

NEEDHAM PLANNING BOARD MINUTES

December 2, 2014

The regular meeting of the Planning Board held in the Charles River Room, Public Services Administration Building was called to order by Martin Jacobs, Chairman, on Tuesday, December 2, 2014 at 7:00 p.m. with Mr. Eisenhut and Warner and Mss. McKnight and Grimes as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Correspondence

Mr. Jacobs noted there was no correspondence.

De Minimus Change: Major Project Site Plan Special Permit No. 2011-04: Town of Needham, Petitioner (Property located at 300 Hillside Avenue, Needham, MA).

Town Manager Kate Fitzpatrick noted there are 12 Special Permit parking spaces for the Senior Center only in the Mark Lee parking lot. She wants on-street permit parking like the Town has in the center. There are 14 spaces on Highland Avenue and 12 spaces in the Mark Lee lot. She wants on-street permit parking and the employees can use these spots. The Selectmen had a meeting on 9/10/14 and would like to pursue this with the Planning Board approval. Mr. Jacobs asked if the Town was trying to free up the Mark Lee lot spaces to share and was informed they were.

Ms. McKnight stated she reviewed the letter to the Planning Board and the proposed changes. All seems reasonable but she has a couple of concerns that she felt could be dealt with a couple of tweaks in the language. The 12 spaces at the Mark Lee Road lot shall remain restricted but shall no longer be restricted to the Senior Center. They are still going to be restricted but will be for local business as well as Senior Center staff and employees. Then at the end of the first paragraph on the second page of the letter, they should add "provided that at least 26 spaces in total are to be provided in the permit parking program areas." She wants to make sure there are at least 26 spaces in the permit parking program.

Town Manager Fitzpatrick stated they sell significantly more spaces than they have. Mr. Jacobs asked what the signs would say. Ms. Fitzpatrick stated Needham Heights parking permit required or something like that. Only an employer can buy the permits. The Town will differentiate between the Heights and the downtown passes. Mr. Warner stated it sounds reasonable.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. Grimes, it was by the five members present unanimously:

VOTED: to deem the changes as outlined by the Town, with the friendly amendment by Ms. McKnight, as de minimus.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. Grimes, it was by the five members present unanimously:

VOTED: to approve the draft decision as amended by Ms. McKnight.

Appointments:

7:15 p.m. – Ken Mackin: Discussion of project close-out requirements of Major Project Site Plan Review No. 2012-05: MMM Property, LLC, 7 Harvard Street, Brookline, MA 02445, Petitioner (Property located at 916-918 Great Plain Avenue, Needham, MA).

Mr. Jacobs noted the following correspondence for the record: a letter, dated 11/25/14, from Kenneth Mackin; a letter, dated 12/2/14, from Attorney Robert Smart; an email, dated 11/24/14, from Planning Director Lee Newman to Tony Caruso and a copy of the existing 7/10/12 Special Permit decision. He noted there is an issue with Section 3.37 of the decision.

Mr. Mackin stated the Special Permit has a number of conditions pertaining to the abutting parcel. Some are beyond his control. Section 3.37 allows them to occupy 916-932 Great Plain Avenue with a temporary occupancy permit but they are trying to get a permanent. He stated they can meet many of the requirements of (a) through (f) but he cannot meet those items that pertain to the Feuerman building – the 3 plus one building that is currently under construction on Dedham Avenue. He will meet the individual requirements of a, b, c and f and will continue to refrain from parking at the rear until the property is sold. He stated he needs a permanent Certificate of Occupancy in order to sell.

Mr. Eisenhut asked what the procedure is. Attorney Robert Smart stated he received a letter from Attorney Peterson, representative for MMM Property LLC. There is language in the special permit decision that says a permanent Certificate of Occupancy is a condition. The closing is scheduled for 1/5/15 and not later than 1/30/15. The clients cannot close without a Certificate of Occupancy and the applicant cannot get that until someone else finishes their building. He stated it could be a couple of months or it could be longer.

Mr. Smart stated the Board could authorize the Planning Director to provide a letter to the Building Inspector that a permanent Certificate of Occupancy should be issued when MMM Property LLC submits the requirements of Section 3.37 a through d. Mr. Jacobs asked if they did that would all the requirements of the Special Permit decision be complied with. Mr. Smart stated they would. Ms. Newman stated there were 2 lots with parking in back on both lots. The applicant was granted a temporary Certificate of Occupancy but they need to figure out employee parking.

Mr. Eisenhut stated this was not noticed as a de minimus change. Mr. Mackin stated he requested a de minimus change. Ms. McKnight asked if it was possible that all work would be done by the end of June. Mr. Mackin stated the parking lot has since been paved and access will be completed tomorrow. All the asphalt, egress and ingress will be done. Mr. Eisenhut stated the Board should put it on the 12/15/14 agenda and have it ready to go.

Mr. Mackin stated the audio visual device will be on the Dedham Avenue parcel As-Built. He will have the As-Built only for Lot A which is his property. All completed work is on his property. The As-Built will show grading and elevations. He stated he would park off-site until the audio visual device has been completed by Jeff Fermon. Mr. Jacobs asked what would happen if he loses the off-site spaces. Mr. Mackin stated he has an agreement with Mr. Bartzokis and he leases spaces from the Town. He does not see an issue. Also he owns 922 Great Plain Avenue and can provide spaces. Ms. Grimes stated she sees no problem with it.

Ms. Newman stated the permit needs to be a de minimus change and needs As-Built and inspections by the Building Department before the next meeting. She stated she needs an application for a de minimus change. Mr. Smart stated he will get that to her. He asked if the relief is granted at the next meeting would the decision need to be filed with the Town Clerk and recorded. Ms. Newman informed him it would have to be filed and recorded.

Decision: Major Project Site Plan Special Permit No. 2014-10: Gilbert W. Cox, Jr., 60 Dedham Avenue, Needham, MA 02492, Petitioner (Property located at 60 Dedham Avenue, Needham, MA 02492).

Mr. Jacobs noted the following correspondence for the record: a letter, dated 11/26/14, from George Giunta Jr. to Planning Director Lee Newman with revised parking counts. Ms. Newman reviewed the changes to the draft decision. On page 8, Section 3.8, she changed it so deliveries can occur at the circular drive and trash is in the back. Section 3.12 clarified there are no proposed changes to the drainage system. Section 3.13 stated there are no new sewer lines and any connection is to known services. In Section 3.17, she was not sure if there were separators so she eliminated this and in Section 3.23 she gave flexibility on the security fence.

Mr. Eisenhut stated Section 3.17 should be consistent with the others. Ms. Newman stated the applicants are not changing the parking lot. Mr. Giunta Jr. stated in Section 3.17 the catch basins should be cleaned as required or as necessary. Mr. Eisenhut stated it should be consistent. They should be cleaned twice per year. Ms. Newman stated under Section 3.24 a variance will be required for this property. To give some flexibility with the ZBA, she modified this to be the Building Inspectors determination and Mr. Cox can proceed at his own risk if granted.

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

VOTED: to strike "as required" in section 3.17b.

Mr. Giunta Jr. stated he originally thought the zone line was along the property line. The lot consists of 3 separate parcels. One runs along the zone line. He stated the applicant needs all 3 parcels to meet the floor area to lot area ratio (FAR) requirement. He asked if the Board would be inclined to view them as separate lots for the 50 foot setback requirement. The applicant was hoping to get the excavation of the concrete in before winter sets in. He asked if it could be 2 separate lots for the purposes of this. Mr. Eisenhut stated it would be a ZBA determination.

Ms. Newman stated this came up before with the elevator issue behind Trader Joe's. Trader Joe's got a variance first then came to the Planning Board. The problem is that the building is 17,000 square feet and with a 14,980 square foot lot they have to add the other parcel in to meet the FAR requirements. Mr. Giunta Jr. stated state law is that ramps are outside the purview of zoning but the elevator and lifts are not. Ms. Newman stated this provision is a problem and is something she will try to fix. She will speak with the ZBA Chair to see if the ZBA can expedite it. Ms. McKnight stated she thinks handicap access should be done wherever it can be done although she does not want to impose burdens on property owners beyond what the law requires.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. Grimes, it was by the five members present unanimously:

VOTED: to accept the decision as drafted with the proposed changes and deleting "as required."

Public Hearings:

7:45 p.m. – 1001 Central Definitive Subdivision: RRNIR LLC, 20 Beaufort Avenue, Needham, MA, Petitioner (Property located at 1001 Central Avenue, Needham, MA). Please note: This hearing will be continued to the first January 2015 meeting of the Planning Board.

Ms. Newman stated she has a letter from Attorney George Giunta Jr. requesting a continuance to 1/6/15 and requesting to extend the applicable action deadline to 170 days after the filing date. Ms. Clee will calculate the date.

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

VOTED: to approve continuance to 1/6/15 and extend the applicable action deadline to 170 days after the filing date.

Board of Appeals – December 18, 2014.

Michael J. Pelgro – 168 Harris Avenue.

Mr. Jacobs noted Section 4.74 of the minimum side setback requirements may be reduced. It allows relief in unusual circumstances. The applicant does not allege it was done inadvertently and it does not give grounds addressing the unusual circumstances provision in Section 4.74. He stated there needs to be some allegation it complies with the second paragraph and he does not see any. This is not mentioned in the application and it needs to be addressed. Ms. Grimes stated she does not want to make it any harder on the owner. He is not the builder who built this.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Warner, it was by four of the five members present (Ms. Grimes voted in the negative):

VOTED: to comment there is nothing in the application that purports to show compliance with the second paragraph of Section 4.74.

Lisa Cherbuliez and John Terry, owners – 17 Lindbergh Avenue.

Ms. Newman stated she does not have the 1959 plan. Mr. Jacobs noted the second page of the application stated the survey done in 1959 was attached. It was not attached. Mr. Eisenhut stated he had a lot of questions on this. Ms. McKnight commented there is no basis for this being a prior non-conforming structure. Ms. Newman stated there is no documentation it is pre-existing, non-conforming. The applicant is saying it was put up legally but it was not.

Plugged In Band Program, owner – 40 Freeman Place.

Ms. McKnight stated she has been a modest supporter of this program. She believes it is a non-profit. Mr. Jacobs noted he is not sure if it is a corporation or not. The application should make it clear. The applicant should be an entity. Ms. Grimes stated it is a corporation and the applicant has a tax ID number with the state.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. Grimes, it was by the five members present unanimously:

VOTED: “No comment.”

8:15 p.m. – Oak Street Definitive Subdivision: Oak Street, LLC, 235 Billerica Road, Chelmsford, MA, 01824, Petitioner (Property located at 66 Oak Street, Needham, MA). Please note: This hearing has been continued from the September 16, 2014 and November 5, 2014 meetings of the Planning Board and will be further continued to the first January 2015 meeting of the Planning Board.

Mr. Jacobs noted the Board received a letter requesting a continuance to 1/13/15. The meeting will be 1/6/15 instead. He would also like the action deadline extended to 2/24/15.

Upon a motion made by Mr. Eisenhut, and seconded by Ms. Grimes, it was by the five members present unanimously:

VOTED: to continue 66 Oak Street to 1/6/15 and extend the applicable action deadline to 2/24/15.

Update and Discussion: Zoning for Medical Marijuana.

Mr. Jacobs noted the Board would be discussing proposed zoning amendments, if any, for Registered Marijuana Dispensaries. He noted the Board has some proposed language Ms. Newman put together for a possible zoning By-Law along the lines the Board discussed at the last meeting. The Board also has an article that Ms. Grimes supplied regarding the US Attorney considering enforcing a 1,000 foot buffer, as well as a copy of Federal Regulations regarding how the 1,000 foot distance was defined under the statute (which is a follow-up to the article provided by Ms Grimes).

Ms. Newman noted she asked the town GIS Department to prepare a map for the Board to look at which would show what would happen with a 1,000 foot radius setback off schools or playgrounds. This would show specifically what would happen in the districts the Board is considering. Mixed Use 128 has a playground/park in Newton across the river which takes out a portion of the back end of the Mixed Use/128 District. It also takes out a portion of Highland Commercial and it also shows what comes out of Industrial District. She stated the Board is trying to move away from the overlay concept.

Ms. Newman reviewed the draft article. She noted paragraph (a) is structured to define a term which mirrors the state. Paragraphs b, c and d define where a Registered Marijuana Dispensary is allowed and requires site plan approval in all three. It creates criteria for a use that goes beyond a Special Permit. She eliminated 7.4 and used the standard the Board talked about adjusting and what they talked about before – 1,000 feet from schools, parks, playgrounds. The requirement mandates no day care in the building. It leaves the Board discretion to come down below 1,000 feet.

Mr. Jacobs stated the way the definition is written someone could do processing, growing and selling under this definition. Mr. Warner asked if there was any place where you could locate a Registered Marijuana Dispensary. Ms. Newman noted most of Mixed Use 128, the western section of Highland Commercial/128 and the southern portion of Industrial 1. Mr. Jacobs stated this does not include any portion of the New England Business Center or any other zone. He asked if this is something the Board wants to support and put forth at Town Meeting. Mr. Eisenhut noted not at Town Meeting but at a public hearing. All agreed. Ms. Newman noted the 1,000 foot setback. She asked if they should be tracking language in the federal law regarding schools, colleges, universities and playgrounds. Ms. McKnight commented they should be tracking this. She feels there is an argument for sticking with the language they had before.

Ms. Grimes stated the Board should start big and could always scale back. Ms. McKnight stated they are establishing a new use. Mr. Eisenhut stated it is unclear if the Board is establishing a new use. He does not think this is clear. He feels the Board should be conservative. Ms. McKnight stated she feels if the Board goes with the restrictions the Board had in the original draft and make it 1,000 feet rather than 500 feet, but not add any new things requiring setbacks such as swimming pools, video arcades, public housing that they did not have originally, then if they cannot have an Registered Marijuana Dispensary because of federal law then so be it. She feels a youth center is vague. Mr. Jacobs agreed he would not change the language to be in accord with the federal regulations.

Ms. Newman clarified they are going with the 1,000 feet. She asked if she should refer it to the Selectmen for a public hearing. Ms. McKnight stated, yes, it should be referred for public hearing. Ms. Grimes agreed as did Mr. Jacobs and Mr. Warner. Mr. Eisenhut stated he would abstain.

Upon a motion made by Ms. Grimes, and seconded by Mr. Warner, it was by four of the five members present (Mr. Eisenhut abstained):

VOTED: to refer to the Selectmen for placement on the warrant.

Minutes

Mr. Jacobs reviewed changes he would like for the 8/6/14 minutes. On page 5, first paragraph, remove the words “have been” after “three small changes.” On page 7, last full paragraph, remove the word “for” and on page 8, second to last paragraph, add the word “width” after “roadway.”

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

VOTED: to adopt the minutes of 8/6/14 with changes discussed.

Ms. McKnight noted on the minutes of 8/12/14, Northampton is misspelled, Matt Varrell is the Director of the Conservation Commission and “others” should be changed to “members.”

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

VOTED: to adopt the minutes of 8/12/14 with changes discussed.

Mr. Jacobs noted on the minutes of 9/16/14, “to service the pool” should be deleted.

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

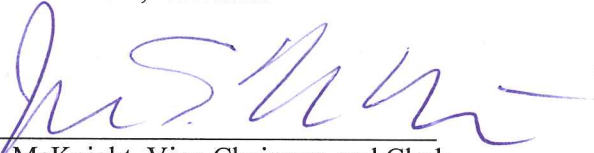
VOTED: to approve the minutes of 9/16/14 as amended.

Ms. Grimes noted she is meeting on Thursday with the attorney for Rockwood Lane on the Home Owners Agreement. She noted if there were any comments she would like them sent to Ms. Newman or herself before then.

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

VOTED: to adjourn the meeting at 8:55 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Jeanne S. McKnight, Vice-Chairman and Clerk