

NEEDHAM PLANNING BOARD MINUTES

February 2, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, February 2, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of people expected to be on the agenda. She noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. She reviewed the rules of conduct for zoom meetings. She noted this meeting does include public hearings and will allow for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Block, it was by a roll call vote of the five members present unanimously:

VOTED: to automatically continue the meeting to 2/16/21 at 7:15 p.m. with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight.

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

VOTED: to authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Highway Commercial 1 Rezoning and Planning Study: Project Update

Mr. Block noted the presentation is tomorrow and there will be an outline. He will introduce, give the history, note changes made as a result of feedback, outline the changes and identify and compare the uses and dimensional changes. Natasha Espada, of Studio ENEE, will proceed with 2 scenarios of by right and by special permit. Then Rebecca Brown, of Greenman-Pedersen, Inc. (GPI), will talk traffic and needed improvements. Select Board member Marianne Cooley will discuss the fiscal impact. Then there will be comments and questions. There may be closing remarks. He anticipates one hour of content and 30 minutes for questions and comments.

Ms. Newman stated there needs to be discussion on how to manage questions. Does Mr. Block want the planning staff to manage the questions or will Mr. Block do so? Mr. Block would like the staff to allow people to speak after he recognizes them. Ms. McKnight will open the meeting. She feels there should be one hour for comments and questions. Mr. Alpert stated he would not be at the meeting. Ms. Newman noted the meeting will be covered by live cable. She will email the full presentation to all members after the meeting. She will update the website with the final version after the meeting.

Public Hearing:

7:30 pm. – 390 Grove Street Definitive Subdivision: Elisabeth Schmidt-Scheuber, 390 Grove Street, Needham, MA, Petitioner (Property located at 390 Grove Street, Needham MA.) Please note this is a re-noticed hearing that began on February 4, 2020 and is continued from the July 21, 2020, August 11, 2020, September 8, 2020, November 4, 2020, December 15, 2020 and January 19, 2021 Planning Board meetings.

Attorney George Giunta Jr., representative for the applicant, noted he has submitted revised plans to address several comments or issues from abutters. The reverse curve has been eliminated in favor of a new configuration. Street grades at the entry have been revised, the grading system has been revised to make it consistent, and the profile of the street has been revised. The By-Right Plan shows the ability to do 2 conforming lots without waivers. They are trying for a residential driveway feel as this is going to one house in the back. He submitted a revised list of

waivers and feels all technical requirements have been met. The main issue left is if Lot 1 is a corner lot. He feels it is not a corner lot.

Mr. Giunta Jr. stated Parcel B will be owned 50/50 by Lot 1 and Lot 2. There is no law that prohibits the creation of lots. The abutters' attorney has cited 4 cases. Three are from other states and none apply to this situation. The Board has dealt with this before at least twice. One was Heather Lane, which is the same situation as here. They created a 10 foot by 90-foot strip along Chestnut Street to make a buildable lot. Also, on Woodworth Lane a strip 10 feet by 200 feet was created. The Planning Board has allowed this in the past. It makes sense and is fully lawful in this case. His position is the creation of Parcel B is permitted, allowed, lawful and within the zoning and planning laws. The subdivision is an attractive proposal and fits better than a fully compliant subdivision. He is asking the Board for approval.

Ms. McKnight noted the Meridian Associates letter. Mr. Giunta Jr. stated there were several comments, and changes were made on the plan. Mr. Kelly can speak to the drainage. David Kelly, Project Engineer, added additional details to the infiltration system and one tweak of the stormwater calculations due to the roadway realignment. Ms. McKnight noted the following correspondence for the record: an email dated 1/30/20 from Fire Chief Dennis Condon stating he is satisfied with the plan; an email dated 1/27/21 from Assistant Town Engineer Thomas Ryder with comments on storm water and other issues and the need for detail for the bounds; and an email dated 1/27/20 from Tara Gurge, of the Board of Health, requesting at least one sidewalk. Mr. Alpert stated he would like to hear from the abutters.

Attorney Gary Lilienthal, of Bernkopf Goodman, representative for the abutters on Grove Street, disagreed with Mr. Giunta Jr. on several aspects. He feels the Board needs to discuss what constitutes a corner lot. The question is does Lot 1 have frontage on Grove Street. He noted he cited cases for relevant effect that were close. He also cited 3 Massachusetts cases relevant to the issue at hand. He feels they all apply to this situation. Parcel B cannot be distinguished from Lot 1 at all. He believes the Board has authority and an obligation to make a decision in this case. The abutters are concerned with the precedential value this sets trying to fit 2 lots into one. The Board will be setting a precedent. The issue should be resolved here and the Board should deny it because Lot 1 is a corner lot. It would send a strong message to developers. He noted the Health Department wants a sidewalk but he does not feel that is in the best interests of all. Parcel B is not a seamless interruption. It is a corner lot and insufficient in width as a corner lot. He requests the Board deny the application.

Mr. Jacobs stated both attorneys had good points. He would like to have Town Counsel's input on this situation. Mr. Owens stated he thinks this is bad planning. Though Mr. Giunta Jr. stated this is one new lot with a house in the back, and said he feels it is like a driveway, it is not a driveway; it is a road. He would not vote to approve waivers in this application. If there is a by right, the applicant should go ahead and build it. It is in fact a road. He is not persuaded by the argument that certain waivers were voted in certain situations. He also would like to hear what Town Counsel has to say.

Mr. Alpert is not averse to hearing from Town Counsel and getting an opinion. He has read the cases cited by Mr. Lilienthal and is not convinced of the argument by reading the cases. The Board has already created a precedent. It was not discussed during the public hearing for Heather Lane. He is aware that Heather Lane is the exact same issue as here. He is concerned with setting precedent. Once precedent is set it should be for all. He will see what Town Counsel has to say. He is inclined to say the creation of Lot B is a large hole in the By-Law. He would like to hear again the arguments for the waivers. He is concerned with the trees close to the lot line or that straddle the lot line.

Mr. Block stated he has mixed feelings about this. Heather Lane was brought up, but this is a 2-lot subdivision, and Heather Lane was multiple lots. The Heather Lane Homeowner's Association was to tend the landscape buffer for the pleasure of the homeowners. He does not feel this is the same. He feels there should be some continuity in the policy on how to handle this – a house behind a house. Mr. Alpert stated, if asking for Town Counsel's opinion, he would like him to address the 2-lot subdivision and the 50/50 common ownership issues. This could put the decision on Heather Lane in jeopardy. Mr. Block stated the benefit of this is predominantly for Lot 1 and not Lot 2. Every

case in itself is different. He has a question if construction vehicles are excavating. (Mr. Block lost his internet connection briefly.)

Ms. McKnight agreed to getting Town Counsel's opinion. The Board should be concerned with adequate access to the lot, sidewalks, is the drainage adequate and whether to grant waivers. She is not sure it is their decision as to whether particular lots in the subdivision are buildable. She would like the questions addressed by Town Counsel as to whether it is the Board's obligation to make that determination. She had a question about the Meridian letter. On page 5, at the top regarding the infiltration system, it says the applicant should submit a mounding analysis. Meridian's response is they do not feel ground water mounding calculations are required. She asked if the Town required this and is additional information needed. Ms. Newman stated the Assistant Town Engineer was not recommending it be done but she will follow up.

Mr. Block stated if excavators are working on the road and dig down and destroy roots of trees on someone's property that is a challenge. He would like the Board to have some continuity where there is a house stuck behind another house. Robert Badavas, of 402 Grove Street, stated he heard the Fire Chief had no issue with the plan. He asked if he was looking at driveway width or roadway width. Paul Beaulieu noted that, with the widest outriggers, the Fire Department uses 18 feet of pavement, and asked is that sufficient for fire equipment. James Curley, of 380 Grove Street and a direct abutter, noted Parcel B is being created to make an unbuildable lot buildable. Lot 1 is a corner lot under the By-Law and is unbuildable. Ms. Newman noted the hearing will be continued. She will need, in writing from the applicant, a request to give another extension of the action deadline from the end of March to the end of April.

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

VOTED: to continue the hearing to 3/2/21 at 7:30 p.m.

The Board took a 5 minute break. Mr. Block was out of the room for the approval of minutes.

Minutes

Upon a motion made by Mr. Jacobs, and seconded by Mr. Owens, it was by a roll call vote of the four members present unanimously:

VOTED: to accept the minutes of 12/1/20.

Mr. Block returned to the meeting.

Discussion of Permit Conditions: Major Project Site Plan Special Permit No. 2020-03: Hunnewell Needham LLC, 393 South Main Street, Cohasset, MA 02025, Petitioner (Property located at 400 Hunnewell Street, Needham, MA). Regarding request to build new residential building with 8 units (see legal notice for more info).

Ms. McKnight noted the following correspondence for the record that was left out at the last meeting: a letter from 8 abutting property owners with photos taken 12/31/20 with a focus on the shading issue and demolition.

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

VOTED: to reopen the hearing for the limited purpose of accepting the 12/31/20 letter from the abutters for the record.

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

VOTED: to close the hearing.

Mr. Jacobs had no questions or comments. Mr. Alpert stated it seems the neighbors have been in touch with the developer and are satisfied. He is satisfied. Mr. Owens feels the developer has made a serious attempt to mitigate the abutters concerns, and is in full compliance with the zoning requirements. He has no objections or concerns. Ms. McKnight stated she fails to see the need for the 5 parking spaces along the rear left of the property line at the back of the building. She thought the land could be better used for a sitting area. She understands the need for a place for snow but a sitting area does not necessarily mean trees and bushes. She suggests the area be pervious. She lives in a condo unit and there is a large demand for outdoor seating areas. She likes the idea of outdoor space for people to socialize. She would like a response from Mr. Giunta Jr. and ideas from Board members.

Mr. Giunta Jr. stated anything is possible. The applicant has a different view. Those spaces are at a lower grade 4 feet down from the landscaped area. It is not a very warm and inviting spot. He feels it would go largely unused and feels the parking spaces would be used. He feels if someone has a social gathering the needed guest parking would not be there. This would be a semi enclosed space with retaining walls on 2 sides. Mr. Alpert stated he disagrees with Ms. McKnight. It is a good idea but if the owners want a seating area they can create one. Ms. McKnight asked if there could be a condition in the decision that these spaces are not required. She would also like it clear these are guest spaces.

A discussion ensued. Mr. Jacobs asked if there was any issue with those spaces being permeable pavers. Mr. Giunta Jr. stated Engineering and developers try to avoid permeable pavers especially in parking spaces where oil or other car liquids could drip down. He does not feel the net difference is sufficient to warrant them. Mr. Beaulieu noted he has used permeable pavers but it is not a favorite material to use per the Engineering Department. He noted these spaces are near the dumpster. Volatile organics tend to create a long-term contamination issue. He would not use permeable pavers near a dumpster.

Ms. Newman noted there had been some conversation regarding the dumpster outside and if the trash could be handled inside. Mr. Giunta Jr. stated, if the dumpsters go inside, the parking would have to be reconfigured and they would lose 2 parking spaces. These are non-commercial dumpsters. It will not be that bad to have them outside with a fence around them. They will be set 4 feet below the abutters. Dennis Cronin noted they will be paving the entire parking lot including the neighboring lot. Mr. Owens stated he is opposed to any condition for the developer to separate parking areas. Mr. Cronin will work with the neighbor and put up signage for their spots. A discussion ensued regarding driveway easements. Mr. Giunta Jr. suggested arrows be painted for the entrance and exit. Mr. Owens commented too much time has been spent on this project. Mr. Alpert agreed. He feels they are micromanaging now. Let the 2 property owners deal with the easement if there are issues. He would not want this as a condition. Ms. Newman will prepare a decision. The Board can grant relief and approve the decision at the next meeting.

Review of Inclusionary Zoning Opportunities Across Needham's Commercial Districts.

Ms. McKnight stated she wants to make a presentation on Inclusionary Zoning. She is looking at all zoning districts. She was surprised this 8-unit condo project at 400 Hunnewell does not require any affordable units. She has found that several districts do not require affordable units. She showed a list of all district requirements. She noted the Apartment A-1 District and Apartment A-2 District. Any that have already been built would not be required to have affordable units. In the 1970s, the town rezoned to allow apartments. She feels the requirement should be put in the A-1 and A-2 districts in case the existing buildings are ever redeveloped. She discussed the Avery Square District and the Hillside Avenue Business District. She feels there should be a consistent affordability requirement in all districts. She suggests that, if a development is in the overlay and has at least 6 units, one affordable unit be required. There is no requirement in the underlying district for affordable units. She asked if this is something the members want her to work on and prepare appropriate language for.

Mr. Jacobs stated he would like her to go forward with this. There are 6 districts – Apartment 1 and 2, Center Business, Chestnut Street Business, Hillside Avenue Business and Avery Square District. The Neighborhood Business 128 District has an affordable unit requirement. He would like if there are 6 to 10 units, there be one affordable unit and above that round up one. Ms. Newman stated it would be helpful to loop Karen Sunnarborg in.

A discussion ensued. Mr. Alpert commented it was a great idea and he likes it in general. He feels they are getting into the weeds and it would be rushing to get it on the May Town Meeting. He is not sure it can be ready for May. He is confused as to how to treat existing apartment complexes. If not exempt, how do we require it? He asked what happens when the building gets old and is rehabbed or torn down. Ms. McKnight will be prepared to answer that question. She feels it would be exempt.

Mr. Owens thinks it is a great idea and the Board should go ahead with it. He thinks it may be a little more complicated and more controversial than Ms. McKnight thinks. Mr. Alpert agreed with Mr. Owens. Paul Beaulieu stated it sounds like a good idea, that Mr. Alpert is correct in not racing for the May Town Meeting, that the Board should look at incentivizing in certain areas. and he commented the Board should not look through the keyhole and make it too specific. Ms. McKnight noted a letter from Peter Olive, of 133 Thornton Road, dated 1/27/21, who works with the Equal Justice in Needham advocacy group. They would like an affordable unit requirement in the 6 zones outlined. Mr. Olive appreciates all the hard work on the inclusionary zoning plan. He noted a lot of people are working on this and they hope to get it on the Warrant for the May Town Meeting.

Board of Appeals – February 18, 2021.

This is off the agenda.

Report from Planning Director and Board members.

Ms. Newman informed the Board a vaccination facility is going into the first floor of the Trip Advisor Building. The Board of Health has created a public health emergency declaration to allow this. The Fire, Police and Building Inspector have all looked at this and signed off on it. Mr. Alpert stated he has a problem with this. He has an issue with the Board of Health declaring a health emergency and overriding the Planning Board rules and regulations. He does not feel they have a right to nullify the By-Law by declaring a health emergency. It is ok if they come to the Planning Board to request an exemption.

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

VOTED: that this Board approves the use of the Trip Advisor Building by Newton Wellesley Hospital and Mass General and Brigham for the purpose of administering covid vaccinations and, if such use is in violation of our By-Laws or of a Special Permit, we are directing the Building Inspector to not enforce any violation because of such use.

Ms. Newman stated she needs some direction on Heather Lane. There are 2 lots where the structures were to remain. The developer now wants the flexibility to take them down. She wants to modify the finding section of the decision and the off-street drainage requirement. She asked if a deminimus change was proper. Mr. Jacobs is ok with that. Ms. McKnight did not recall those buildings being important for their decision. She feels it can be done as a deminimus change. Ms. Newman noted the bond will be increased and Engineering has no issue. Mr. Alpert stated he wants to make sure the abutters are aware since they had raised an objection. He would like something in the file that the abutters have received notice or have no objection to it. Mr. Jacobs agreed. Ms. Newman will follow up with Attorney Robert Smart tomorrow.

Mr. Block stated he has been approached by a Central Avenue resident regarding a large-scale day care going in next to Temple Aliyah. Ms. Newman stated it will be right below the 10,000 square foot threshold and create a design as of right. This triggers minor site plan review. The parking will not need any waivers. She does not have any details. Mr. Block stated drop off will be 7:30 a.m. to 9:00 a.m. and pick up will be 3:30 pm. to 6:00 p.m. There will be an additional 100 cars on Central Avenue. He would support a Zoning By-Law change; if a use with that much traffic impact is in a residential zone then the Planning Board should have some oversight. He would like to see if the Board can set some policy and codify it. Mr. Alpert stated the Single Residence A District has few uses that are allowed by right and those are by statute. Ms. Newman feels the Board should think about a standard across residential. Mr. Block feels there is a danger adding 100 cars in the a.m. and p.m. He is not sure what the

Board can do. Mr. Alpert stated Temple Aliyah is right next door and post covid there are after school religious schools which will increase traffic. He noted the owner of the property is an entity that is owned by Select Board member Matt Borelli. Mr. Owens stated he needs more information.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote of the five members present unanimously:

VOTED: to adjourn the meeting at 10:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk