

NEEDHAM PLANNING BOARD MINUTES

December 19, 2023

The Needham Planning Board meeting, held virtually using Zoom, was called to order by Adam Block, Chairman, on Tuesday, December 19, 2023, at 7:00 p.m. with Messrs. Crocker and Alpert, Mmes. McKnight and Espada, Planner, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Block noted this is an open meeting that is being held in a hybrid manner per state guidelines. He reviewed the rules of conduct for all meetings. This meeting does not include any public hearings and public comment will not be 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.

ANR Plan – Brendon – Mota LLC, Petitioner (Property located at 543 Greendale Avenue, Needham, MA).

Ms. Newman stated the plan has been reviewed and is compliant. Mr. Alpert commented he was sorry to see the Lutheran Church had closed.

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

VOTED: to endorse the plan ANR as provided in the packet.

Decision: De Minimus Change: Major Project Site Plan Review Special Permit No. 1998-11: 117 Kendrick DE, LLC, 116 Huntington Ave., #600, Boston, MA 02116, Petitioner (Property located at 117 Kendrick Street, Needham, MA).

Mr. Block noted there was an initial draft of the decision, then a red lined decision and some further red lined conditions. He asked if there were any comments about the red lined version. Mr. Alpert suggested the language regarding the nature of deliveries in the Findings and Conclusions in #4 is appropriate to have in #1 of the Conditions and Limitations. At the end of the last sentence after "specialized deliveries" the following language should be added " , that requires specific handling and storage conditions to support research development/lab space. These deliveries could include medical gas, refrigerated and/or delicate items that cannot be efficiently managed without appropriate facilities." Ms. McKnight agreed.

Mr. Alpert assumes the landlord would do work even though he has no tenant. He asked if there needs to be language if the landlord does not lease to a science lab as this is specific to a science lab being there. Attorney Tim Sullivan, of Goulston & Storrs, stated the applicant does expect to do the work so the space is attractive. There could be periods of time when other users may be in there. Whatever tenant there would be subject to the conditions. He feels the decision covers that. Mr. Alpert is fine with that but wanted to raise the question for the Board. Mr. Sullivan noted in Condition 5 the limitation on the frequency of deliveries is 2 times per week. It should be approximately 2 times per week or more. They would like up to 5 times per week. Ms. Newman is ok with a fixed number and not an approximate. All members are ok with 5 times per week.

Ms. McKnight noted in Finding #7, VHB's conclusion on traffic impact anticipated deliveries approximately 1-2 times per week. She asked if there needs to be a limit of 1-2 times per week. There does not seem to be much impact, though. Mr. Block noted the gap analysis noted sufficient capacity to handle the change from 2-5 times per week. Mr. Alpert noted, in the redlined draft, in the Conditions and Limitations, after January 10, 2006 "and" should be removed and a " , " should be added.

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

VOTED: to grant the relief requested.

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

VOTED: to accept the amendment to the decision dated December 19, 2022, as presented with the red lined changes and the changes discussed this evening.

Decision: De Minimus Change: Major Project Site Plan Special Permit No. 2023-03: Neehigh LLC, 93 Union Street, Suite 315, Newton Center, Petitioner (Property located at 629-661 Highland Avenue, Needham, Massachusetts). Regarding request to demolish the five existing buildings on the property and build a single two-story 50,000 square feet Medical Office Building (25,000 square feet footprint) with two levels of parking (one at grade and one below grade) totaling two hundred and fifty (250) spaces.

Mr. Block noted there was a decision in the packet and a draft with redlined changes. He asked Town Counsel Chris Heep to review the decision and certain provisions. Attorney Heep provided a response and Attorney Evans Huber has responded. That is part of the packet tonight. He asked if there were any outstanding issues. Evans Huber, attorney for the applicant, sent comments to the Planning Director. He appreciated that she looked them over and responded. He noted there are some redlined comments. He feels there are still 5 or 6 very important issues and 3 less important issues. He noted on page 13, 2.0 (c) and now (b), regarding additional landscaping. He understands the neighbors asked for this, but it was not discussed at the hearing. He is not sure what it means. It is vague who the Petitioner would agree with or if it would be the Petitioner's own judgement. This is problematic. Mr. Alpert noted the neighbors' property is across the street from the building and is not property the applicant owns. Mr. Huber stated it is a private way and the applicant only has the rights to pass and repass.

Ms. Newman stated at the first hearing the neighbors said they wanted some beautification there. She thought the applicant would meet with the condo association. Mr. Block stated no landscape plan has been proposed and there is no agreement where the petitioner agreed to do other things. Mr. Crocker noted when the bump out was proposed it was going to be landscaped. He is not sure that is what is being referred to. Mr. Block stated, with the proposal, the Petitioner has no right or access to do that and has no plan. Mr. Huber stated there was a discussion with an abutter about the north side of the corner of Cross Street. The little peninsula was proposed that would impede turns from Cross Street onto Putnam Street. They would not have any landscaping that would limit views at the corner. He feels any landscaping would be destroyed by plows. Ms. McKnight remembers the same as Mr. Crocker. The owner of the land abutting was concerned with the applicant going on his property. He was assured any altered hardscape would not be on his property. She remembers some green grass but nothing about the views. Where does it say there would be a bump out to discourage left turns onto Putnam? Mr. Block remembers the bump out, but nothing was discussed regarding landscaping or views.

Mr. Huber noted the Engineer said at the meeting it was a bad idea to put significant screening as it would impair views. He included green space but did not say what landscaping. Ms. McKnight agreed there could not be obstructions. She suggested eliminating the additional landscaping and putting something in 3.17. Mr. Alpert asked if the bump out is shown on the plan. Mr. Block stated there was no concurrence from the residents of the condos and no further discussion after the loss of a parking space was noted. Mr. Crocker feels landscaping a couple of feet high would not impede views. Mr. Alpert commented 3.17 covers the language. This discussion is not appropriate as the hearing is closed. The Petitioner and neighbors can discuss and see if they can reach a decision. Mr. Huber noted it refers to coordinating with neighbors and he asked who that was. Ms. McKnight asked who has ownership rights in the private way.

Mr. Alpert is uncomfortable with 3.16, 3.17 and 3.18. He agrees with Mr. Huber regarding who he would be coordinating with -- individual condo owners, the condo association or owners along Putnam and Cross Streets. Mr. Crocker noted several different plans were shown. One cut out a parking space and all agreed they did not want to lose a space. The smaller area is what they were looking for. He feels the Petitioner should coordinate with the Association Board. Ms. McKnight recalls alternate plans also. She asked if it could be added to the plan, say what should be on the sign as to parking and access and say the developer will do it? Mr. Alpert asked if you could limit private way access to residents? The law is not clear. He has seen where authority cannot deny access to traverse a private way. There could be signage on private driveways. Ms. Espada agreed with Ms. McKnight to have the plan that was shown to the Planning Board. This should not be taken out.

Ms. Newman asked if it should say "shall coordinate with owners of the Gateway Condos" and reference the plan that the Board saw that was represented at that location. Mr. Block feels that may create harm or disadvantage to others who live

on Cross Street. Mr. Huber echoed the concerns Mr. Block stated. This is not definite. No plan has been presented. It is not fair or appropriate that the Petitioner needs to do something without information or agreement. They may not be able to reach agreement. Mr. Block noted the focus is on removing 2.0 (c). As a matter of law, it is vague and there was no specific plan presented. This is requesting the Petitioner to come up with a future agreement with unknown parties. He does not see (c) as being valid. After discussion the Board agreed 2.0 (c) should come out.

Mr. Huber noted 3.5 – hours of operation. He could see circumstances where people would stay late, and doctors would stay late doing paperwork after patients leave. He does not think the Board has the power to say the staff cannot operate the building after 6:00 p.m. This is an as-of-right use with no special permits. He does not think the Board has the authority to limit it and it is not reasonable. Ms. Newman noted this has been imposed on other mixed-use buildings. Ms. McKnight asked if it could be narrowed so it is open to patients 8:00 a.m. to 6:00 p.m., understanding workers may arrive earlier. Mr. Huber appreciated the comment, and he understands the desire to limit, but he would like the Board to extend the hours and maybe limit the hours only for patients. Mr. Alpert stated this is a medical office building. Doctors see patients all the time. He is not sure this is an appropriate condition. If the Board is saying doctors cannot go in on weekends to do paperwork he does not agree. He does not want a patient who is there until 7:00 p.m. to cause a complaint to the Building Commissioner. Mr. Huber agrees if there are any restrictions it should be limited to patients. He agrees with Mr. Alpert that he would prefer not to see any restrictions. He feels the time periods should be extended and shall not be exceeded except under unforeseen emergency circumstances. Mr. Alpert would go 7:00 a.m. to 7:00 p.m. Mr. Crocker has no issue with that time. His problem is the public was told 8:00 a.m. to 6:00 p.m. at the public hearing. He has a problem with that but no issue with the change of hours. After discussion, it was decided in 3.5, patient services may be provided 6 days a week, Monday through Saturday, from 7:00 a.m. to 7:00 p.m. These hours shall not be exceeded except in emergency circumstances. Mr. Crocker noted the cleaning staff should make sure the shades are down at night for lighting.

Mr. Huber noted, in 3.16, Ms. McKnight suggested putting up a sign. That is a simpler solution and fine with them rather than coordinating with the neighbors. Mr. Crocker noted Putnam is a dead end and it is appropriate to put up a sign. Ms. McKnight suggested “the Petitioner shall erect a sign to be placed at the corner of Putnam and Cross.” Mr. Block noted it should say dead end private way with no access to Highland Avenue. All are ok with that. Mr. Huber noted, in 3.17, it says the Petitioner will coordinate with neighbors. Different people on Putnam will have different views. Can the Petitioner put barriers in a private way that would impede access and does the Planning Board have legal authority? He wants to be clearer about what they are being required to do. He asked Justin Mosca, of Vanesse Hangen Brustlin, to show the more modest drawing. Mr. Mosca does not remember a drawing. He recalls that he marked up the site plan at a prior meeting to show an island while preserving the parking space.

Mr. Alpert stated there is a note on the plan and he does not feel they need to say anything. Mr. Huber would like clarity on what is being required. As to the language of the note, he is not sure whose consent would be required. He foresees a potential scenario in which it never happens because they did not get consent and then a complaint is filed. Mr. Block feels that is a valid concern. Mr. Alpert is not sure the Petitioner has the right to do this. Ms. McKnight stated the Petitioner could figure out who has rights within Cross Street. Mr. Alpert does not think they have any rights. Only over to the middle of Cross Street and this is on the other side. No one can make improvements on a private way on their own. Ms. McKnight stated, to the extent the consent of the abutter is required, the Petitioner should get the consent.

Mr. Crocker commented at a public hearing it was stated this was part of what they were going to do to mitigate. They specifically said it would happen. Mr. Huber disagreed. Some possibilities were suggested but no one said they were going to do it. Mr. Block stated it was raised as an option but there was no concurrence by 100% of the ownership of Putnam Street. Mr. Huber suggested the Board could require, at a minimum, that the Petitioner make reasonable efforts to get the consent after finding out whose consent is needed. Mr. Crocker is ok with that. After discussion, it was decided “the Petitioner will make reasonable efforts to determine whose approval is required for the improvements on the plan as modified and to obtain such consent.” Ms. Newman will modify 3.17 and do a plan modification.

Mr. Huber suggested 3.18 should be the same as 3.16 with the same signage. The Petitioner is not coordinating, just putting the signs up. Ms. McKnight noted 3.18 should say “Petitioner shall erect appropriate signage placed at the intersection of Putnam and Cross Streets adjacent to parking by residents of Gateway Townhouses Condominium,…” Mr. Huber is very concerned with 3.20. The language proposed by some resident is patently unreasonable to say someone will be available 24/7 and will take reasonable and immediate response. What does that mean? A future hearing of the Board to eliminate

all traffic on Cross Street is very problematic. He suggested the Board check with Town Counsel Chris Heep, but he feels there is no authority for Board decisions and conditions that require future determination of substance. Abutters to Cross Street have a right to pass and repass Cross Street. This is a by right use and generates traffic. It cannot be said that the use generates traffic but the street cannot be used. Mr. Block clarified that Mr. Heep said it is not reasonable to require the owner to have someone 24/7. An owner cannot be held responsible for where a person drives their car. The issue is best dealt with signage only. He agrees with Mr. Huber 3.20 should be struck. Ms. McKnight suggested the property owner could put cameras on their buildings to protect themselves from trespassers.

Mr. Crocker agrees 24/7 is not reasonable. He noted the medical marijuana special permit had a provision that the Board would revisit in 6 months to determine if all was ok. Mr. Alpert noted that was a special permit situation and this is a site plan approval. Mr. Alpert agreed 3.20 needs to come out. There will be tenants. The Petitioner cannot be held responsible. It was agreed 3.20 will come out. Mr. Huber noted in 3.21, the first sentence is no issue. After that it is the same issue that was just discussed. All agreed to remove everything after the first sentence. Mr. Huber noted in 3.24, the only issue is it says maintenance of emergency generators and testing will be one time a month. Some warranties say one time per week. He would like it changed to one time per week. This was agreed.

Mr. Huber suggested in 3.25, the last part that says “required to be removed” be struck. Ms. Newman stated the DPW recommended that for this project. Mr. Block stated it is already clear in the By-Law and it should be left in. Mr. Huber noted 3.49 as to hours of construction. The town regulations are 7:00 a.m. to 8:00 p.m. They do not intend to work beyond 8:00 p.m. on a regular basis and typically would end around 5:00 p.m. but there are times it needs to be exceeded. He feels it should be allowed to be exceeded with Building Commissioner approval. After discussion, it was decided to say “consistent with Town By-Law which may be extended to no later than 8:00 p.m. with prior notice to, and approval by, the Building Commissioner.” Ms. McKnight noted a typo on page 6, Section 1.11, 4th line, add “of” after “each.” On page 18, Section 3.36, she feels there is something wrong with the wording. It was decided to delete “or impact fee.” On Page 22, under Limitations, there are several references to special permits. It should say Major Project Site Plan Review Special Permit with no “s.” Ms. McKnight noted in 4.6, it says the Site Plan Special Permit Amendment will lapse. This is not an amendment. She noted it is the same thing in the final 2 paragraphs.

Mr. Alpert noted on page 14, Section 3.9, handicap parking requires a special plate. He rarely sees a special plate, but he sees placards in the window. He feels this should be revised. Ms. Newman will see what the town language is and make it consistent. On page 18, Section 3.33, last sentence, it says no snow to be plowed onto Cross Street or Putnam Street. He asked if Arbor Street should be included. This was agreed. In Section 3.51 (l) and (m), it says no occupancy until prepared and filed with the Registry and the parcels have been merged. That is a lot of work. He would suggest amending (m) to allow for a temporary Certificate of Occupancy while the process is going on. The project would likely be completed before the Land Court’s final order is issued. Mr. Huber stated this may take longer than they think, and he appreciated Mr. Alpert’s comments. Ms. Newman is ok with this.

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

VOTED: to grant (1) the requested Major Project Site Plan Review Special Permit under Section 7.4 of the Needham Zoning By-Law, as modified by this decision as red lined and with changes approved at this meeting, subject to and with the benefit of the following Plan modification, conditions and limitations.

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

VOTED: to adopt the decision presented tonight with the red line changes as modified by the changes discussed and approved this evening.

The Board took a 5-minute recess.

Discussion of Zoning Strategies for Solar Energy Systems.

Mr. Block noted there are 5 items – ground mounted solar, solar mounted canopies, building mounted canopies, building mounted non-canopies and parking lot parking canopies. For ground mounted canopies, the treatment for height and setback

needs to be resolved. Small canopies are up to 1,500 square feet in size and for height he looks for 8 feet. The height limit is easier to screen for neighbors. Mr. Crocker stated it is reasonable to have an 8-foot height in the Single Residence B (SRB) District. In the Single Residence A (SRA) District it should go to 10 feet. If you limit to 8 feet with a medium size array you lose 3% efficiency. Screening will help cover. There should be screening on medium size arrays, but the 8-foot requirement is unnecessary. He is fine with 8 feet in SRB. In all other areas he feels it is not necessary to restrict to 8 feet. Ms. Espada asked if ground mounts are sloped and was informed they were. She asked where the 8 feet was. Mr. Crocker noted it was at the top. It was agreed small scale and medium scale would be 10 feet everywhere but SRB and General Residence where there would be an 8-foot height limit.

Mr. Block noted the setback will be the sides and rear in Residential and Commercial Districts. The members had already agreed to a setback at the primary structure setback. Mr. Crocker disagreed. He feels it should go to a 5-foot setback as long as there is screening. He does not want to push it further into the lot. Mr. Block clarified that Mr. Crocker wants to change to the accessory structure setback. Ms. Newman stated she has not seen setbacks as of right with screening provisions. Residential small scale is allowed as of right and medium scale is subject to site plan review. Mr. Block noted on page 5, the ground mounted setback, Mr. Crocker is looking to make it less restrictive with a screening requirement. A discussion ensued. Mr. Block suggested that Ms. Newman follow up with Town Counsel Chris Heep to see if screening could be required if modified to 5 feet.

Mr. Alpert stated that if ground mounted setback, small or medium, is to the setback of the primary structure of the district, then screening is not needed. They still have site plan review for ground mounted. A hearing is only needed if screening is closer to the setback. Mr. Block stated all medium scale are allowed by site plan review and would require screening. Mr. Crocker stated small ground mounted at the setback of the district does not need screening or site plan review. Mr. Alpert noted if less than the district setback it would require site plan review which requires screening. Ms. Espada clarified that anything small is 1,500 square feet with appropriate setback by right. A medium, which is 1,500 square feet but less than 40,000 square feet is by right with site plan review. Mr. Block noted the side and rear have been resolved and the front is only with a special permit. Mr. Crocker stated the setback from the front would be at least 12 ½ feet. If there is no screening in front, it would be pushed back further. Mr. Block wants the front yard with a special permit. He feels any ground mount in the front yard larger than 600 square feet should require screening whatever the setback is. Ms. McKnight does not like the focus on screening. She feels the focus should be on setbacks. Ms. Newman agreed. She feels screening is hard to manage. Mr. Block stated the Board could wait on front yards and see how it goes. They could always go back to it. Mr. Alpert stated that, if accessory structures are allowed in the front yard, ground mounted solar should be allowed as long as it meets the front yard setback. Ms. Newman stated a person could have a garage and no screening is needed. She asked how screening would be enforced long term. Mr. Block stated for the front yard, he proposes by special permit at the setback, with screening. Mr. Alpert stated if this is allowed in the initial By-Law, they can always cut it back.

Mr. Block described building mounted canopies, which is a canopy structure over the roof of a building. This use should be allowed by right subject to existing mechanical height of 15 feet in the following Districts – Mixed Use 128, Highland Commercial 128, New England Business Center and Industrial Districts. It would be allowed by site plan review and has to comply with storm water management. After discussion, it was decided to strike Industrial Districts. It would be allowed in all districts on the other side of 128 where Trip Advisors, Staples and You Do It are located. Ms. Espada is fine with this proposal in those districts. Mr. Alpert asked why not include the Muzi site and was informed it was due to the proximity to residential.

Mr. Block described building mounted non-canopies. There are 2 installations on commercial roofs. The flat roof solar panels which would go to the edge of the building if flat. The pitched installation would be set back a length equal to the heights from the edge of the building. Mr. Crocker stated the arrays are not angled very far off the roof and are always a minimum of 4 feet from the edge of the roof. This would happen by engineering definitions. OSHA regulations have definitions and engineering practice. They could say the arrays could never be more than 2 feet high. Ms. Newman asked what is the aesthetic result they want. Mr. Block stated on page 3 and 4 of the By-Law, at a pitch of fifteen (15) degrees it would be allowed to extend one foot above the roof surface. All agreed to that. Mr. Block stated it should be set back the distance of the height of the install. Ms. McKnight stated 3 feet from the roof edge is already in the By-Law. All agree.

Mr. Block noted parking lot canopies, such as Olin College has, and canopies over parking structures such as Boston Properties has. The maximum height technically is the height of the structure. Ms. Newman stated it is the height in the

residential district or the maximum height of the principal structure. Mr. Crocker suggested 15 feet like a garage. Ms. Espada noted 15 feet or larger by special permit. She stated Mass Department of Energy Resources (DOER) says structure height is 11 to 17 feet for solar canopies. She would feel comfortable with 17 feet. All agree with a 17-foot maximum. It should be consistent in all districts.

Mr. Block commented on exceptions. He wants to make sure if someone has a trellis in the front yard to the front door he feels they should be able to put solar on that. He feels a reasonable height for a new structure would be 8 feet, even if inside setbacks, without requiring a special permit or site plan review, as long as the Board agrees on a height. He does not feel it needs to meet setback requirements. Ms. McKnight stated all the photos Stephen Frail provided look like structures. Mr. Crocker stated that with solar the primary purpose is solar. With these photos the primary purpose is to cover the patio. It was agreed to let this go as they are probably roof mounted. Ms. Newman will update the By-Law for the next meeting.

Minutes

There were no minutes.

Report from Planning Director and Board members.

Ms. Newman noted there is a Housing Needham Advisory Group (HONE) meeting tomorrow. The Consultant has run 7 different compliance scenarios which the committee will review and modify. They will begin the conversation to plan for the workshop in January. Mr. Block stated he had a conversation with Assistant Town Manager Katie King that they may want to utilize the Council of Economic Advisors (CEA) and get any feedback from them.

Correspondence

Mr. Block noted an email, dated 11/28/23, from Stephen Frail regarding ground based solar arrays in front yards and parking structure canopies; an email, dated 12/7/23, from Paula Dickerman regarding the Planning Board/Needham Housing Authority meeting and an email, dated 12/9/23, from Gregg Darrish regarding the Planning Board Open Meeting complaint.

Mr. Block thanked the Board members for a very productive 2023.

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

VOTED: to adjourn the meeting at 11:05 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Natasha Espada, Vice-Chairman and Clerk

