February 25, 2022

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Friday, February 25, 2022, at 12:00 p.m. with Messrs. Jacobs and Block and Ms. McKnight, 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. If any votes are taken at the meeting the vote will be conducted by roll call. All supporting materials, including the agenda, are posted on the town's website.

Decision: 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 child-care facility of 9,966 square feet and 30 parking spaces, that would house an existing Needham child-care business, Needham Children's Center (NCC).

Ms. Espada has recused herself from this agenda item. Mr. Alpert recused himself as Chairman for this agenda item. He turned the meeting over to Vice-Chairman Block. Mr. Block noted that, at the 2/11/22 meeting, the Board enabled written submissions to be received from the applicant and the abutters through 2/18/22. He thanked Holly Clark, Joe Abruzese and the Attorney for Gregg Darrish for their submissions. All submissions will be included, and all comments submitted have been reviewed. A 2/4/22 settlement letter is the only letter from the applicant.

At the last meeting the Board discussed the restriction of further subdividing the lot. Mr. Block asked Town Counsel about this. He read Town Counsel Christopher Heep's response. The property cannot be subdivided further unless it conforms with the Zoning By-Law and all applicable land use laws. He noted the Board could say any change would need a site plan modification, which is different from saying it could never be done. He does not believe it is within the Planning Boards authority to prohibit further subdivision, and he recommends not including the provision. Mr. Block proposed adding "any change to the lot requires an amendment of the site plan approval."

Mr. Jacobs suggested going through the redlined decision page by page. All agreed. He noted, on page 16, the section describing the Exhibits -- the legal memorandums submitted after close of hearing through Exhibit 196. The new Exhibits should be added after that with Exhibits 197 through xx. Mr. Alpert noted after Exhibit 192 change "Legal Memoranda" to "Legal memo and comments from abutters." Add "received after 1/6/22" after Exhibit 195 and put the sketch plan as the last item. All agreed. Mr. Block noted in Section 1.8 of the draft decision, traffic reports are additional exhibits. Mr. Jacobs noted this was fine as amended. Ms. McKnight agreed. Mr. Jacobs noted in 1.15, 3rd paragraph, it says "analysis included." He noted "included" was not in the prior draft. He noted "drop-off" should be "dropoff." All agreed.

Mr. Jacobs stated all was ok with Sections 1.16, 1.17 and 1.21. He noted in 1.20, the reference to Section 7.46(a) should be 7.4.6(a). He noted on page 25, paragraph g, Section 1.23, "lighting" should be "light." Section 1.24(d) was not in the prior version. Mr. Block noted on page 28, paragraph 2.1(d), change the setback language. This was agreed. Mr. Jacobs noted on page 27, Section 1.32, he proposes a change. To make it consistent with 1.33, he proposes adding "and conditioned" after "as modified." Ms. Newman thought that was a good idea. It will be the same as 1.33 "as modified, conditioned and limited by this decision." All agreed. Mr. Block noted a plan modification. In 2.1(d), under conditions, 3.8 has been removed. He proposes "any change to the lot shall require an amendment of the site plan approval" as per Town Counsel Heep's language. Ms. McKnight noted any change to the size or dimension of the lot. She asked if that was limiting? Mr. Block stated he prefers to keep it general. Mr. Jacobs noted instead of "lot" it should say "property." He noted "property" is defined on page 1 but "lot" is not defined. All agreed.

Mr. Block asked if Ms. Newman is including in paragraph 3.8, "any change to the property shall require an amendment of site plan approval." Ms. Newman will add that. Mr. Jacobs asked, in 3.2 on page 28, why is 1.16 referenced in the list of how the child-care will be used? He noted 3.3, says no operations on Saturday and Sunday. What about holidays? Mr. Alpert stated the daycare may need to be open on holidays. Mr. Block noted the other issue is weekend activities. Mr. Jacobs asked if 3.3 should be expanded to list what the Board believes should be allowed on weekends and holidays or leave it alone. Mr. Block stated the applicant is asking for training time after hours and on weekends. He asked what the lights-out hour should be? Ms. McKnight noted the word “operation” has not been defined. Mr. Block feels it should be allowed as long as there is no overflow of parking. The hours of operation for the child-care is limited to 7:00 a.m. to 6:00 p.m., Monday through Friday except for any meetings between parents and operators. Mr. Alpert suggested leaving the 2 sentences alone and add “Notwithstanding, the above child-care facility may be used on weekdays until 8:00 p.m. and Saturday and Sunday for administrative purposes, meetings with staff and small meetings with parents and guardians, providing all other conditions of this decision including but not limited to parking requirements are not violated.” Mr. Block is fine with that. Ms. McKnight noted there is a set limitation on a certain number of staff people. but at times a therapist may be an additional staff person. She feels that is reasonable. Mr. Alpert stated that is not an issue. A therapist would be a contractor and not staff.

Mr. Block noted 3.8, any change to the property shall require an amendment of the site plan approval. Mr. Jacobs noted any change to “or on” the property. That takes in the building as well. Ms. Newman noted 2.6 already deals with building, driveways, etc. and any change to that plan requires an amendment. Mr. Jacobs withdrew his comment. Mr. Alpert noted there were issues raised by Attorney Evans Huber’s letter and Pat Day’s letter. Mr. Block noted Evans Huber’s letter, dated 2/4/22. He stated some letters received have said they are concerned by the threat of litigation. He noted any decision is eligible for appeal. Some abutters have also threatened litigation. Mr. Jacobs noted on page 30, Section 3.17, the paragraph does not say if Section 1.24 requires the Licensed Site Professionals (LSP) recommendations actually be followed. He does not see it here. Mr. Block noted the LSP will conduct an environmental assessment of the property and offer suggestions and guidance on what is necessary.

Mr. Alpert noted 1.24 does not say what will be done with the recommendations. The Board of Health will make a determination on what would be done. He does not know if the Board of Health memo says what the Board of Health will do. Ms. McKnight noted it does not say explicitly this needs to be satisfied prior to the issuance of a building permit. Mr. Alpert stated the Board of Health may have the opportunity to say the petitioner cannot demolish until soil testing is done. Mr. Block noted the applicant may do soil testing after the building is gone. Mr. Jacobs asked if 3.17 says 1.24 has to be complied with but they also need to do any other work recommended. Mr. Alpert stated, in 3.17, it should say “the petitioner shall be responsible for complying with any and all requirements of the Board of Health that result in the Board of Health review of the testing as set forth in Section 1.24 and all other requirements as the Board of Health shall determine from the reports of the LSP as set forth in Section 1.24.” Ms. McKnight suggested “based on.” This was agreed.

Mr. Jacobs stated he would like to discuss Section 3.30, regarding the limitation on trash dumpster pickup on Monday through Saturday. The Board received some comments from abutters who object to Saturday pickups. Mr. Block commented that anything is going to be imperfect. It is reasonable to have pickups on weekends. Ms. McKnight noted Sunday is called out basically as a day of rest. Saturday can also be a day of rest. This is next to the Temple which may have services on Saturday, which would be disrupted. Mr. Jacobs noted the letter Pat Day sent after the hearing said trash is traditionally picked up one or 2 times per week. Why is Saturday needed? Ms. McKnight noted Ms. Day says it is a danger to children when trash trucks come in. She was arguing for earlier trash pickup. Mr. Alpert objects to earlier pickup times. He noted Ms. McKnight raised a good point with Saturday morning services at the Temple. Mr. Jacobs does not see the need. Pickups are not done daily and should not be allowed on weekends and holidays. Mr. Block would accept that. Ms. McKnight suggested they add “not at all on Saturday, Sunday and holidays.”

Mr. Jacobs noted in Section 3.31, it says the lights in the drive should be turned off between the hours of 8:00 p.m. and 9:00 p.m. Why not 8:00 p.m.? After discussion, it was agreed to say “by 8:30 p.m. the petitioner shall shut off the driveway and parking lot lights.” Mr. Jacobs noted on page 35, Section 4.1, this decision applies only to the “site” and off-site improvements. Should it be property? Mr. Block noted “only to property, site and off-site improvements.” All agreed. Mr. Jacobs noted the “,” does not apply after the word “improvements.” Section 4.2 also says “site” and it should be “property.” All agreed. Mr. Jacobs noted on page 36, Section 4.7, last sentence, “construction of the site has not begun, except for good cause.” It was agreed the word “except” should be removed. The Board took a 5-minute break.

Mr. Block noted the Board should discuss Attorney Huber’s letter. Ms. McKnight noted Mr. Huber wants to compromise to change the setback from 135 feet to 80 feet in Section 2.1(d) and the applicant would agree to remove the barn. As she stated earlier, she does not see the necessity of a 135-foot setback. She would like to see this compromise agreed to. Mr. Alpert stated it is fair to say 135 feet is arbitrary as is 80 feet. He wants it back as far as possible. The civil engineer does not say there is ledge. Mr. Block suggested this be deferred and other issues discussed first. He thought 135 feet was a compromise. He noted the applicant's agreeing to 80 feet was contingent upon the Board approving all other conditions in his letter. The Board has not discussed the traffic mitigation in his letter.

Mr. Jacobs asked if the Board would agree the applicant could install a septic system on site. Mr. Alpert stated it is not the Planning Board's decision. The Planning Board is only approving the plan that shows a sewer. If the applicant wants septic, the plan would need to be modified. He thinks that is a Board of Health decision. Mr. Jacobs suggested the Board insert a sentence that "if the Board of Health, and Engineering Department, approve septic the Planning Board would accept a request to modify the decision." Ms. McKnight noted the applicant is presently requesting a sewer. Mr. Jacobs noted the applicant has the right to come back with an amendment to the site plan. Mr. Alpert noted the Town may require a hook up to the sewer. The Board needs to write a decision based on the documents in front of them. Mr. Block stated septic is not on the plan in front of them and does not need to be discussed now. Mr. Alpert agreed. Mr. Block noted the applicant would like a 2,000 square foot storage structure in place of the barn. The Board has said they are fine with an accessory structure customarily used. Mr. Alpert stated this needs to be discussed at an open hearing. They do not know where this structure would go. If the applicant comes to the Board with something like a garage, of a size that is what they are allowed to have, it would be discussed. He feels the Board should be silent. The petitioner should come with an amendment to the plan also. Does it have to go the Design Review Board (DRB)? Mr. Jacobs agrees. His memory is the Board has not asked them to change the basic structure at all. The size, shape or function has not changed. The way this was proposed there was to be no storage, including the barn. Apparently, this was designed with all the storage the day-care would need. He is ok if they ask to amend and come back. Ms. McKnight is ok with putting in the decision "a storage unit not to exceed a certain size could be constructed on the location where the barn is." Mr. Block stated there are a lot of unknowns of what the applicant needs and does not need for storage. The applicant can come back with an amendment. He is fine to not include this. Ms. McKnight agreed.

Mr. Block brought up the number of staff. Mr. Alpert is not willing to change it. That is what was represented to us. Mr. Jacobs agreed. Mr. Alpert noted on page 2 of the letter, regarding Section 3.19, that the Board had a discussion on the original plan of the Carter building as to whether this Board has the authority to prevent a change of operator. That would need an amendment. If the operator is licensed, the Board does not have authority to deny it. He would add "require that the operator needs to be licensed by the Department of Children and Care." All agreed. Ms. Newman noted in 3.18, she will leave the section in that the operator is NCC, get rid of the rest and put the sentence at the top of page 3. Mr. Alpert stated "858 Great Plain Avenue" should be taken out, after the word "decision" put in "a Licensed Massachusetts Department of Early Education and Care", leave in the "Notwithstanding" and take out "and without the prior written approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient."

Mr. Jacobs recapped the discussion. Section 2.1(d) has been deferred; in 3.8 they proposed to adopt the change, 3.19 they adopted the proposed change and the last 3 the Board said no. He noted they need to look at 1.16 (a) and (c) which is now 1.17 (a) and (c). Mr. Alpert stated he is not willing to give up 1.16(a). The Planning Board makes the decision, not the Police Chief. Ms. McKnight agrees the Planning Board needs to evaluate. Mr. Block noted there is 60 days in the decision and Mr. Huber is proposing 30 days. He thinks 45 days is reasonable. Mr. Jacobs commented he thought the applicant already agreed to this. Mr. Alpert was not sure. Ms. McKnight stated the petitioner could request it be dismissed after 60 days. She feels they really need 60 days. Mr. Jacobs noted there is nothing to prevent the petitioner from coming in after 30 days to request it be done on day 60. All agree to change it to 45 days.

Mr. Alpert noted 1.16, which is now 1.17. He does not feel it is vague. The applicants have a traffic expert who did this. He is willing to not make it mandatory if it is not necessary. If traffic is flowing fine, they do not need a condition to have them spend money on a traffic study. It should be "upon the request of the Planning Board" there be a traffic study and "upon request of the Planning Board" to have a peer review. Mr. Jacobs noted 1.17(c), a follow up traffic study after the site is set up. To him a "follow up" is one time. He asked if the Board could ask for more than one if things go bad? Ms. Newman stated the intent was to have one. Mr. Alpert suggested adding language to say, "a traffic study consistent with methodology and conclusions previously represented to this Board and consistent with traffic studies previously submitted to this Board." Mr. Jacobs is ok with adding that language. He suggested adding "upon request of this Board, and no later than 18 months after 80% of capacity, the petitioner will follow up…" He stated he would go along with John Diaz once they are at 80% capacity. Mr. Block stated he would prefer 100% capacity.

Mr. Jacobs stated they should put a request that one time a month the operator tells the Board what capacity she is at. Ms. McKnight suggested adding "shall report monthly to the Board the enrollment numbers." Mr. Alpert agreed but feels 80% is a good number. If there are issues down the line the Board would hear about it. Ms. Newman stated 3.16 allows them to call in the operator to deal with it. Mr. Alpert noted it should be left as mandatory but add "upon request of the petitioner, the Planning Board, after notice and hearing, may determine a traffic study is not necessary."

Mr. Jacobs noted the question of the setback. The members have already said no to enough that they cannot say yes to Mr. Huber's settlement letter. Mr. Alpert feels the setback should stay at 135 feet. Ms. McKnight stated her concern is it would be appealed, and the Planning Board would not prevail. If the Board goes to 80 feet, and they appeal, the Board may prevail. Mr. Alpert does not agree. There are legal issues involved. A judge could determine, according to our By-Law, the setback is 35 feet. That is his concern. Ms. McKnight stated there is no need to debate further if the other 3 members are ok with 135 feet. Mr. Jacobs commented he never said it had to be 135 feet and feels there is some play there. He feels 64 feet is too close and 80 feet is still too close. Mr. Alpert agrees with Mr. Jacobs. It could be adjusted but they have a letter saying unless all is agreed to the applicant will appeal. He feels he could go to 125 feet.

Mr. Block stated the problem is of the applicant's own making and now sits with the Planning Board. If the applicant was more clear they would have sat with the applicant to see where the real compromise could be made. He concurs 80 feet is not enough, and 135 feet was a compromise to his initial thoughts. He would be comfortable somewhere above 100 feet but he does not think they have the option now. The Board should issue the decision and the applicant can appeal it. Mr. Jacobs stated the Board received a lot of comments from a lot of people. He commented they appreciate all the comments. They are good to have. He is glad people wrote and he got to read them. There was one settlement letter from Mr. Huber. Many were offended by the settlement discussion letter. He is not offended by the letter. He viewed it as a good faith attempt to come to a resolution. It is almost always better to come to a compromise than to litigate. Mr. Block echoed Mr. Jacob's comments. This has been an extraordinary process.

Mr. Alpert suggested the decision be approved as drafted with the modifications discussed today. Ms. Newman asked if the setback was remaining at 135 feet. Mr. Alpert feels it should be left at 135 feet. Based on comments from neighbors and counsel for one neighbor he is comfortable with 135 feet. Mr. Jacobs would go along with the others. After discussion, the Board decided the setback would be changed to 120 feet. Mr. Jacobs noted there should be a condition to deal with large events and the issue regarding trees that are removed should be replaced. They have not dealt with these. Mr. Block is in favor of more landscaping. Mr. Alpert stated there would need to be a tree planting plan. He noted there is no tree By-Law. He thinks it is too late to be raising that as an issue. Mr. Jacobs stated he is in favor of substantial landscape screening on this site. Ms. McKnight asked if they could set a standard of replacing trees over a certain caliper and leave it up to the Tree Warden. Ms. Newman stated it would be a plan modification of the landscape plan. She will make the changes agreed to today and will speak with Tree Warden Ed Olsen between now and the next meeting. All agreed.

Mr. Jacobs noted large events should have no on-street parking. Ms. Newman stated they did not allow for large events. Mr. Block wants to deal with the possibility that the applicant has a concert at 4:00 p.m. or has fundraisers or large events. He thought Ms. Day said she would have them at her other site. Mr. Alpert was not sure Ms. Day has asked about having large events. Ms. Newman stated they changed 3.3 to add weekday evening and weekends for meetings with parents and administrative meetings with staff. Ms. McKnight suggested changing it to meetings and events. Mr. Alpert stated this is a new issue. If the applicant wants large events an amendment could be requested. Ms. Newman will incorporate all the changes and give a red-lined version on Tuesday. She will try to figure out a landscape strategy. The Board will vote the decision and the relief on Tuesday.

Mr. Alpert resumed as Chair of the meeting.

Minutes

There were no minutes.

Correspondence

There was no correspondence.

Report From Planning Director and Board members.

There is no report from the Planning Director or any members.

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 adjourn the meeting at 3:00 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

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Adam Block, Vice-Chairman and Clerk