health, stated the Board of Health wholeheartedly supports this but would like a broader definition of family to include niece and nephew. He personally supports this. Mr. Alpert stated if the niece is a caregiver then it is allowed. David Montgomery, Precinct J, stated he was glad to see this back. He noted one matter at Town Meeting that came up was if the owner was absent for a certain amount of time. He asked if that has been resolved. Mr. Alpert stated that was covered by a temporary absence of up to 9 months. Ms. Grimes stated rentals during that time was taken out.

Jeff Heller, Precinct F, stated he was happy Town Meeting referred it back. He feels it needs more discussion. He has reviewed the changes made since last time – transferability, renting and the cooking unit should be removed before the house is put up for sale. He feels there is such a need for this but there is an opportunity for abuse. He asked if the Board has consulted with the ZBA. The elderly may stay in the home but sell to a relative in preparation of moving to an assisted living facility to protect their assets. There should be a provision for this. He commented the Planning Board needs to collaborate with other departments and may need more staffing for enforcement. The ZBA are colleagues and should be invited to the Planning Board meetings. He would like the Planning Board to work out these issues before Town Meeting.

Mr. Alpert stated the Building Inspector has been intimately involved since the beginning as have the Select Board, who have been generous with their comments. Ms. McKnight stated there are all kinds of criteria in the By-Laws that would apply to this situation. Mr. Heller stated he is more concerned with the allowance. You cannot be cavalier around the opportunity to have a two family in a single family zone. Mr. Jacobs noted the issue of short term rentals is a serious one but separate from what is being discussed tonight.

Colleen Shaller, Chair of the Council on Aging (COA), stated the COA is in full support. The more concise this Article can be the less questions will come up. This is a concise requirement for people aging in this town to stay in this town. Ms. Shockett asked, when the owner dies and the ADU is gone, what is the mechanism that would prevent the new owner from doing this. She suggested the Board might want to add the ADU is null and void upon the death. Mr. Alpert stated the Building Inspector may require that the elements that make it a separate unit must be removed. Ms. Grimes stated she has not seen many being approved as ADUs in other towns. Also there is a recorded permit when an ADU is approved and owners have to reapply every 3 years to keep a solid check on the home.

Mr. Heller asked how the notification was done to the Building Inspector. Mr. Alpert noted permits are for 3 years. He assumes the Building Inspector will keep track or, if sold, the Town will know the property has changed ownership. At the Building Inspectors discretion he can take the steps. Mr. Heller stated there is short sighted burden around accountability. Josh Levy, Precinct C, shared his concerns with the definition of family. The Town should not be determining family. It should be the owners and residents.

Doug Fox, Precinct F, stated he was happy it is being brought back. He hopes all Town Meeting members read it prior to Town Meeting and give red lined versions so there are no at-length discussions on the Town Meeting floor like last time. Mr. Jacobs noted the following correspondence for the record: a letter from Economic Development Director Devra Bailin on behalf of the CEA stating they voted to recommend approval of the Articles and for the Planning Board to move forward in a positive way and an email from Chris Heep noting he reviewed the Article and made comments for consideration.

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

VOTED: to continue the hearing to 10/2/19 to allow for a fiscal analysis to be received.

8:15 p.m. – Major Project Site Plan Review No. 2019-03: Apirak Chuenprapa, c/o Four Spoons, 769 Beacon Street, Newton, MA, Petitioner (Property located at 946 Great Plain Avenue, Needham, MA).

Mr. Jacobs informed the Board he ate at the Newton Restaurant the previous night. George Giunta Jr., representative for the applicant, stated this is one tenant in a bay in a larger building. It was last occupied by the UPS Store.

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

VOTED: to waive the reading of the public hearing notice.

Mr. Giunta Jr. stated after the UPS Store went out the Planning Board approved Eat Well Restaurant with slightly fewer seats. Eat Well is no longer interested. The current applicant has been in Newton for 4 years. The space is 1,662 square feet with 839 square feet in the basement. The restaurant will have 60 seats and there will be one register for the take-out station. This will be a full service eat in with wait staff and accessory take-out and catering. The menu will be similar to 4 Spoons. He noted the space needs to be completely retrofitted. There will be 2 new handicap bathrooms upstairs and one bathroom downstairs for employees. The proposed storefront will be large folding panel windows like Blue on Highland. The applicant would also like to paint a mural on the solid wall next to it.

Mr. Giunta Jr. stated the Design Review Board (DRB) has approved the concept as of now. The use is allowed by special permit. There are multiple uses on the site so they will need a special permit for more than one use and modification of an existing special permit. With 60 seats the parking requirement is 20 spaces and another 10 spaces for take-out. There is no parking at all on this property. The applicant is requesting a waiver of all 30 spaces. The Board previously granted a waiver of 24 spaces to Eat Well. He is comfortable there are enough spaces in downtown to accommodate this.

Mr. Giunta Jr. stated the applicant proposes to share the existing dumpster as Eat Well had proposed. They are looking at either an additional dumpster or a small compactor to share with the abutters. Recycling cannot be added in and it would be a shared arrangement. Mr. Jacobs asked if he had spoken with the others who share the dumpster. Mr. Giunta Jr. stated he has. David Becker has been the central point. The applicant met with Mr. Becker today to discuss everything. He noted there are also 2 oil refuse dumpsters behind the building. Ms. McKnight stated traffic studies show a potential of only 7 available on-street spaces at peak times. Also the Police Chief commented he had a concern with downtown parking. With one restaurant the Board limited the number of seats at lunch time. Has this been considered? Mr. Giunta Jr. stated his experience is there would always be people who circle for spaces because they want to be close. He thinks the peak demand number is an inflated number. He does not feel a lot of people will drive at lunchtime. Sweet Basil had that condition but had a higher number of seats at 100. Eat Well was approved for 42 seats. He would push back on that condition.

Ms. McKnight stated she heard a tenant in the apartment building on Dedham Avenue complained about odors. That may be a Board of Health issue. She asked how odors are controlled. Mr. Giunta Jr. stated it depends on what type of cooking. Most require a hood type system with filters, fans and odor collectors. Ms. McKnight asked if this was subject to approval by the Board of Health and was informed it was. Mr. Alpert stated he wants to make sure the Board of Health concerns are met. He noted parking is always an issue. Ms. Grimes stated she would not be supportive of restrictions at lunch. Mr. Jacobs commented the Board of Health had concerns. Mr. Giunta Jr. stated he would be going through everything with the Board of Health.

Mr. Jacobs noted the following correspondence for the record: a letter from Assistant Town Engineer Thomas Ryder noting no comments or objections; an email from Police Chief John Schlittler with comments regarding parking and an email from Fire Chief Dennis Condon noting no issues. Mr. Alpert asked if the Board requires parking permits. Ms. Newman stated spaces are required for the number of employees in the store. Ms. Newman stated she could have a decision prepared for the 10/2 meeting.

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

VOTED: to close the hearing.

Minutes

There were no minutes.

Correspondence

Mr. Jacobs noted correspondence from the Town of Dedham regarding gun restrictions. Ms. McKnight noted a proposal from Judith Barrett. Ms. Newman stated she has engaged Ms. Barrett for a fiscal analysis. The goal is to have it by the end of the month for the 10/2 meeting.

Report from Planning Director and Board members

Ms. Newman stated she received a draft ANR plan in which a piece of land would be conveyed to the abutting lot. The existing house is non-conforming with regard to the side yard setback. She stated Section 1.4.8 of the By-Law was adopted by the town. She noted in 2005 the Planning Board had the position a pre-existing, non-conforming lot could not be changed without the lot losing its zoning protection. The Board opened the door in 2005 if frontage or lot size increased in size (but not decreased) and since 2005 that is how the rule has been applied. She noted Town Counsel David Tobin does not feel the language is as clear as it should be. She asked how the Board should apply the rule in this situation.

Mr. Alpert stated he had represented the seller of this lot to the current owner. Mr. Jacobs stated the Board could go along with Town Counsel's interpretation or the Board could say they do not agree with Town Counsel and add the note per historical practice. He asked if the Board should seek a formal interpretation from Town Counsel. Ms. Newman noted Town Counsel's opinion is that Section 1.4.8 does not limit what can be done as long as you do not touch the line that affects the non-conformity. Mr. Alpert stated Town Counsel is saying since they are not changing the lot line it is ok to go forward. Mr. Jacobs feels the intent is clear. Ms. McKnight stated she would like to see a formal opinion. Case law would say you need to approve unless something in the By-Law disallows it.

Ms. Newman stated she is trying to set up a meeting with the Finance Committee to present the Articles. She had a conversation with the Town Manager. It could be done earlier on 9/25. Ms. Grimes stated she feels the Board needs the fiscal impact analysis prior to meeting with the Finance Committee. There were 4 or 5 members of the Finance Committee here tonight so they have heard the presentations. She feels it is premature to meet now.

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

VOTED: to adjourn the meeting at 9:45 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Elizabeth Grimes, Vice-Chairman and Clerk