

NEEDHAM PLANNING BOARD MINUTES

May 18, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday May 18, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs and Block and Ms. Espada, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 a public hearing so there will be an opportunity 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. Block, and seconded by Mr. Jacobs, it was by a roll call vote of the five members present unanimously:

VOTED: to automatically continue the meeting to 6/21/21 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. Block, and seconded by Mr. Jacobs, 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.

ANR Plan – Robert Roach, Oakcrest Builders, Petitioner (Property located at 71 Pilgrim Road, Needham, MA).

Ms. Newman stated she and Engineering have reviewed this plan and have no comments. The applicant will demolish a house on the lot. The structure is conforming in all respects except the side yard. This is all set for an 81P endorsement. Paul Beaulieu, surveyor from Field Resources, noted there is a monument on the corner of the parcel that caused houses to be built 7 feet away from where they should have been. This ANR plan will correct the issue for Lots 65 and 71 and 2 houses to the left. Ms. McKnight asked if Parcel A would be conveyed to the Scully's. Mr. Beaulieu stated ultimately it would be. These parcels are easier to deal with as the houses are coming down.

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

VOTED: to endorse the plan as presented as subdivision approval not required.

Public Hearing:

7:20 p.m. – Major Project Site Plan Special Permit No. 2021-02: Katherine Pennington Klein, 40 Eaton Road, Needham, MA, Petitioner (Property located at 32 Chestnut Street, Needham, MA). Regarding proposed renovation of approximately 1,751 square feet of existing first floor commercial space, in an existing commercial building, for use as an orthodontics practice.

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 waive the reading of the public hearing notice.

George Giunta Jr., attorney for the applicant, noted this is 1,751 square feet of existing commercial space in the Jacobs block that was previously occupied by the Art Emporium. The building was built in 1926. An addition was added at the end of the building in 2002 and a special permit was received then. This space will be renovated to use as an orthodontic office. Katherine Pennington Klein is a board-certified specialist, and he gave her background. The office will be open from 7:00 a.m. to 7:00 p.m., Monday through Friday and some hours on Saturday if needed. The practice is for all ages and will have braces, retainers, teeth whitening. There will be 3 staff – Dr. Klein, one administrative staff and one assistant.

Mr. Giunta Jr. stated there was a discussion with the Board at a previous meeting and it was agreed this was classified under Craft, Consumer Services. This is a use allowed by right but the Special Permit that was given in 2002 requires a review by the Board if there are any changes in use. The applicant needs the review and relief from parking. There is no parking on site. In 2002 the owner of the building gave some land to the Town for the Lincoln Street Lot. The existing waiver is for 46 spaces and this project will have a net increase in parking space demand of 3 spaces. There will need to be a revised waiver of 49 spaces for the entire building. The building is fully developed and there will be no change in the interface. He noted the exterior changes that will be made. The green awnings will be removed and there will be one awning over the front entrance. There will be new transom windows over clear glass and one clear glass panel with a translucent cover over it. The sign band will have blue paint applied. A directional sign is proposed for the back. There will be 5 chairs in the waiting area and a door in front and back. These are minor changes.

Ms. McKnight noted the following correspondence for the record: an email from Fire Chief Dennis Condon noting he was fine with the change; an email from Police Chief John Schlittler with no issues and an email from Tara Gurge, of the Health Department, with comments. Ms. Newman noted an email from the Design Review Board (DRB) noted they had received the proposed changes. It is well designed but there was discussion regarding the acute entry awning and the rear awning over the employee entrance. The DRB questioned the awning over a non-public entrance and commented on the coping. The owner said the coping would continue through the front of the façade of the building.

Mr. Giunta Jr. stated the Design Review Board was fine with the proposal. The comments regarding the signage were separate. The applicant would need to go back to the DRB for the special permit. In the end the DRB was ok with the awnings. The painting of the coping is beyond the scope of this applicant, and it would be the building owner. Mr. Alpert asked if this is an amendment to the special permit that applies to the entire building or just limited to this space. Ms. Newman noted the entire building. She suggests, with the owner's permission, a condition for the painting be included but only if the owner is in agreement. Alfred Greymont, owner of the building, stated he would be happy to take care of the painting of the coping. Mr. Alpert appreciated that and feels it would add to the appearance of the building.

Ms. Espada noted it was a nice renovation and will enhance the building. She asked what is the structure of the awning angle? Ken Feyl, architect, noted it is a similar frame as the other awnings set at an angle. The door is recessed, and they wanted to give a different look. It is more of a decorative element. Ms. Espada asked what the hardy base board material was. Mr. Feyl noted it was a concrete curb base to protect the finish materials from weather. Mr. Block commented it is a great addition to the town and a great improvement to the building. The design and layout make sense. Mr. Jacobs noted it was a good project and clarified he is not a part of the Jacobs family of the Jacobs block.

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

VOTED: to close the hearing.

Appointment:

7:50 p.m. – Minor Project Review: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, Massachusetts, Petitioner (Property located at 1688 Central Avenue, Needham, MA).

Ms. McKnight stated she would like to bring the Board members up to date on the status of the application. There was a letter, dated 5/14/21, to the Planning Board from Attorney Evans Huber for the daycare applicant, Needham Enterprises, withdrawing the application for Minor Project Site Plan Review without prejudice. Needham Enterprises is doing so with the understanding, after discussion with the Town, that they will submit, by 5/20/21, an application for Major Project Site Plan Review and no Special Permit under Section 7.4 will be required. The hearing will be 6/15/21. All paperwork has already been filed.

Mr. Jacobs stated, in Mr. Huber's letter, he was surprised with the second and third sentences in paragraph 1. He had asked for Town Counsel's opinion on how to proceed. He asked if there has been a response from him. Ms. McKnight stated she spoke with Town Counsel but there is nothing formal yet. Mr. Jacobs asked why they are proceeding with anything.

Mr. Alpert stated the Chair and Vice-Chair spoke with Town Counsel and are satisfied regarding the applicability of G.L. c.40A Section 3. It is not appropriate for Town Counsel to do a formal opinion. He noted the neighbors want a major project review so the Planning Board can have more control. Mr. Jacobs said he has no problem with the withdrawal, but he asked how the agreement came to be that no Special Permit under Section 7.4 would be required. The Board's authority would be limited. Mr. Alpert stated he does not read that as limiting the Board any more than statute and the law already limits them.

Mr. Jacobs asked if that was Town Counsel's opinion also. Mr. Alpert said he has not gone into that, noting that they had extensive discussions regarding case law. Mr. Jacobs thought all were in agreement to ask Town Counsel for an opinion. Then they get a letter from Mr. Huber with an agreement and no opinion. Mr. Block agreed. He feels this is an executive action beyond what the Planning Board had agreed to, which was to seek from Town Counsel an expert opinion in the zoning law and the limit of the Planning Board's authority. This appears to be well intentioned, but it seems to be a different action than what was requested by the Board. Ms. McKnight stated this action was to achieve the goal. They have tried to move expeditiously. Ms. Block noted that Paragraph Number 1 of Mr. Huber's letter creates an issue. Mr. Jacobs stated he does not agree with the second and third sentences of Number 1. A motion was made to accept the withdrawal of the application without prejudice. Mr. Jacobs stated he wanted to be crystal clear he would not sanction the sentences in Number 1 of Mr. Huber's letter. Mr. Block concurred. Mr. Alpert stated they are limited under 40A Section 3 to what the Board can do.

Ms. Espada stated she is a neighbor of the property and will recuse herself. Mr. Jacobs wants to make sure the applicant knows he will not be available on 6/15 and Ms. Espada has recused herself. There will only be 3 members present at the hearing. Mr. Alpert would like to ask if Ms. Espada being present could go toward being a quorum. Mr. Jacobs could listen to the meeting and then participate.

Upon a motion made by Mr. Alpert, and seconded by Mr. Jacobs, it was by a roll call vote of four of the five members present (Ms. Espada recused herself):

VOTED: to accept the withdrawal of the Minor Project Site Plan Review application without prejudice.

Decision: Major Project Site Plan Special Permit No. 2021-01: WELL LCB Needham Landlord LLC, c/o LCB Senior Living, 3 Edgewater Drive, Suite 101, Norwood, MA 02062, Petitioner (Property located at 100-110 West Street, Needham, MA). Regarding redevelopment of the property to include an 83 unit Assisted Living and Alzheimer's/Memory Care facility and 72 Independent Living Apartments.

Ms. McKnight noted the Board had a hearing, voted to close the hearing, and now has a decision prepared by the Planning Director. This is not a public hearing. Mr. Alpert stated he had some non-substantive changes that he sent to the Planning staff. Ms. McKnight noted a memo of response from Attorney Evans Huber with 7 concerns. Mr. Huber stated he grouped them by concerns. He is withdrawing Number 2 as the applicant has decided to pay for the cost of a Monitoring Agent. In Number 3 the generator is currently not screened. The applicant would be required to do a noise study and would not want the requirement to screen the generator. In Number 5 the dumpster enclosure is for wood fencing, but the applicant would like to do vinyl fencing. In Number 7, Sections 3.37(c) and 3.38(e) regarding the Board's approval of the as-built plans and noise analysis of the emergency generator. He would like to clarify this does not require a public hearing.

Mr. Huber noted more significant is Number 6 and Section 3.31 regarding exterior lighting. They understand the need to reduce the lighting at night, but safety is a major consideration. They will have independent living citizens who may stay out late. This should be written in such a way as to have flexibility. Number 1 for Sections 1.12 and 3.32 is the same issue. Their last project was compliant with different but similar criteria. Language had been proposed that there be compliance with LEED Silver or National Green Building Standards. He is proposing a rewrite of Section 3.32. Attorney Roy Cramer noted Section 1.12 should be rewritten also so it is consistent.

Mr. Huber noted Number 4 is the most important. That is Section 3.17 noting Board approval would be required if the operator of the facility changes. If LCB is no longer the entity any entity coming in would need to be vetted by regulatory framework by EOEa. There would be significant financial ramifications. This is problematic language for lenders and the

owner. He would like Section 3.17 taken out. The Town would be notified if this took place, but they would not like the consent of the Board to be required.

Ms. McKnight stated the practice for buildings is to have generators screened to shield them from view. There are properties on the other side of the railroad tracks. Mr. Bloom noted there is a fence along the railroad and there is landscape screening on the south side. Only the east side facing the building is not screened on the parking lot side. There will be a noise attenuation enclosure. Mr. Alpert stated it would be visible to residents and visitors and he would like screening. Mr. Cramer suggested landscape screening.

Ms. Espada asked what color the vinyl fence dumpster enclosure would be. She noted wood would weather to a gray color. Mr. Bloom is not sure as they have not decided on a color yet. All members are ok with vinyl fence.

New language has been proposed for lighting. Mr. Lee Bloom of LCB Senior Living noted there are safety concerns. The shift changes at 11:00 p.m. so the light reduction should be at 11:30 p.m. There were no issues with that change by the Board members. Mr. Bloom stated the last few buildings he has done have switched to the Green Building Standard. It is very similar to LEED. He is good with LEED, but the Board needs to understand it is an old building. He wants that taken into consideration.

Ms. Espada stated she is LEED Certified. She is ok with the project architect submitting the compliance certification, but National Green Building Standards are less stringent than LEED. Anthony Vivirito, Project Architect, has assessed the value of this project. This would fall under Level 3 of the existing building code. Portions of the building are being gutted and will be brought up to standards. LEED Certification is above and beyond what the building code expects them to do. The building envelope is one issue. Ms. Espada stated the applicant should be able to get LEED Silver if gutting and putting new systems in the whole building. Mr. Vivirito noted they will get close to LEED Silver but there is no guarantee. Ms. McKnight asked if they used the National Green Building Standard could it be achieved. Mr. Vivirito is not sure. He has not used that before. Mr. Bloom stated he is ok with using the LEED Standard, but he wants language to consider the issues.

Mr. Block stated he generally has no issue with a different standard. There are challenges with the standards. The Board was going to look at the standards for all builds in all zones when they were discussing the Muzi location. He feels the Board should stick with the current code and go with the Stretch Code. Ms. McKnight asked if Mr. Block would delete the LEED or Green Building Standard reference entirely because the Stretch Code is required. Mr. Block would delete it. Mr. Alpert stated he has no problem with wording changes but would defer to Ms. Espada. Ms. Espada stated the Green Building Standard is less stringent but is typical for homes. She is not as familiar with it as LEED. She is ok with the project architect submitting compliance certification as long as the architect is LEED Certified. She would recommend to keep it LEED Silver and if there are some hardships it could be reviewed.

Ms. McKnight stated she is ok with the proposed language but would take out “or the National Green Building.” She would add a check list submittal be done as a condition of, and prior to, the Certificate of Occupancy. Mr. Cramer stated that is beyond the Stretch Code and they intend to do it. He would hate to have the Certificate of Occupancy held up. Mr. Alpert stated it is only a submittal of a check list prior to the Certificate of Occupancy. Ms. Espada noted the check list should be submitted with the building permit. The LEED check list is done during the design. Mr. Vivirito stated filing for LEED requires a check list up front. It sets the design standards for the project. At the end of the project the architect certifies they have met the assumptions.

Ms. McKnight noted the issue of Board approval of change of entity of the operating facility, noting that, typically, there is a process. Ms. Newman noted this is a standard condition the Board has been imposing for these kinds of uses historically. Mr. Cramer stated he has had cases over the years where properties have been sold. He would not like a sale held up due to Board approval. The state has to approve any sale. The Board is not qualified. That provision has not been in some decisions and has not been included in any decision for this property. That has potential financial issues, and he explained the rationale. Louise Giannakis, attorney for the owner, sees it as beyond the purview of the Planning Board. She is more than happy to maintain a dialogue. There are multiple avenues for new owners to be vetted. The Special Permit runs with the land and the new owner would need to abide by the permit. This is a major issue for Well Tower and LCB Senior Living.

Mr. Jacobs agreed with Mr. Cramer and Ms. Giannakis. The Board is not qualified to vet new operators. He would ask the incoming operator to sign a document to abide by the Special Permit requirements. Mr. Block concurs. It is not the Board's job to regulate ownership. Mr. Cramer stated the Conservation Commission used to have the new owner file a statement they have read and understand the permit requirements. Ms. Newman will reword it in the document.

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

VOTED: to grant (1) the requested Major Project Site Plan Review Special Permit under Section 7.4 of the By-Law, (2) the requested Special Permit under Section 1.4.6 of the By-Law for alteration of a lawful pre-existing non-conforming structure, (3) the requested Special Permit under Section 3.15.3.2 (b), (c), and (d) of the By-Law, to operate assisted living and/or Alzheimer's/memory loss facilities, independent living apartments, and buildings with multiple uses containing, as a primary use, such uses as are allowed by special permit or by right in the Avery Square Overlay District or the Avery Square Business District, and (4) the requested Special Permit under Section 5.1.1.5, to waive strict adherence with the requirements of Section 5.1.3 (Parking Plan Design Requirements) of the Zoning By-Law, more specifically, in Section 5.1.3(h) to waive the parking space layout standard, which requires that all parking areas be designed so that each motor vehicle may proceed to and from its parking space without requiring the movement of any other vehicle and to approve in the alternative 5 tandem parking spaces within the parking garage as shown on the Plan, and in Section 5.1.3(i), to waive the maneuvering aisle width standard which requires a minimum maneuvering aisle width of twenty-four feet for 90-degree parking spaces and to approve in the alternative a maneuvering aisle width of 16 to 18 feet within the parking garage as shown on the Plan: subject to the following plan modification, conditions and limitation.

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

VOTED: to accept and issue the decision as presented with the minor changes previously submitted to the Planning Director and with modifications discussed this evening.

Board of Appeals – May 20, 2021

33 Fenton Road -- Andrew McKinney, applicant

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

VOTED: "No comment."

Minutes

Upon a motion made by Mr. Alpert, and seconded by Mr. Jacobs, it was by a roll call vote of four of the five members present (Ms. Espada did not vote):

VOTED: to accept the minutes of 6/8/20.

Ms. McKnight noted on the minutes of 6/16/20, 100 West Street, it should say Ms. Newman will put it on the agenda "for a public hearing."

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote of four of the five members present (Ms. Espada did not vote):

VOTED: to accept the minutes of 6/16/20 with the one change discussed.

Ms. McKnight noted on the minutes of 1/19/21, under the Highway Commercial 1 Zoning, Ms. Newman stated there were no cost estimates. Ms. Newman noted it was for roadway improvements. Mr. Block stated they should strike the sentence.

On Hunnewell Street it says “the FAR is half the building across the street. He noted this is not an appropriate issue.” Ms. McKnight asked if “this” should be “FAR.”

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 accept the minutes of 1/19/21 with the changes discussed.

Ms. McKnight noted on the minutes of 1/21/21, under Highway Commercial 1 Zoning, it says “the mail Level E or F.” Mr. Block stated to strike the sentence.

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

VOTED: to accept the minutes of 1/21/21 with the one change.

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

VOTED: to accept the minutes of 2/2/21.

Report of the Planning Director and Board members.

Mr. Alpert noted the Racial Equity Statement for Needham should be in the packet for a June meeting. Ms. Espada noted she is on the committee that worked on that statement and is available for questions. Ms. McKnight noted correspondence from Stephen Frail in the packet. He looks forward to working with the Planning Board on sustainable development. Mr. Alpert stated he has been the Community Preservation Commission (CPC) representative for the past 6 years. There are only 2 3-year terms allowed so he will need to be replaced on the CPC. This can be taken up at the 6/1/21 meeting. He noted there will be 2 or 3 summer meetings and the members should think about if they want to be the representative.

Mr. Block stated he is currently the Chair of the Council of Economic Advisors (CEA). He described the changes he has made as Chair. The CEA will have a meeting on 5/25/21 at 8:30 a.m. They have invited a number of retail commercial brokers and some investors to look at the issues downtown. Ms. McKnight stated that tied in with the Planning Board’s 6/1/21 meeting. Ms. Newman stated she will talk with the Town Manager about Mr. Block’s role on the CEA and if he should be the representative for the Select Board or the Planning Board going forward. The Select Board had appointed him to the CEA.

Ms. Newman is working with the Town Manager’s office on outdoor seating. How does the Planning Board want to convert to the existing framework? They are looking at what the restaurants have implemented and how to move forward. A small working group has been set up to figure out what is appropriate. She would like 2 Planning Board members on the group. Mr. Block and Ms. Espada volunteered for the group.

Reorganization

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 nominate Mr. Alpert as Chair of the Planning Board commencing immediately.

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 nominate Mr. Block as Vice-Chairman of the Planning Board commencing immediately.

Ms. McKnight thanked Mr. Block for all his leadership with the Highway Commercial 1 District this past year and thanked Ms. Espada for all her contributions. She has been glad of the opportunity to serve as Chair. She thanked all the staff people for all their help this past year with the zoom meetings.

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

VOTED: to adjourn the meeting at 10:27 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk