

NEEDHAM PLANNING BOARD MINUTES

April 25, 2022

The Special Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Monday, April 25, 2022, at 9:00 a.m. with Messrs. Block and Crocker 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 not include any public hearings and there will not be any public comment allowed. 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: Amendment to Major Project Site Plan Special Permit No. 2005-07: Carbon Health Medical Group of Florida, PA, 300 California St (Suite 799), San Francisco, CA and Needham Gateway LLC, 66 Cranberry Lane, Needham, MA, Petitioners (Property located at 100 and 120 Highland Avenue, Needham, MA). Regarding request for a new principal use in the subject property, described as a medical professional office providing primary and walk-in medical care.

Mr. Alpert noted the Board voted the relief at the last meeting. This is a continuation of the discussion of the decision. The decision has been revised and a further red-lined decision was received from Attorney Rick Mann. Mr. Alpert noted he was fine with the draft decision circulated on Friday. Mr. Mann has made further red-lined changes. Mr. Block and Ms. Espada have not had a chance to review Mr. Mann's changes. Mr. Alpert asked if there were any comments on Friday's decision. Ms. McKnight stated she went through the comments and found a few minor changes. Mr. Block and Ms. Espada had no comments. Mr. Crocker noted in Section 3.14, the after hours illuminating of the sign, it makes it easy to be controlled by the tenant. He asked why it is controlled by the tenant and not just turned off? Mr. Alpert stated it is covered by the original decision. Ms. Espada asked if the site plan presented would be part of this condition. Ms. Newman noted it is a basic site plan approval. Ms. Espada asked how accountability could be created to make sure there are only 2 professionals in the building when there are 7 exam rooms. Ms. Newman noted the Board has not required reporting or timesheets.

Attorney Rick Mann, representative for the applicant, stated the changes are not new. They were done in the original decision. There is a fundamental disagreement relative to the parking waiver. Mr. Alpert stated they should go through the decision in order of changes. In Section 1.3, Mr. Mann pointed out some typos. An "s" should be added in 2 places. He noted Section 1.8, 1.9 and 1.10. At the top of the 2nd paragraph of 1.8, he has no objection to the change. Ms. McKnight agrees. Mr. Alpert noted parking spaces. It was made clear during the hearing any use of the Webb building would require the applicant to come back. The applicant's expert parking study showed only 9 spaces available at the peak hour. The applicant is asking, if a new tenant comes in and requires less than 25 spaces, they do not have to come back. The Planning Board is saying the applicant would need to come back. Mr. Mann stated, originally when the shopping center was approved, it was granted with an understanding there were not enough parking spaces, and they were given a waiver of 30 spaces. He asked, if Carbon Health were a retail user, would we be having this discussion. Mr. Alpert stated the applicant would still have to come back and discuss it.

Mr. Alpert stated the neighbors complain about the parking and the Planning Board needs to be aware of that. Mr. Mann stated the original was based on the presumption that the whole area would be retail and one restaurant. It was granted and the legal issue is the Board has not waived the waiver. Mr. Alpert stated the applicant is in front of the Board with a special permit application. That allows the Board to revisit. Mr. Mann does not agree. He feels his argument is legally correct. He does not want to give up anything they already have. His client was told in 2006 they can have retail use and a 4,800 square foot restaurant. His client has now lost his tenant and would be put in a position of tremendous vulnerability.

Mr. Block stated it is not the same use and the traffic study highlighted a new problem not contemplated in 2006. The Board needs to look at this. Mr. Mann's client has to go through the process of finding a tenant to fill the use. The Planning Board needs to deal with traffic issues at the time. He understands Mr. Mann's advocacy. A new traffic study was done which has shown a new issue from 2006 and it is still a special permit. Ms. McKnight agrees with the comments made by

Mr. Alpert. Mr. Mann's changes were reviewed by the Planning Director and it was decided to keep it as it was drafted. Ms. Espada agrees with all previous comments.

Mr. Alpert stated no changes will be made in Section 1.8, 1.9 and 1.10. They will remain as drafted except in the 2nd paragraph of 1.8 as already discussed. Mr. Mann stated he would like to change, in Sections 1.10 and 1.11, the acknowledgement as it is. The decision makes a single space waiver. He does not know why he has to acknowledge that. Mr. Alpert stated this was discussed at the public hearing and it was said that when a tenant is found for the Webb building the applicant needs to come back. He is willing to take out "and the petitioner has acknowledged that." Ms. McKnight asked if he was willing to take out the entire sentence as these are findings and not conditions. Mr. Alpert stated yes. Ms. Newman noted the building will be tenanted and the petitioner will come back. That is a finding. It could say "the former Webb building will remain untenanted until..." Mr. Mann added "if required." He feels that is appropriate. Mr. Block asked why they would need to come back if there is zero parking. Ms. Newman stated nothing will have zero parking. Any use would have a parking requirement associated with it. She stated a use as of right needs a parking waiver. Mr. Mann would advocate against what the Board is doing here by reducing the parking to zero. That is not fair to his client. Mr. Alpert stated they are 16 years later, and he is comfortable with taking out the entire sentence and do not need it in findings.

Ms. McKnight stated there is no formal process for this Board to determine if a parking study is adequate except for the waiver being sought. She is looking at the conditions. Is that clearly in the conditions? Mr. Mann stated yes, in Section 3.16. Ms. McKnight stated she would go along with deleting the entire sentence as long as it is in the conditions. Mr. Alpert stated it would be deleted. In Section 1.8, Mr. Mann is requesting "full occupancy" be changed to "proposed use." He would like the same in section 1.11(3). He read Mr. Mann wants "currently empty" and "untenanted." Ms. McKnight stated this is recited in the parking study. If it is not the same, it is not appropriate. Mr. Crocker stated the tenants have changed and parking has changed. The Board will be looking at it in the future. He does not see an issue. Mr. Block stated they should strike "until further Planning Board approval is obtained" and he is fine with the change. Ms. McKnight clarified they will change "remains" to "currently" and was informed that is correct.

Mr. Alpert noted in Section 1.15, change "building" to "shopping center." Ms. Newman stated she wrote in that there was adequate parking on site for 120 Highland Avenue, not at the other building. Mr. Mann stated 100 Highland Avenue is vacant. Mr. Crocker noted in Section 1.8, the "s" should be removed from "spaces." He is ok with the change in Section 1.15. Mr. Alpert stated he is reluctant to make any changes to the decision. They already voted the conditions. In Section 3.9, page 7, he has no problem with the change. All are fine with the change. Ms. McKnight noted there should be an "s" after "practitioner" and "assistant."

Mr. Alpert noted Section 3.10 and 3.11. This was discussed at the Chair and Vice-Chair meeting. There was no representation at the meeting of the maximum number of patients per day. Ms. Newman stated it was discussed. Historically, information was received from the applicant on how many patients per day. She wanted to discuss this before she deleted it. The Board has been told how many patients would be seen with a maximum number. She usually quantifies it in the decision. Mr. Alpert stated it was not discussed at the meeting and the applicant did not make a representation. The doctor commented on the number of patients seen in another location per day, but no representation was made. Ms. McKnight stated if it is not a condition then there is no fixed condition the Board can use to control this. Mr. Alpert stated there is a condition of how many rooms are available and how many patients there are at a time. He does not know how a maximum number could do any good.

Ms. McKnight noted in Section 7 and if a complaint is received. To say the use is in violation they would have to have a maximum number to begin with. Mr. Mann stated, if the cap is removed, that would not be needed. The plan shows 4 seats in the waiting room. Carewell has 18 seats in the waiting room. A cap on the number of patients was not discussed and the applicant would not agree with that. Ms. Espada asked about the orthodontist recently permitted. Was there a cap on patients or rooms and staff? Ms. Newman is not sure and will look at it. Ms. Newman stated she modeled this after Carewell and the medical clinic across from Town Hall which was 40 patients per day. Mr. Mann stated Carewell has 31,000 square feet and 11,000 square feet of storage in the basement with 113 parking spaces. This project has 22,000 square feet in the entire shopping center and no basement storage with 97 parking spaces. The two are not comparable.

Mr. Alpert agreed with Mr. Block that they cannot put a condition without reopening the hearing. They have a limit on the number of rooms and the waiting room. There is only so much capacity. He feels it is not necessary to have a 40 per day

maximum. Mr. Block stated there is a limit on the number of patients at any time on page 7. Mr. Crocker commented the applicant stated 20 patients per day. Mr. Alpert stated that was not a representation. Mr. Block stated they were explaining an average on a number at another facility. Mr. Alpert stated they did not discuss in an open meeting a maximum number per day, and they have Section 3.6 and 3.7. He does not feel they need a maximum per day. He thinks they are covered. Ms. McKnight agrees as long as Section 3.7 stays as is. It would be evaluated at the time if there was a complaint. It should come out of Section 3.10 and 3.11.

Mr. Alpert stated in Section 3.11, any changes to the floor plan should have the applicant come back. Mr. Mann would like only if the treatment or exam rooms are changed, they must come back. This is one of the Planning Board conditions. He would like to leave the language. In Section 3.16, they should not add Mr. Mann's language. Mr. Mann noted it says "shall." It should be "to the extent required by applicable law and this decision." Ms. McKnight stated there is no harm in saying "or uses." She noted 3.16 needs a period at the end. Mr. Alpert stated Section 3.19(b) and 3.20 are ok. Change "decision" to "amendment" in Section 3.19. Ms. McKnight noted there is a more precise way for Section 3.19(b). She suggested adding "or uses granting this Special Permit amendment under Section 7.4 and Site Plan Approval under Section 7.2 and a Special Permit Amendment under Section 5.1.1.5 of the Zoning By-Law...." That covers everything. Mr. Mann has no objection to that. He noted in Section 3.20, it should be changed to amendment. Ms. McKnight noted "subject to these Special Permit Amendments and Site Plan approval." It should be the same thing with Section 3.21.

Ms. Newman noted she wanted to grab the last parking study and may have the incorrect study referenced. This should only be this facility and not the Golf. She will correct the Exhibit. Ms. McKnight asked if Exhibit 11 should be "parking plan." Mr. Block noted in Section 3.24, it says it may be transferred to another party for substantially the same use. He would prefer "this use" and to strike "substantially." Mr. Alpert noted they did strike "substantially." Ms. McKnight noted in Section 1.9, 5th line, there should be a, after Panera Bread. In Section 3.7, 2nd to last line, should have a comma after designated time or a; and eliminate "and." In Section 3.15, it says "Carbon Health shall share the same dumpsters." In other areas it says, "Carbon Health Facility." All agree. On the top of page 9, it says, "Building Inspector" and it is "Building Commissioner" in other areas. Ms. Newman stated it should be Building Commissioner. She will make the change. Ms. McKnight noted in Section 3.24, the "and" should be removed before "together with" as it is not necessary.

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

VOTED: to accept the decision as discussed with the changes today.

Ms. McKnight noted Hunting Road and the vote by Town Meeting that the Planning Board would further study it. She asked Ms. Newman if Engineering could do an assessment of the whole area. There was discussion at the zoning subgroup of the Housing Plan Group. Oscar Mertz took a look at it and reported the total additional lots would be 4 lots. She could do a report at the next Planning Board meeting. The Housing Plan Working Group will probably study this and make it part of their work. Ms. Newman will indicate the applicant is not going forward and may choose to come forward with an alternative that the Planning Board would study and leave it at that.

Ms. Espada stated the Board should take a look at any initiatives they want to do this year. Mr. Block agreed. He would like to look at the goals each member sees. Ms. McKnight stated Accessory Dwelling Unit (ADU) rules change is something but that could wait to the 2023 Town Meeting. Mr. Alpert noted brew pubs. Ms. Espada stated they are doing a lot of important work and they need to say what they are working on. Ms. Newman suggested setting up a goal setting session. They should set up a special meeting after Town Meeting to set the next year. Mr. Crocker stated, something the public wants that he has not heard, is environmental concerns. Mr. Alpert noted they made representations to Town Meeting last year that the Planning Board would take that up and they have not done anything. They are following Newton and Brookline and state laws, and it looks like the Legislature will be passing something.

Mr. Crocker stated it makes no sense to be behind the curve. Needham is far behind other towns. Ms. Espada agrees. She was on the Green Committee years ago. There was a committee of 25 people, and they could not get anything through Needham. She will think about next steps. Mr. Crocker wants to do it the right way with a public process and public input. Ms. Espada agrees. She is on the Climate Action Group and will be reporting to the Planning Board. Mr. Alpert asked if Stephen Frail is on that group and was informed he was along with Marianne Cooley. Ms. McKnight noted the Tree By-

Law also needs to be done. The Planning Board was working on it and the Select Board discouraged them from doing it. Mr. Alpert stated the Select Board made it clear it was their province and not the Planning Board's.

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: adjourn the meeting at 10:30 a.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Adam Block, Vice-Chairman and Clerk