

NEEDHAM PLANNING BOARD MINUTES

June 29, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Tuesday June 29, 2021, at 7:15 p.m. with Messrs. Jacobs and Block and Mmes. McKnight and Espada, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Alpert took a roll call attendance of the Board members and staff. He 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. He reviewed the rules of conduct for zoom meetings. He noted this meeting does include a public hearing and there will be public comment allowed. If any votes are taken at the meeting the vote will be conducted by roll call. All supporting materials are posted on the town's website.

ANR Plan – Pinewood Landholdings, Inc., Petitioner (Property located at 107 Thornton Road, Needham, MA).

Matt Hughes, applicant, noted this is a single-family, existing dwelling that will be demolished, and 2 lots will be made. 107 Thornton Road is a good size lot, then there is a smaller lot. The 2 lots will be combined. Parcel A was gifted to the family at 121 Thornton Road. Mr. Block asked if a house will be built on each lot and was informed yes. Both houses are under the FAR requirement. Ms. Newman noted the staff and engineering have reviewed and are fine with this. Both lots have required minimum square footage and frontage. Mr. Jacobs stated the plan bears a comment that does not bless this zoning-wise. Mr. Block noted Lot 2 says there is 70.45 feet of frontage. Mr. Hughes clarified 9.55 feet have been added due to the bend in the road.

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 accept the ANR as presented for the property at 107 Thornton Street and endorse the plan as ANR.

Public Hearing:

7:30 p.m. – Amendment to Major Project Site Plan Review No. 2005-07: Needham Gateway LLC, 66 Cranberry Lane, Needham, MA, Petitioner (Property located at 100 and 120 Highland Avenue, Needham, MA). Regarding request to amend the Decision to allow in the existing development all of the uses allowed by right or by special permit in the zoning district.

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

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

Rick Mann, representative for Needham Gateway LLC, noted this is the Panera Bread Mall. It consists of 2 buildings with 23,448 square feet with 97 parking spaces. 120 Highland Avenue houses Panera Bread and others, and 100 Highland Avenue has 10,628 square feet with Frank W Webb. He noted 55% of the leases will end in 2022. The applicant would like to amend the 2006 special permit, which restricts uses at 100 and 120 Highland Avenue. Section 3.3 expressly prohibits many uses in that area. There have been many changes in the retail world since 2006 and it has been worse since Covid. The prohibitions have placed an unfair competitive advantage among the competitors in the area and on Needham Street in Newton. The abutters are concerned with another restaurant. He stated no restaurant is planned as long as Panera remains. He requests the restrictions be removed, Section 3.3 be removed in its entirety and language added that all uses allowed in the Highland Commercial Zoning District shall be allowed by right.

Mr. Alpert asked why Section 3.3 had been included. Ms. Newman gave the historical perspective. There were a lot of concerns raised about parking and traffic at that time. The applicant requested a parking waiver of 30 spaces and stated Panera generated less parking than required. The Board wanted to limit higher traffic uses on the site.

Mr. Block stated he went to the site. He is glad to hear there are lease prohibitions and that they intend to follow all special permit requirements. He asked when Panera Bread's lease is up. Mike Moskowitz, Manager of Needham Gateway LLC, stated there are a number of options. It is a long-term lease. Frank W. Webb is moving. Omaha Steak and Super Cuts have no options to renew their leases. Both indicated they do not want to negotiate a new lease. Mr. Block asked if there were any inquiries from any brokers. Some had looked at it but there are no letters of intent. Mr. Block asked if there has been any discussion regarding a standalone ATM. Mr. Moskowitz stated there has not been as there is no room for it. Mr. Block

noted there is concern with people parking on Highland Terrace. Mr. Moskowitz stated “no parking” signs have been put up.

Ms. McKnight stated the permit called for landscaping. She asked if there is reasonable landscaping. Mr. Block stated there were several landscaped islands and trees. Nothing is unkempt. It is colorful and clean. Ms. McKnight stated she would not support what is being proposed unless the usual “no change in use without Planning Board approval” is included. Mr. Jacobs stated his partner, when he practiced law, represented Mr. Moskowitz. He does not feel he needs to recuse himself. There were no issues from other members. Mr. Jacobs stated he agrees with Ms. McKnight. He would not go another way. Ms. Espada asked if anything has changed in the Zoning By-Law in that district since this was awarded. Ms. Newman noted there have been no changes. Ms. Espada asked for clarification as to whether the uses they are asking to change would be by special permit and not by right. That is correct. Mr. Alpert stated below 10,000 square feet is by right and above by special permit up to 25,000 square feet.

Ms. Espada asked if there is a way to create a special permit for the prohibited use to look at independently. Ms. Newman would think about it. Something could probably be done through the site plan special permit process, and it may be possible to do as an amendment through the site plan special permit process. Mr. Alpert noted the following correspondence for the record: a memo from Fire Chief Dennis Condon with no comments or objections; an email from Police Chief John Schlittler with no comments or objections and multiple emails opposed to applications due to restaurants and Highland Terrace parking from Joe and Eileen Manning of 68 Riverside Street, Ryan and Tonya McKee of 18 Highview Street, Diane Abbott of 69 Highland Terrace, Robert Deutsch of 14 Highview Street and Melanie Prescott of Riverside Street.

Mr. Alpert stated he understands the concerns of the neighbors to some extent. There are no restaurants in town with live music, and he understands the concerns with parking. He noted there is no safe parking on Second Avenue. He stated right now a restaurant would be by special permit and a fitness center would be by special permit. Mr. Mann stated he is not sure that is correct with regard to a restaurant as long as Panera is there. Mr. Block noted Section 3.3 has prohibited all sports clubs and athletic merchandise stores. Mr. Jacobs stated there is no definition of a sports club. Michael Ruddy, of 69 Melrose Avenue, spoke in opposition. He agrees with Ms. McKnight and Mr. Jacobs. The applicant should not have a blanket right of use based on vague uses. This abuts existing residential, and the conditions imposed were for specific reasons. He is troubled with assurances there would be no other restaurants as long as Panera is there. He is concerned with Mr. Block’s testimony of the abutters. There should be more transparency on who the tenants are.

Mr. Alpert stated the property straddles 2 zones and there is a difference in what is allowed in the 2 zones. If there is no provision, how do we decide? Ms. Newman stated the building is located in Highway Commercial 1. She would need to look at the site plan to see where the line is. Liz Kaponya, of 27 Highland Terrace, is against a restaurant, bar, grill, take-out only and convenience store. The dumpsters for Frank W Webb are right next to the houses. Panera Bread’s dumpster is in the middle of the lot. The Frank W Webb building should not have been allowed. There are 2 or 3 horrible trees that are pouring over into their yards. They are cotton trees with pods that fall all over their yards. The trees are right at the corner of the parking lot. Patricia Baker, of 33 Highland Terrace, stated the Frank W Webb sign shines right into her window. Mr. Block asked when the lease is up for Panera Bread and there was no clear answer. She would like an answer. Any restaurant will bring rats, noise and smells. She would like to know the duration of the long-term lease for Panera as she feels that is key. Mr. Moskowitz noted the dumpster in the middle of the parking lot is for tenant’s trash and is picked up 2 times a week. The dumpster at Webb is for cardboard only. All other trash goes into the compactor in the middle of the lot. Webb’s lease is up in March 2022 and is moving to the tile store next door. Panera has options for the next 25 to 30 years and have exercised renewal until 2026.

Ms. Espada stated the Board needs to look at zoning globally because things happen and not based on leases. The Planning Board could control by special permit what goes in there. Mr. Jacobs stated it is very important they write the decision with standards and it not be dependent upon the identity of the party. The applicant must meet the conditions set in the permit and not focus on the identity. Mr. Mann agreed with Mr. Jacobs. Here is a prohibition that others do not have. The language offered was offered in good faith. Derek Wade, of 41 Riverside Street, stated his opposition for a restaurant. He moved to Needham in March 2020. The owner wants to maximize profit. There has been an unverified anecdotal reference to people in the neighborhood supporting this. It should be clear to the Planning Board there is a lot of opposition especially from the abutters. He feels it is absurd a restaurant could go in the Frank W Webb building. No high traffic use should go in there. It would disrupt the neighborhood.

Janice Epstein, of 75 Highland Terrace and a Town Meeting member, has been here for 75 years. She was here when they built the 2 new buildings and made it a gateway. They received a variance from 50 feet to 24 feet to get the Webb building and a variance on the parking from 127 to 97 spaces. A lot was put in to protect the neighbors such as lights, noise, dumpster locations. She is surprised to see a second dumpster. There is nothing in the permit. What has changed that would allow

any other uses? She has talked to a majority of the neighbors, and all are opposed to this. It is too close to the neighborhood and should stay the way it is. Ashley Walsh, of 45 Riverside Street, stated this is a great neighborhood to live in but it is isolated from other parts of Needham. She wants to reiterate this is a neighborhood with kids and families. She feels this area is overlooked by the rest of Needham. She wants the Board to keep their best interest at heart.

Mr. Mann thanked the Board and staff and the abutters who took their time. There are no plans or desire to put a restaurant in that space. They tried to make uses not prohibited but make them special permit. He would take out the reference to Panera. It is true it is a different age after Covid. It is a very different time, and they are moving toward no brick and mortar. He does not think it is fair they are treated differently, and he feels they are. He would propose the Board agree this request be appropriate for some of these uses. Mr. Alpert stated any use requiring a special permit would need to come to the Board. To the extent a convenience market is less than 10,000 square feet, it could go in as of right if it were not prohibited in the decision, and a sports store less than 10,000 square feet could go in. This is unusual circumstances with the property abutting a residential area. He would hate to see a late night, noisy use in the Frank W Webb building. He is glad Mr. Mann mentioned banks. He would agree take-out food should remain prohibited, so he would be inclined to leave this alone but would support removing banks, video stores and maybe pharmacies from the list of prohibited uses and leave in a prohibition for the restaurants, sports clubs, athletic merchandise stores and convenience markets.

Mr. Block stated he does not consider sports clubs as athletics but more retail. Mr. Jacobs stated he is open to defining sports clubs and convenience stores. He would go along with Mr. Alpert's proposal as he feels it is reasonable. Ms. McKnight asked if a bank could go into the Frank W Webb building without any application to the Board and was informed it could.

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 close the hearing.

A motion was made to deny the relief requested and replace that with revisions to Section 3.3 that eliminate the prohibition against banks, video rental stores, pharmacies, convenience stores and athletic merchandise stores – subsections 3, 5, 6 and 7. Mr. Mann stated he does not want convenience stores removed from the prohibited uses list, as that is too controversial. Mr. Alpert stated he would not remove convenience stores.

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 deny the relief requested and replace that with revisions to Section 3.3 that eliminate the prohibition against banks, video rental stores, pharmacies, and athletic merchandise stores – subsections 3, 5, 6 and 7.

De Minimis Change: Major Project Site Plan Special Permit No. 2014-11: French Press, LLC, 45 Chapel Street, Needham, MA, Petitioner (Property located at 74 & 78 Chapel Street, Needham, MA).

Jay Spencer, owner, noted there are 1,500 square feet at 74 Chapel Street. He wants to expand to 78 Chapel Street for a kitchen space only. He has extended the benches and landscaping in front of the building and that will remain. Mr. Alpert stated he could expand the outdoor seating in front of that property also. Ms. McKnight asked why the plan does not show the seating. Mr. Spencer stated there are no changes to the existing area. Due to Covid there is no indoor seating, and it will be added back when they are able. This is just new space. Ms. McKnight stated the bar is not on the original plan. Mr. Spencer stated it was added due to Covid and approved by the Board of Health and the Building Department. It is an accessory take out station.

Ms. McKnight stated they should have a plan that shows exactly what the applicant will be doing in the future with seating and a bar. Ms. Newman noted the Board could ask for a plan modification. Mr. Alpert noted the draft is just the plans as relate to 78 Chapel Street and not changes to the existing. Mr. Block approves the change. He noted it would not make sense to require a plan based in reality as no seating is currently allowed. Ms. Espada commented this is a great addition to the streetscape and she highly endorses it.

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

VOTED: to treat this as a minor modification.

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 provide the relief requested with minor changes in the language of the decision to reflect the plans listed in Exhibits 1 and 3 are not being changed and Exhibit 5 is only reflecting changes to the new space.

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 accept the decision with the changes discussed.

The Board took a short recess.

Request to Release Lots and Establish Subdivision Surety: Heather Lane Definitive Subdivision: William John Piersiak, William John Piersiak, Trustee of the 768B Chestnut Street Realty Trust, Evelyn Soule Maloomian and Koby Kemple, Manager of the 766 Chestnut LLC, Petitioners (Property located at 764, 766, 768-768A, and 768B Chestnut Street, Needham, Norfolk County, MA).

Request to Release Lots and Establish Subdivision Surety: Heather Lane Extension Definitive Subdivision and Residential Compound: William John Piersiak, Petitioner (Property located at 768-768A Chestnut Street, Needham, Norfolk County, MA).

Robert Smart, attorney for the applicant, stated a lot of roadwork has been done. It is appropriate to release lots for sale. The applicant will post a cash bond per the 6/24/21 letter from the DPW. He is also ready to post the requested drainage bonds. He is asking for relief for all Heather Lane Lots 1–6 and the residential compound lots in Heather Lane Extension Lots 1–5. Ms. Newman stated all documents for the subdivision went on record and have been signed by Town Counsel and the Select Board. The documents have not yet been signed by the state. When the state accepts the conservation restriction it would convert the restriction from 30 years to perpetual in nature.

Mr. Alpert noted the following correspondence for the record: 2 letters from Assistant Town Engineer Thomas Ryder, both dated 6/24/21, one for off Chestnut Street release of lots for \$122,500 and the 2nd letter for 768 & 768A Chestnut Street request for bond for \$34,500. Mr. Jacobs asked if any title problems were anticipated due to the lack of documentation. Mr. Smart does not think there will be an issue with the anticipated buyers. It should wrap up quickly with the state. Mr. Alpert clarified that, without state approval, the conservation restriction only last 30 years; with state approval it becomes perpetual. Ms. McKnight asked if there was any reason to think any changes would be wanted by the Executive Office of Environmental Affairs. Mr. Smart said it has been held up by the Acting Town Counsel, but he said he would take care of it. He noted this only affects 3 lots – Residential Compound Lots 3, 4 and 5.

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: for Heather Lane, to grant a release of Lots 1-6 contingent upon receipt of \$122,500 surety for the Street Bond and \$14,000 for the Off-Street Drainage Bond for a total bond of \$136,500 and signing of an agreement the funds can be used in the event of a default.

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: for Heather Lane Extension, to authorize the release of Lots 1-5 of the Heather Lane Extension Subdivision contingent upon receipt of \$34,500 for the Performance Bond for the Subdivision and \$17,500 Off-Street Drainage Bond for a total of \$52,000 upon receipt of funds and satisfactory agreement accompanying those funds.

Decision: Amendment to Major Project Site Plan Review No. 2018-05: Town of Needham, 1471 Highland Avenue, Needham, MA, Petitioner (Property located at 28 Glen Gary Road, Needham, MA).

The Board discussed the decision. Mr. Block suggested at the end of paragraph 1.1, it should say the Town “currently” has no other concrete plans to use the property for another purpose and paragraph 1.4 should be “police” and not “policy.” Ms. McKnight noted some clarifications and typos and noted under Section 3.2 it says “Plan.” “Plan” is not defined anywhere. Ms. Newman stated the decision does not need to be referenced. The decision should be recorded at the registry.

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 accept the decision as drafted with the modifications made by Mr. Block and Ms. McKnight.

Review of zoning initiatives for the upcoming fiscal year.

Ms. Newman stated this could be deferred to the next meeting, but the Board needs to speak about outdoor seating. There was a meeting of the working group working on outdoor seating. They wanted an additional change for the Select Board to have the same discretion as the Planning Board to grant waivers for outdoor seating standards when outdoor seating is on parking spaces. They also wanted authority of when permits can be granted. Currently it is April through October. The group wants flexibility. The decision needs to be modified more for seasonality. She had imbedded the zoning process the Select Board would follow if they deviate. There was talk about removing that language. Ms. Newman noted the Planning Board should have a morning meeting the week of 7/12. After discussion, a meeting was set for 7/14, 8:00 a.m. to 9:00 a.m., to discuss zoning initiatives, outdoor seating and gun shops similar to what Newton did.

Review and Discussion: Needham Unite Against Racism Initiative (NUARI) Vision Statement, Guiding Principles and Intentional Practices Created by NUARI Working Group, March 22, 2021.

Ms. Espada stated she has been part of Needham Unite Against Racism Initiative (NUARI) for over one year now. The biggest issue is to set a tone for the Town that is appropriate for the way we want the Town to move forward regarding racism and social injustice. The vision will differ with different Boards so they can be aligned with the mission of NUARI. There will be some structural changes in the Town. She feels the Board should set some roles and accountability of how we want to proceed. Boards should look at equity when appointing people. Mr. Block noted that is a function of who stands up to run. There are not a lot of people lining up for the positions. Ms. Espada stated the people may not know of the opportunity. There is a need to get the word out for gender and age. Boards need to be diverse. She noted it takes work to make change. They need to spread the net wider to let people know of the opportunities. She showed the “Racial Equity Statement for the Town of Needham” and the “Guiding Principles” and stated this is just the beginning.

Ms. Espada stated action items and accountability need to be created and this takes effort to do. There is no support in Town and no accountability. There needs to be systems for support, action and accountability. Mr. Block stated he sees utilizing the public information office, but he asked if there is anything the Planning Board could specifically do. Ms. Espada stated it appears each Board has a different way of doing things. There needs to be one independent group. NUARI is about including people and not excluding people. Ms. McKnight stated the Town has initiatives on communicating going on now, and part of the statement relates to the work of the Planning Board. She stated if the Board embraces the NUARI statement they need to take the wording of the statement seriously and realize it is their role. Mr. Alpert stated everything presented with the overall vision is something all need to keep in mind. They all need to keep the spirit of the vision in the forefront of their minds.

A motion was made to adopt and support the NUARI Vision Statement, Guiding Principles and Intentional Practices as written and approved by the NUARI group. A discussion ensued. Mr. Block feels, as they roll out the affordable housing goals and policy, the Chair and Vice-Chair of the NUARI working group and Needham Human rights group should be invited to attend. Ms. Espada stated the Board needs to figure out and review the process, and it is critical to include the community. Mr. Jacobs commented part of the problem is there are laws and statutes that need to be followed. A lot of people are ignorant of the legal process that needs to be followed. People are not taking notice of the notices out there. It is a multi-layered problem. He is all for this, but they have to have action items. Mr. Alpert stated the emails from the 1688 Central Avenue abutters have been extremely helpful and well thought out. The process for that is going well. The neighbors showed up for 100 Highland Avenue, told the Board their concerns and the Board heard them. The Board would not have thought of those concerns unless the abutters came to the meeting. The Muzi project had community meetings. The process works.

Ms. Espada stated the Planning Board website does not give the process or how things are reviewed. It is very ambiguous. There should be a simple explanation of the process. She showed an example of Boston’s website with guidelines of the process. She stated there is clarity to their process. Mr. Alpert commented that sometimes a phone call to a Planning Board member is better. Mr. Block would like to see where each applicant is in the process throughout the year. This motion is a start and should be approved.

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

VOTED: to adopt and support the NUARI Vision Statement, Guiding Principles and Intentional Practices as written and approved by the NUARI group.

Board of Appeals – July 15, 2021

Noreen Capraro, applicant – 78 Jayne Road.

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

VOTED: “No comment.”

Joseph Audette, MA, MD and Allison Bailey, MD, applicants – 920 South Street.

Mr. Alpert stated this application is for living space on the top floor of the house with a school downstairs. That would be 2 uses on a lot. He raised the question if living on the third floor is in violation of the restriction of more than one use. They have not allowed that. It is reasonable under the Dover Amendment. A discussion ensued regarding the Dover Amendment. Mr. Block suggested the Board rely on the Zoning Board of Appeals (ZBA) to investigate and make sure this is allowed and accurate. The vast majority of space appears to be living space. The ZBA should make sure it fits within the Dover Amendment. Ms. McKnight asked why this does not require a major or minor site plan as it is a change in use.

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

VOTED: to ask the ZBA to be sure they are satisfied this is truly an educational use within the meaning of the Dover Amendment, to question whether the residential use combined with the educational use is in violation of our By-Law requirement that there not be more than one use on a lot and would prohibiting the 2 uses on the lot be a reasonable regulation under the Dover Amendment.

Minutes

The minutes will be discussed at the 7/14/21 meeting.

Correspondence

Mr. Alpert noted the following correspondence for the record: letter from the Planning Director to the appropriate parties, a check from Matt Borelli for the 1688 Central Avenue traffic peer review study, and a letter from Dr. Alex Bejian. Mr. Jacobs stated he read that letter as a request for help. Mr. Alpert noted he had a lengthy conversation with Mr. Bejian and told him to hire a lawyer. Mr. Block also spoke with him and suggested he file a Citizen’s Petition at Town Meeting to prevent that use or first floor retail.

Report from Planning Director and Board members

There was no report.

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

VOTED: to adjourn the meeting at 11:30 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Adam Block, Vice-Chairman and Clerk