

NEEDHAM PLANNING BOARD MINUTES

July 20, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Tuesday, July 20, 2021, at 7:00 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 one 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.

Decision: Amendment to Major Project Site Plan Review No. 2005-07: Needham Gateway, LLC, 66 Cranberry Lane, Needham, Massachusetts, Petitioner (Property located at 100 and 120 Highland Avenue, Needham, Massachusetts). 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.

Mr. Jacobs asked Rick Mann, attorney for the applicant, if he has reviewed the draft decision and if he is ok with it. Mr. Mann stated he is fine with it. It was noted the draft decision says the vote was 4-1, but it should say the vote was unanimous.

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

VOTED: to grant (1) an amendment to a Major Site Plan Review Special Permit issued by the Needham Planning Board on January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012 and August 13, 2012, under Section 7.4 of the Needham Zoning By-Law and Special Permit 2005-07, Section 4.2; Subject to the following plan modification, conditions and limitations as set forth in the decision before us for the property at 100-120 Highland Avenue and the applicant is Needham Gateway LLC.

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

VOTED: to approve the decision as drafted with the one change noting the vote was unanimous.

Minutes

Ms. McKnight noted in the minutes of 5/1/21, under the Discussion of Annual Town Meeting Warrant Articles, 3rd paragraph, it says "She noted there is one more article. Article 12 is for \$50,000 for small repair". Ms. Newman will correct the Article number.

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

VOTED: to accept the minutes of 5/1/21 with the one correction discussed.

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

VOTED: to accept the red lined version of the 5/3/21 Planning Board minutes.

Ms. McKnight noted in the minutes of 5/18/21, page 4 under 100-110 West Street, 4th paragraph, it says "Ms. McKnight stated the usual practice is not to have a public hearing." She does not feel that fits and feels it should be deleted. Mr. Block

Planning Board Minutes July 20, 2021

asked if there are times there would be minor modifications without a public hearing. Ms. McKnight believes that is what was being discussed. Mr. Block feels it was about the preceding paragraph regarding generators. That would be treated as a minor modification without a public hearing. It was agreed to delete the sentence.

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

VOTED: to accept the red lined version of the 5/18/21 Planning Board minutes with the one deletion discussion tonight.

Public Hearing:

7:20 p.m. – Major Project Site Plan: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, Petitioner (Property located at 1688 Central Avenue, Needham, MA). Regarding proposal to construct a new childcare facility of 9,966 square feet and 30 parking spaces, that would house an existing Needham childcare business, Needham Children’s Center (NCC). Please note: this hearing was continued from the June 14, 2021 meeting of the Planning Board.

Ms. Espada recused herself from the hearing as she is an abutter. Mr. Alpert noted this is a very contentious matter. There has been a lot of communication. He noted there are site plan reviews called for under our Zoning By-law, but also special site plan reviews under a provision of G.L. c.40A, Section 3 known as the Dover Amendment. Case law is generated under that statute. Under that statute the Board cannot deny the project. This proposed day care use is by-right, reflecting that statute, under the Town’s By-Laws. This Board is proceeding pursuant to that statute and the case law. He read from the statute. He noted that this Board may make the project subject to reasonable regulations concerning the height and bulk of structures, determine yard signs, lot area, setback, open space, parking and building coverage requirements. In a Supreme Judicial Court case, the court said local zoning requirements adopted under provisions that serve legitimate public purposes, and determined by factors of each case, a Board can look to the By-Law for things they can regulate. This is a facts and circumstance decision the Board needs to make. The use of a childcare center cannot be denied. It is not a special permit.

Mr. Alpert cited Rogers vs. the Town of Norfolk noting the Norfolk daycare center By-Law had a maximum of 2,500 square feet and could not be approved because of the By-Law. This was challenged as unreasonable and the court said, based on the facts and circumstances, enforcing the By-Law was unreasonable for that project. Mr. Alpert spoke of alleged ethical violations by this Board and stated he would not discuss the ethical issues raised. This Board does not have the authority to decide ethical issues. They deal with zoning issues. This was presented to Town Counsel Heep, who has not found any conflict of interest and agrees this Board does not have jurisdiction on ethical matters. He noted the process and procedure he will follow for this hearing. He stated he does not expect the hearing to be completed tonight but will be continued to the next meeting in August. He thanked the neighbors for their thoughtful comments and emails which were very civil. He also thanked the neighbors that are attorneys that submitted arguments very professionally.

Mr. Jacobs agreed with the ground rules and not dealing with ethical issues by the Planning Board. He noted Maggie Abruzese sent a letter requesting the Planning Board pause consideration until Town Counsel Heep issues a written opinion on the ethical issue. Mr. Alpert stated the Board received a letter contrary to Ms. Abruzese’s opinion. A written opinion is not required, and Town Counsel does not intend to send one. Mr. Jacobs stated, if Town Counsel is not going to issue an opinion, and ethical issues will not be decided by this Board, does it make sense to pause the hearing so the ethical issues can be determined by the State Ethics Commission for anyone who wants an opinion from that Commission. Ms. McKnight stated the allegations of ethical improprieties were made a couple of months ago. The persons making the complaint could have filed a complaint with the Ethics Commission if they wanted. She sees no need to pause the hearing.

Mr. Block questioned, if it was found by the legal process that an ethical violation did occur, what impact, if any, would it have on our hearing. Mr. Alpert stated he agrees with Ms. McKnight. This was raised a long time ago and could have gone to the Ethics Commission. He feels this Board has no jurisdiction on ethical issues and they should move forward. Mr. Block asked if Mr. Huber, attorney for the applicant, has consulted with the Ethics Commission if any ethical improprieties occurred and what was the outcome. Mr. Huber stated he has not. He feels that is a matter for people who made the allegations to discuss with Town Counsel. Town Counsel had informed Mr. Alpert the Ethics Commission would not weigh in on this.

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 continue this hearing to August 17, 2021 in the case of technical difficulties.

Mark Gluesing, architect, showed the most recent version of the plan while Mr. Huber described it. There have been several revisions. This is a large building that originally was set back 40 feet; in response to concerns, it was then revised to be set back 50 feet. This has impacted the turn-around space between the building and barn. The plan was revised again and the setback is now 64 feet at the closest point and farther at other points. The orientation of the building is not parallel to Central Avenue. The primary building is a childcare facility including a large space for a play area. The building is on the north side of the site with a 205-foot driveway. This does not include the drop off area, which is additional space. The driveway is wide enough for both directions. There is some parking and a turn around area. There are 30 parking spaces in the lot. He feels this is greater than the number required by the formula the town uses which would lead to a requirement of 11 spaces. He said that the Town Engineer gave a number of 25 spaces required, using a different standard that is based on building size. The site includes a grassy area to the south that will be enclosed by a fence and used as a play area. There will be a substantial amount of landscaping added. The site includes an existing barn that will not be taken down. He said that the Police Department does not expect traffic or safety to be an issue at this site. He discussed the various issues that have come up. Regarding traffic issues, he said that a recent case raised by the legal analysis Mr. Alpert referred to, Primrose School Franchising Company vs. Natick, a Land Court case, stated the Town can impose a special permit due to new construction. That does not include the next reported decision, however, where the Zoning Board imposed a condition that limited the number of children. The applicant appealed and the judge stated, under the Dover Amendment, a limitation on the number of children was unreasonable as the Zoning Board of Appeals did not have the authority to limit the number of children as a way of addressing traffic concerns. He read portions of the decision and stated the same things are true in this case.

Mr. Huber stated he is aware there is a lot of traffic on Central Avenue. The Board should keep in mind their limited authority to impose conditions to address the traffic concerns. He is not ignoring traffic, but the Board has limited authority. There is an intention by the applicant to put a cap on this of 115 children. He feels the applicant has struck a reasonable balance. They are not intending to start with 115 children. He noted there is a concern with cars backing up onto Central Avenue. The drive is 205 feet long before the drop off area. There could be 10 vehicles stacked up in the driveway. There would not be a block of time where more than 10 cars show up at a time. Mr. Jacobs asked if Mr. Huber gave a full history of the Primrose case he cited. Mr. Huber stated he gave the Land Court decision cite 2013WL3057432 and the 2015 decision cite 2015WL3477072. Mr. Jacobs asked if the 2015 decision was the latest. Mr. Huber believes that is the latest but is not sure.

Mr. Huber noted there are many spaces in the drop off area for cars to park and he does not feel cars will spill out onto Central Avenue. He noted, for the setback issue, they have tried to move the building back. It started at 40 feet and now 64 feet is proposed. He showed a chart he created of setbacks of houses on Central Avenue near this property. There are 5 that are less than or comparable; 4 have a setback which is greater; and 2 are corner lots. Only the Temple next door has a larger setback. The Temple is a much larger building, but the parking is in front of the building. He feels the proposed setback is consistent with the others in the area. The turnaround area cannot be made any smaller and the building cannot be pushed back without taking down the barn. He does not feel the Board would make that decision as it is not a reasonable condition. It would cost about \$30,000 to knock down the barn and in excess of \$200,000 to rebuild it.

Mr. Jacobs asked if the applicant has investigated the cost to move the barn. Mr. Huber stated no. There is a lot of ledge where the barn is now. Not all parts of the lot are the same for building. The back part of the lot is wooded, and more trees would need to be cut down and people on Country Way would be impacted. There will be landscaping in front of the building and the expectation is this would hide the building. It would be largely screened based on the landscaping. There would be a cost and very little benefit to moving back farther. Mr. Huber stated they have made good faith efforts to address people's concerns. He noted the roof of the barn would be a good platform for solar panels. The barn would only be used for storage, and they would agree not to use it for any activity related to the childcare center without coming back to the Board.

Mr. Alpert stated he has not seen a lease and his understanding is one is not available. He asked if the Needham Children's Center (NCC) is leasing the entire property or only a portion. Mr. Huber does not believe the entire property. It seems reasonable for the Board to issue a permit and the building be used only for childcare. Mr. Alpert asked if NCC is leasing the barn or is Mr. Borelli keeping control of that. Mr. Huber believed there is an understanding NCC can use the barn. He is not sure if NCC would be leasing the parking area or just has the right to use it. Mr. Alpert noted any part of the property not under NCC control is not subject to 40A, Section 3. He feels the applicant should keep this in mind.

Mr. Huber spoke of the objections asserting that the building is too large and should be made smaller. He showed the prepared chart and noted the building is well above the minimum allowed but well below the maximum of what is allowed. It is 24 feet high at the peak and 35 feet is the allowed height. A lot of the homes in the area are higher than the 24 feet. Most of the houses on Central Avenue in the area occupy a larger width percentage on the lots than the 33% on this lot. Many homes within ¼ mile are as wide or wider than this building.

Mr. Gluesing discussed the design. He noted several factors went into the orientation of the building. Ms. Day did not want activity on Central Avenue, she wanted the entrance back inside the site and it was put close to the Temple side of the site because it is more a commercial structure. They left a larger open area on the residential side. The assumption has always been the barn would remain. It is in excellent condition and will have a use for storage. It is not a "green" idea to remove and rebuild further back. The Temple can park in this lot on weekends and high holy days. He noted this is a heavily forested site. This is a 10,000 square foot building. They did not want to build a commercial building. Most rooms are 400 square feet. He tried to take residential styles and incorporate them. There is a gabled roof, then 2 big sections and a gable over a large playroom, casement windows and dormers. There will be 10-foot ceilings and an outdoor play area. The original Central Avenue façade the Design Review Board (DRB) thought was too simple and wanted it improved. He created an additional gabled structure with bay windows and added an eave element. The entrance mimicked the barn aesthetic, and a red barn color was used. The materials will be wood clapboard, roof shingles and board and batten siding. The siding width has been varied to get a variety. The building is similar to houses in the neighborhood. He feels it will be in harmony with the neighborhood.

Mr. Gluesing stated white pine trees were originally planned but there was criticism by the DRB. They are now using a mix of trees such as scotch pine, white pine and cedar. He showed a summary of changes. They have significantly increased the landscaping, and the plantings along the front will be decorative cherry trees, flowering crabs and evergreens. There will be screening along the Heideman property. An additional lawn area has been created in the front.

The Board recessed for 5 minutes.

Mr. Block noted an underground detention basin to catch most of the drainage south of the drop off. John Glossa, of Glossa Engineering, Inc., stated that was designed to mitigate all increase in the rate of runoff from the site. He used the MA DEP Storm Water Management regulations, which are above and beyond what Needham would require. Mr. Block asked if there was a retaining wall or natural slope, noting a change in elevation sloping toward 1708 Central Avenue and that any water not caught in the detention basin will slope toward 1708 Central. Mr. Glossa stated no water flows off this site. There is a slope and existing condition water flows into a closed loop. There is Hinkley soil, sand and gravel all the way down and keeping the grade flat would allow water to soak into the ground. They may use this as a tool to allow water to soak in. The flow has been mitigated up top. Mr. Block asked if some spill-off from the drive and top of grass area would spill onto Central Avenue. Mr. Glossa stated some water flows from the catch basin to Central Avenue similar to the existing conditions. The site is balanced in rate and runoff. The rate of runoff is not increasing from this site. Ms. Newman stated that would be a finding to be stated in any decision.

Pat Day, owner of NCC, discussed the proposed pick up and drop offs and gave the background of the daycare. She noted she has been in Needham for over 40 years with most of the families from Needham. She does not have a sign. In 1980 she formed a full time childcare, fully insured and licensed by the Commonwealth of Massachusetts. In 1997 the center was nationally accredited. There are 113 children currently at the Baptist Church site and 20 to 25% are siblings. The Baptist Church is closing its doors and they are losing their home. She has known for 2 years, and it took that long to find this space. A lot of time and consideration went into moving to this space. They have always worked in collaboration and was hoping to do that with this neighborhood. The safety of the kids is her top priority with safe entry and exiting being the key. The traffic impact is important to them. She feels it is important for kids to have a play space. The state requires 35 square feet per child. With Covid it was 42 square feet per child. A 420 square foot room will only house 10 kids. This

space gives them all they need. This has been designed for the 98% of the children that come from Needham and their needs for the next 5, 10 and 15 years.

Ms. Day noted sign in sheets are required by law. They used staggered drop offs that were specific. Mr. Huber showed a chart based on 95, which is the initial anticipated enrollment, although they are asking for 115 children. The chart has actual data of the number of vehicles and what times they show up. She noted 7:30 a.m. to 9:00 a.m. the parents are self-staggering. The total number of vehicles was 50 between 7:00 a.m. and 9:15 a.m. In the afternoon 3 vans show up for the afterschool care. That is actual data used. If the actual does not mirror the historical data NCC will put arrival times in place like they did with Covid, but they do not think this will be necessary. The center is open 7:30 a.m. to 6:00 p.m. Staff will be there before the start and after close. There is a part-time program and an afterschool program. 95 is the total number with all programs. The expectation for staff is not more than 16 with 2 administrators on peak days. They would not all arrive at the same time. There is designated parking for short term and handicapped. Children will enter at the back of the building. There will be greeters there and parents will sign in. There will be a police detail the first few weeks to assist with any issues that will continue after only if the police chief feels it is necessary.

Mr. Alpert asked if the applicant was willing to have a condition that mirrors what was just said. Mr. Huber stated they are willing. Mr. Alpert noted the staggered plan will be part of the decision, and if drop off traffic exceeds a certain standard, like a certain distance from the sidewalk, there could be a plan on record that will be implemented. Mr. Huber agreed. They could work on language but they do not anticipate stacking would get close to the sidewalk. If it does, they will implement a different protocol. Mr. Alpert noted on a comment received from neighbors where the program talks about events that parents are invited to attend. These would have more than 35 cars showing up. What is the plan for these events? Ms. Day stated they celebrate everything. They had holiday parties on Saturdays when the public lots were empty. The celebrations are now all internal in each classroom. They have an interactive art show and other events. With Covid, they now have events off site like at Rosemary Pool and the events are smaller now. Mr. Alpert stated any event involving more cars than parking spaces would have to be off site.

Ms. Day stated things done in the past have to evolve. If there is a large event, the party would have to be elsewhere as they do not have the parking. Mr. Huber stated there could be a condition that events could not exceed available parking. Mr. Block commented the applicant has done an exceptional job answering questions. It is clear she takes the safety of kids and staff seriously and recognizes the business is for Needham families on Needham streets. He asked to what extent could she enforce stage 2 of the pick-up and drop off schedule. Ms. Day stated she did it during Covid. They surveyed staff and parents and changed hours. They looked at how to alleviate overcrowding and pedestrian queues. They looked at data, looked at siblings and created a spreadsheet. They gave parents a parameter of when they could come in. Parent would not be let in other than at their time. They need to follow the rules. Mr. Alpert asked if they are keeping the Unitarian Church space and was informed, they will. There is not enough space at the new location for all the children they serve. Ms. Day noted there is a huge need in the town.

Ms. McKnight asked where the outdoor play area is and what is the surface. Mr. Gluesing noted it is confined to the front area. There is some area to the right for older children and the surface is grass. There may be a tented structure for inclement weather installed in the future. Ms. McKnight noted Mr. Huber stated the total length of the drive was over 200 feet. It seems from Central Avenue to the drop off is only 100 feet. That could only accommodate about 5 cars backed up. Mr. Huber stated there is a 205-foot distance from Central Avenue to the curved area at the drop off. Ms. McKnight asked if some cars would want to continue on to park at the rear parking lot. Mr. Huber stated most cars will come up and take a right to drop off and continue back out. They do not expect a conflict with cars parking and others dropping off. It could be handled with signage.

Ms. McKnight stated pick up at the end of the day was not described. Ms. Day stated there is a greeter who frequently knows the cars and the kids know the cars. Pickup is faster than drop off. The kids are ready to go in advance and it is well honed. The kids stay in the building until picked up. Mr. Block asked what happens if someone parks in the 5 spaces and cars are coming in to drop off. Ms. Day stated they have to be very proactive. It is not ideal, but it is workable. No car can be left running. Mr. Block noted they need to look at mitigation procedures further at another time. Ms. Day feels they could designate short term parking over by the barn. Mr. Alpert noted it was getting late. Mr. Huber suggested the hearing be continued to the next meeting. Mr. Alpert suggested a meeting between Mr. Gillen and Mr. Diaz in the next few weeks to hash out some issues that have been raised regarding the traffic study. Mr. Block requested, no later than one week prior

to the next meeting in August, Mr. Gillen and Mr. Diaz should meet. Mr. Gillen should create a summary of changes and Mr. Diaz should create a list of unresolved issues. The Board can then quickly see the unresolved issues.

Mr. Block requested all the applicants' consultants be present at all the meetings. Mr. Diaz agreed it would not take much to resolve the traffic issues. He asked if the meeting should include the site engineer also for site issues. Mr. Block stated, by 8/10/21, the Board wants a memo between Mr. Gillen and Mr. Diaz with the resolved and outstanding issues.

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

VOTED: to continue this hearing to the 8/17/21 meeting at 7:20 p.m.

Ms. Espada returned to the meeting.

Correspondence

Ms. McKnight noted a communication received yesterday regarding light pollution. Ms. Newman stated the complaint regarded the 7/11 Store. She noted the Planning Board does not hold a permit on that. She sent it to the Building Inspector for resolution. Ms. McKnight stated she would like to have a better understanding of lighting, what rules there are, how they are applied and why waivers are being sought. She suggested the Building Inspector should be here for that discussion.

Report from Planning Director and Board members

Ms. Newman noted there is a Chair/Vice-Chair meeting with the Chair/Vice-Chair of the Select Board that she will be attending. She feels they will be discussing housing issues. She is working with Karen Sunnarborg on the housing plan and will have a committee to oversee that work. It will be discussed on 7/29/21 at the meeting. She stated, before the downtown study, she partnered with MIT about 15 years ago and there is interest to do another partnership to look at redevelopment options in the Highland Avenue corridor and how it could be redeveloped for a higher use with mixed density. She was thinking the study area would go from May Street to Gould Street. Mr. Block noted the Council of Economic Advisors (CEA) is working on a comparison of the Center Business and Chestnut Street Districts with a review of uses and dimensional requirements for those and to consider updating and making suggestions for improvements. Ms. Espada stated she would like to participate. Mr. Alpert asked if zoning requirements for gun shops is on the Chair/Vice-Chair agenda. Ms. Newman is working on it.

Ms. McKnight informed the Board she worked on a video titled "Moving Forward Together" by Equal Justice Needham. Based on the book "The Color of Law," she searched Norfolk County Registry of Deeds records, and she only found one racial restriction recorded for Needham property. She noted the first Zoning By-Law in Needham was in 1925 and all Business Districts allowed apartment buildings and the Select Board had the right to allow an additional unit in a home if the home was in existence in 1925.

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 10:38 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Adam Block, Vice-Chairman and Clerk