NEEDHAM PLANNING BOARD MINUTES

December 17, 2013

The regular meeting of the Planning Board held in the Charles River Room in the Public Services Administration Building, was called to order by Bruce Eisenhut, Chairman, on Tuesday, December 17, 2013 at 7:30 p.m. with Messrs. Warner and Jacobs and Ms. McKnight as well as Planning Director, Ms. Newman.

Mr. Eisenhut noted the meeting was beginning at 7:45 p.m. due to bad weather.

Deminimus Change: Amendment to Major Project Site Plan Review No. 1993-03: the Continental Wingate Development Company, 63 Kendrick Street, Needham, MA, Petitioner, (Property located at 589 Highland Avenue, Needham, MA).

Roy Cramer, representative for the applicant, stated a shed on the property had been in existence for 20 years. It was deteriorated. They applied for and received a building permit to replace it. They put the new shed in and it came to their attention there was no shed on the original plan in 1993. To button everything up, the Planning Director suggested a minor modification to allow the shed. He stated it is a 12 by 14 foot shed for snow blowers, lawn mower and such equipment.

Ms. Newman stated a shed was never approved in that location. The new owner put up the shed. She noted there has been a structure there for a long time and there have been no complaints from any abutters. It was originally put up sometime in the 1990s and now the new shed is up. She noted the building permit should not have been issued. It was non-compliant with the plan.

Mr. Eisenhut stated the notice did not give abutters any idea they were going to be discussing the shed. Ms. McKnight asked where the old shed was located. Mr. Cramer stated the old shed was about 30 feet to the right of the new shed, adjacent to the dumpster. Ms. McKnight noted that the stockade fence goes all along the westerly property line. Ms. Newman stated that was correct. Ms. McKnight noted the fence surrounds the shed and asked how high it was. Mr. Cramer stated it was about 6 feet high.

Mr. Eisenhut commented he would feel more comfortable if the abutters told them it was ok. Mr. Cramer reiterated it has been there for about 20 years. Mr. Jacobs stated he understands the concern. He stated he has seen it and feels it is benign. Mr. Cramer stated he sees no reasonable basis for denying it. Mr. Eisenhut commented he feels a site visit is in order. Mr. Jacobs stated the shed seems to be in ok condition. It faces toward the dumpster and the fence is at least 6 feet and maybe 7 feet. There are trees along the border that helps to screen it. He also noted Putnam Street is a little higher than the land where the shed is. He does not feel it can been seen from ground level from Putnam Street. His take is he feels it is benign.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by the four members present unanimously:
VOTED: to determine this is a deminimus change.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by the four members present unanimously:
VOTED: to approve the requested change.

Medical Marijuana Zoning: Review of Draft Zoning Article for transmittal to Selectmen.

Mr. Eisenhut stated the Planning Board really did not discuss at its last meeting why they would not include the New England Business Center in the overlay district where medical marijuana dispensaries would be allowable. It was like it did not exist. He would like to have seen at the Selectmen's public hearing why it was not an appropriate area or why it would be a good area. Ms. Newman stated is the Planning Board plans to hold a public hearing on 1/21/14. They will need to vote on this and have the Selectmen refer it back to them for the hearing.

She noted the Selectmen meet tonight. They could amend the proposed by-law to include the New England Business Center.

Mr. Warner made a motion to insert the New England Business Center zone as a possible site for a medical marijuana dispensary. Mr. Jacobs seconded the motion. Mr. Jacobs stated he feels this area of town is the least burdened by sensitive areas. Mr. Eisenhut noted they should vote for reconsideration to add the New England Business Center to the motion.

Dr. Stefani Lipton, of Wellspring and an applicant for a dispensary, stated there has been a lot of misinformation. She stated Highland Commercial 128 was also overlooked. Mr. Eisenhut stated he felt that area was discussed but Ms. Lipton reiterated it was not. Mr. Jacobs stated they focused on what the Selectmen wanted. He feels Dr. Lipton is correct. The Planning Board did not discuss New England Business Center or Highland Commercial 128.

Ms. McKnight stated she did not propose that strip because she is concerned with the residential areas and there is Riverside Street and Highland Terrace on that side. She discounted it in her mind which is why she did not propose it. She stated the overlay does not have to encompass the entire district. Dr. Lipton stated they are interested in the old Golf Shop by Mighty Sub.

Ms. McKnight asked where do you draw the line on an overlay and can they do it quickly. She noted one way is to say the northern side of Highland Avenue and the southern side west of Second Avenue. Mr. Eisenhut asked if that was an amendment to Mr. Warner's proposal – that they include Highland Commercial 128 north of Highland Avenue and south of Highland Avenue within 100 feet of Second Avenue. Mr. Eisenhut stated he would go west of Second Avenue. Mr. Jacobs stated he feels it should be within that zone, west of Second Avenue both north and south. All agreed. Mr. Jacobs thanked Dr. Lipton for bringing this to their attention.

Ms. Newman stated Article 2 is the overlay. She stated what she has under the map change provisions is essentially a Mixed Use 128 – first one Item A and a legal description, Industrial 1 District – Item B and a legal description. There were questions about the legal descriptions that accompany the individual districts, so she does not have a legal description for that yet.

Ms. McKnight stated a friendly amendment is to add to Article 2 a subsection (e) describing a medical marijuana overlay district, a portion of the Highland Commercial 128 District superimposing that district over the Highland Commercial 128 District bounded and described as follows: both sides of Highland Avenue to the center line of Second Avenue and on the westerly side of Highland Avenue to an imaginary line extending Highland Avenue. Mr. Warner accepted the amendment to his motion.

Upon a motion made by Mr. Warner, and seconded by Ms. McKnight, it was by the four members present unanimously:

VOTED: to insert the New England Business Center zone as a possible site for a medical marijuana dispensary and add to Article 2 a subsection (e) describing a medical marijuana overlay district, a portion of the Highland Commercial 128 District superimposing that district over the Highland Commercial 128 District bounded and described as follows: both sides of Highland Avenue to the center line of Second Avenue and on the westerly side of Highland Avenue to an imaginary line extending Highland Avenue.

Dr. Lipton stated the Department of Public Health (DPH) zoning regulations are just recommendations in terms of buffer zones. DPH recognizes that it is not always feasible, and can be excessively restrictive, to include the 500 foot buffer zone around areas where children congregate. Brookline has recognized there would not be any dispensaries in the entire town because of the 500 foot buffer zone so they only allowed that zone around schools and stated they will not allow dispensaries in buildings with day care facilities and that is it. Otherwise, it is excessively restrictive. It is the same thing here in Needham. If you were to allow the 500 foot buffer around where children congregate there is practically no place to put it. She stated they are asking the proposal be amended so it will only be applicable to schools.

Mr. Eisenhut stated the concern he has is do they take this information now or at the public hearing. Ms. Newman stated she thinks it is more appropriate to discuss this at the public hearing. She stated the Board should know the draft is modeled after the Newton and Cambridge approach where they do have the 500 foot buffer. There is an escape clause where if the Board issuing the permit finds the use is adequately buffered, the 500 foot limit could be modified. This is the approach most communities are taking. Mr. Jacobs stated Cambridge has this out clause also.

Dr. Lipton stated it is objective. She noted they cannot have it in Cambridge. She feels a whole slew of people will be applying for Special Permits to grow marijuana in their homes. If they are concerned about adolescents and divergences, that is the perfect set up for adolescents to get hold of it. She feels it is safer to allow a location where it can be strictly regulated.

Mr. Jacobs stated it is better to discuss this at the public hearing on January 21. He noted he is not sure, in the language of 3.14.5.6 (b) this is really what they mean by "sufficiently buffered." He is not sure what that means but he is also not sure it is what they mean. They are looking for an escape clause but he is not sure that is what they mean by "buffered." Mr. Eisenhut stated accessible and safe. Mr. Jacobs stated he is not sure the use of the word "buffer" is sufficient.

Ms. Newman noted language changes they can make later. There are 3 articles. She asked if they want to make any changes. The first article is text, the second is overlay and the third is a protective article to extend the moratorium in case of a problem. In the last article, essentially all they are changing is the expiration date of the moratorium to 12/30/2014.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the four members present unanimously:

VOTED: to transmit these articles to the Board of Selectmen for a referral back for purposes of a hearing to be scheduled.

Request to authorize Planning Director to authorize building permit and Occupancy Permit: Amendment to Major Project Site Plan Review No. 2012-05: VO2 Max Elite LLC, 23 Francine Road, Framingham, MA 01701 & MMM Property LLC, 7 Harvard Street, Brookline, MA 02445, Petitioners (Property located at 916-918 Great Plain Avenue, Needham, MA).

Ken Mackin, owner, noted there were a couple of issues and gave an overview. In July 2012, the initial Special permit was issued by the Planning Board (recorded at the Registry of Deeds in October 2012) for this property, as well as the property on Dedham Avenue. There were a set of conditions in each Decision. Some were linked with the Dedham Avenue property. In October 2013 a Special Permit was approved for VO2 Max Elite for stores 1 & 2 of just under 2,000 square feet. Some of the conditions of the original permit are innocuous and do not pertain to VO2 Max Elite.

Ms. Newman stated, essentially, they are looking to occupy where VO2 is going in to the building. Basically there are 3 Special Permits that are operational here. One is a Special Permit they issued under an overlay which had certain conditions attached to it, some of which can be met and some that cannot be because they are linked to the construction of the 4 story building on Dedham Avenue. She noted one requires that the utilities come in from the back of the building. That is happening and there is an As-Built associated with that. They are supposed to get an As-Built that shows the installation of the sewer to the back of this building. All work is not going to be completed until the Dedham Avenue building is constructed.

Mr. Mackin stated the sewer line connection has been made at the street and the sewer line has been brought to the rear of the property. The DPW came out to inspect the location. Town Engineer Anthony DelGaizo stated he would accept a statement or a plan from the contractor where the sewer line is installed, then the engineer would put together an As-Built plan this month to send to the Planning Director. He stated he would like the Planning

Board to authorize the Planning Director to accept that. They are looking to obtain a temporary occupancy permit for 1/1/2014 which is before their next meeting.

Mr. Jacobs asked if Ms. Newman was comfortable with this. She informed him she was Mr. Eisenhut asked if they were amending the decision. Mr. Mackin stated they were not. They had discussed that possibility if it was not feasible to reroute the sewer line because the developer could not open the street. The developer was able to open the street before 11/15 and they were able to put the line in the same location. Ms. Newman stated they were able to get the sewer line in, which is a better option. Mr. Eisenhut stated these seem to be deminimus changes. Ms. Newman noted, basically, the decision allowed him to occupy the building even though it is not complete. The decision does say the work was all supposed to be completed and, if not complete, it would need to be bonded. He is only asking they not have to bond it in order to occupy.

Mr. Mackin stated they are requesting a waiver of Section 3.7 (b). Ms. McKnight noted there was a Special Permit for the entire project including Dedham Avenue and the conditions are not complied with yet because Dedham Avenue is not done. Mr. Jacobs noted Mr. Mackin is asking to be excused from things he has no responsibility or ability to perform. Ms. Newman stated that was correct and asked if this was the proper forum to do it. Ms. McKnight noted they could handle it by saying in the original permit "comply with Special Permit conditions except for…" Mr. Eisenhut noted that was right but it is a deminimus change.

Mr. Mackin stated he believes it is in the spirit of what the permit said in 2012. He owes the sewer line, parking license, As-Built plans for VO2 space and subsequent façade and center bay applications and final sign off from Engineering. They are satisfied with the sidewalk repairs.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the four members present unanimously:

VOTED: to note the requested letter by MMM Property LLC to the Planning Director dated 12/9/2013 relative to VO2 and relative to item B – sidewalk repair on Dedham Avenue, Item C – landscape plan and Item F – Audio Visual Alarm we deem the request for those changes to the VO2 Special Permit B, C and F to be deminimus and we approve those changes to the VO2 permit.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the four members present unanimously:

VOTED: that Item D in the applicants 12/9/2013 letter requesting the Planning Board grant the Planning Director authorization to issue a Certificate of Occupancy permit for the sidewalk when completed be approved.

Mr. Jacobs stated they should amend so as not to require As-Built plans for the complete site but really only for utilities that service the building on Great Plain Avenue. Mr. Eisenhut asked if this amendment was to the first vote. It was noted it is.

Upon a motion made by Mr. Jacobs, and seconded by Ms. McKnight, it was by the four members present unanimously:

VOTED: to amend the first vote so as not to require As-Built plans for the complete site but only for utilities that service the building on Great Plain Avenue.

Mr. Mackin stated the only question he raised is he has a perspective tenant looking to take the other 3,000 feet. This is just an inquiry. They have 9 parking spaces in back. They will give 6 spaces to a custom golf place. They will only have 3 employees on site. They are looking to modify the parking permit so as to be used by clients only when they drop off or pick up their clubs. He will be coming back in January. He does not want them double parking in front like UPS does. Ms. Newman stated that is an amendment. She noted they had a discussion about traffic going in and out.

Ms. McKnight stated golfers will walk long distances with golf clubs. Mr. Mackin stated most have caddies or pull carts. They are dealing with higher end golf equipment. They are more likely to not carry their own equipment. He just wants to get a feel of the Board. Mr. Eisenhut stated one dedicated space may be ok.

ANR Plan – 199 Great Plain Avenue.

Ms. Newman stated there is only one issue she spoke with Building Inspector David Roche about. She asked a surveyor to give her the dimensions across the frontage streets. Building Inspector Roche said as they were showing 86 feet at this particular location and on the parallel line he was comfortable with it. They do not have the other dimensions. She asked the surveyor to put it on but he could not get it on in time. There is no need for any notes. They are keeping the existing house which she feels is a positive.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to endorse the plans ANR.

Council of Economic Advisors Downtown Subcommittee: Recommendations Regarding Zoning and Regulatory Modifications to Improve the Permitting Process.

Mr. Eisenhut noted this was off the agenda for tonight.

Large House Review

Ms. Newman noted they are going to appoint a committee. The new employee, the Housing Specialist, starts on 1/6/14. Ms. McKnight stated the League of Women Voters gave the name of Lindsay Acomb that they would like on a committee. She had served on other committees.

Mr. Warner asked if they think, in addition to the Planning Board rethinking lot lines and such, would it also think about some sort of reward program to bring the neighborhoods into the process when a teardown is proposed. Mr. Eisenhut asked if he was thinking of using Community Preservation funds for restrictive covenants or something like that. Mr. Warner stated no. His concept was if the developer wished to have a teardown permit and ignored the neighbors and the Planning Board rules, or if he chose to improve the reception of his house and be a good neighbor, he might enter into a bargaining agreement. He would like the bargaining agreement to be met before the teardown and if the neighbors and developers did not agree then there would be no bonus.

Mr. Eisenhut asked what kind of bonus – financial? Mr. Warner stated a tax relief, say for 5 years. Ms. McKnight stated towns cannot offer tax incentives. It has to be approved by the Legislature and they are under constitutional limits. Mr. Warner stated residential areas are in danger. It could be under the Economic Development. Mr. Eisenhut stated they should try to think of some other bonus. He thinks this is part of the Wellesley approach. Ms. Newman noted Wellesley's approach is to keep under a certain number to avoid the conversation.

Ms. McKnight stated there are tax incentive programs that are not unconstitutional. Mr. Eisenhut stated it could be a certain density bonus or some kind of zoning bonus. Mr. Warner commented New York got in trouble for offering bonuses for public spaces. Mr. Eisenhut stated maybe the approach should be if you are going to build something above a certain defined parameter you have to give neighbors notice. Ms. McKnight stated set a threshold and if you go above that threshold you need to have a hearing or you have a true Special Permit process, which she prefers. Mr. Warner stated going in that direction is very good.

Mr. Jacobs stated he thinks they talk around the problem. The problem, as he understands it, is they have a situation where houses that are being torn down are being replaced by much bigger ones because they can. The Zoning By-Law allows them, as of right, to build a fair amount bigger. If they are going to have a problem with the replacement houses, and it is not the teardowns they have a problem with, then they need to go straight to the problem. If the houses are too close to the street or side lines they should have larger setbacks. If they are too high, limit the height. He feels they should be direct about it. He would rather be much more direct.

Ms. McKnight stated she thinks one of the difficulties is when you already have something that is non-conforming. The courts said all they need is finding the new house is not more detrimental than the old house. If you just use setbacks you may run into this situation. She feels they could have gross floor area ratio for residences. Maybe that is the way they should do it. Mr. Jacobs stated he is in favor of the more direct approach. Mr. Warner commented he thinks this is a good start.

Board of Appeals – December 19, 2013.

TTP, LLC – 50 Central Avenue.

Ms. Newman noted this was the old Panella's Market. They are only renovating. She noted the floor plan needs to be updated. They are still showing alcohol in there. Ms. McKnight stated she hopes it is a tight decision for accessory takeout and does not allow any other operation without a further Special Permit. Ms. Newman stated they should recommend the permit be specific to this user.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: "No comment."

Boston ENT Associates, PC – 145 Rosemary Street

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: "No comment."

Minutes

Ms. McKnight stated in the correspondence section of the 9/3/13 minutes it notes Ms. Newman has a model. It should be a model By-Law. She also asked what draft proposal was called Article 1. Ms. Clee will listen to the tape and clarify the language. Ms. McKnight noted in the correspondence section of the 10/8/13 minutes it states the need for an appointment on a committee but there is nothing in the minutes that appoints anyone. She was appointed and it should be on there. Also on Page 4, it should state "The Town" responded rather than "they" responded.

Report from the Planning Director.

Ms. Newman noted Betsy Heffernan sent holiday cards to all members with what she believes have gift cards in them. Gifts under $50 can be accepted but the rule in Needham is they are usually not accepted. The Board members opened the cards and there were gift cards for the new wine store. Ms. Newman will thank Ms. Heffernan but send the gift cards back with a note that the town policy is they cannot accept gifts.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the four members present unanimously:
VOTED: to adjourn the meeting at 9:45 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Sam Bass Warner

Sam Bass Warner, Vice-Chairman and Clerk