NEEDHAM PLANNING BOARD MINUTES

November 19, 2024

The Needham Planning Board meeting, held in the Charles River Room of the Public Services Administration Building, and virtually using Zoom, was called to order by Natasha Espada, Chairman, on Tuesday, November 19, 2024, at 7:00 p.m. with Messrs. Crocker, Block, McCullen and Alpert, Planner, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. Espada noted this is an open meeting that is being held in a remote manner per state guidelines. She 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.

Update: MBTA Communities Act Zoning Referendum

Kate Fitzpatrick, Town Manager, noted Needham Residents for Thoughtful Zoning submitted signatures to evoke the referendum provision of the Town Charter. The referendum would overturn Articles 8 and 9 inclusive of the amendments of Articles 10 and 11. There are 20 days to file the petition. The Town Clerk is certifying the signatures. There are 3,764 signatures needed. The Select Board has 10 days from the Friday the petition was turned in to meet and call for a special election. The Select Board will meet on Monday, 11/25/24, if the petition is certified and, if necessary, will call for a special election the second week of January.

Town Counsel Christopher Heep noted under Section 13 of the Charter the election will happen 14 days later. State law, Chapter 54, Article 42C, states no question can go on the ballot with less than 35 days' notice to the Town Clerk. That has priority over local Acts and Charters. There needs to be a minimum of 35 days per state law. Section 13 of the Charter says the question on the ballot should take the same form as the Warrant. The referendum needs to go on as written but, due to the length of it, he will write a summary for the ballot. A yes vote will keep the zoning the same as adopted by the Town Meeting vote. A no vote will repeal the Town Meeting vote. Mr. Alpert asked if it was allowed to have a second question to keep the provisions of Articles 10 and 11. Mr. Heep stated there will be one up or down vote due to the way it was written. In terms of the vote, in order to repeal, the no votes must be 20% of the voters in Town and must outvote the yes votes. Ms. Fitzpatrick stated 20% is about 5,000 voters who would need to vote no.

Ms. Fitzpatrick noted if the vote is repealed the Planning Board would need to decide what to bring back and when, possibly late February or early March. Mr. Heep stated the zoning by Town Meeting that was negatively impacted cannot be brought back within 2 years. However, the Planning Board could vote to bring it back in some version in the ordinary course. The process would be to start from scratch, refer to Select Board, the Select Board would refer it back to the Planning Board and the Planning Board would hold another public hearing. Mr. McCullen asked if Town Meeting made a decision would the By-Laws allow for another referendum and it could go on and on. Mr. Alpert stated if a no note, it would be discussed and the Board0 would decide what to do.

Mr. Block asked if the town would be out of compliance as of January 1. Mr. Heep stated the zoning is not final until 20 days go by. The town would be out of compliance on 12/31/24. He would submit to the state and the Executive Office of Housing and Livable Communities (EOHLC) to let them know what they intend to do. Mr. Alpert asked if a loss of funding is automatic per the By-Law if the town is out of compliance or is it discretionary according to the funding Boards? Deputy Town Manager Katie King stated if the zoning is repealed they would be out of compliance. The window of time for funding decisions is key. She has a list in the packet of grant funding. The list is not exhaustive. Everything on the list she knows for sure is at risk. Towns find out as the grants are rewarded and compliance is taken into account when making the decisions. She noted there are 2 items most relevant that are at risk. The first is the Transportation Improvement Program (TIP). There is $20 million that has nothing to do with zoning. The application is due at the end of the year with a decision made in January, February or March.

Ms. King noted the second item is the Federal Community Project Funding. Congressman Jake Auchincloss has stated he would not put forth any funding for communities out of compliance. The Town recently received money from this grant. The requests to the Congressman are due in March. This is ever evolving. The Legislature passed the Economic Development Bill last week. Three grant programs were put into the statute and 8 other grant programs were also added into the statute. There is also language included that grants are only awarded to communities deemed to be in compliance. There is a question if the Town's compliance status would affect the Housing Authority. Some of the grants the Town can apply for the Housing Authority can apply for also. They need to assume the Housing Authority's applications are at risk. The Bill is on the Governor's desk and it seems she will sign it in the next week. Mr. McCullen feels if the Town is at risk of losing funding, compliance should be pushed for. He asked if it could be done in late January, February or March? Ms. Fitzpatrick stated as soon as they know, a plan will be mapped out. Then the Planning Board can decide how to proceed. Mr. Alpert discussed the process the Board would need to follow. Mr. Heep reviewed the State Ethics Law. The Board as a Board is allowed to meet, to discuss, vote and communicate its' position through regular means. The Board as a Board cannot sign advocacy documents or engage in advocacy. Individual members in elected policy making positions can advocate and talk to people. They cannot use town resources to advocate and cannot speak for the Board. They should not use their public emails but should use their personal emails.

Mr. Alpert noted the town is applying for state funds for Pollard that may be at risk. Ms. King stated funds are being applied for but there is no indication the MSBA is taking compliance into consideration. A discussion ensued regarding the position of advocacy with what is appropriate and what is not.

Decision: Definitive Subdivision: 40 Highland Avenue, LLC, 435E Dedham Street, Newton, MA 02459, Petitioner (Property located at 40 Highland Avenue and 14-16 Riverside Street, Needham, MA). Regarding request to subdivide the Premises into three building lots, two of which will be used for residential purposes, having frontage on the new road, and the third of which will continue to be used for commercial purposes.

Ms. Newman noted there is a red lined draft decision in the packet. She and Mr. Alpert talked about one additional change. In paragraph 3 it says the "Lot owner" of the structure can have a customary home occupation. Mr. Alpert suggested it should not be linked to the owner but to the resident of the structure. It was agreed to change the language to "resident." George Giunta Jr., representative for the applicant, noted he had 2 substantive issues and one non-substantive issue. On page 5, paragraph 2 b), he would request that be removed. The applicant has agreed to supply landscaping on the southerly side. There was no discussion during the hearings of a requirement to add landscaping on that side and the abutter on that side did not say anything. The Board should not burden the property with a 100-year restriction. If the Board is inclined to enforce that, he feels 15 feet is way too much and it should be 5 feet. Ms. Newman stated there needs to be an easement documenting the landscaping so it is on record.

Mr. Block asked if a landscape restriction has always been included in subdivisions. Ms. Newman noted it was included on one side of South Street but not the other. Mr. Alpert asked what is the southerly property line and was informed the neighbors' property runs along the back of the property. Mr. Giunta Jr. noted it is residential and there are setbacks. He is not sure why there needs to be a landscape buffer. Building cannot be done within 14 feet of the property line. Mr. Crocker stated this was talked about during a meeting and a letter came in from a department requesting the buffer. There has to be something that is codified. Mr. Giunta Jr. stated there was discussion regarding landscaping but nothing about a permanent restriction. Mr. McCullen asked if the Board has done a 15-foot landscape order before. He would not support 15 feet. He feels that is too much. He would do 5 feet or 7½ feet but what was done before? He does not recall any public comment on this. Ms. Espada remembers someone came in saying there is a buffer now and they would like to keep it. Ms. Newman noted there is a buffer for an infiltration trench that is there.

Mr. Crocker noted it is all woods there now. He has no problem codifying it but he is not sure how big it should be. Mr. Giunta Jr. would advocate for 5 feet if necessary. Mr. Alpert is inclined for something between 5 and 10 feet. He feels 15 feet it too much. All agreed with 7½ feet. Mr. Giunta Jr. noted in paragraph 4, it states each and every owner. He feels Lot 101 should not be part of this and it should only be Lots 102 and 103. That was agreed. Mr. Giunta Jr. stated the Off-Street Drainage Bond is posted on all 3 lots. There is no work taking place on Lot 101 and it should not be subject to a bond. Mr. Block stated a provision is included in the event construction of the 2 lots results in ponding on Lot 101 and the developer is required to mitigate. Ms. Newman stated the Board of Health requires funds to cover any issues that may happen on any lots that may be impacted. The Board of Health has set their own procedure. Mr. Giunta Jr. noted the issue is on the back end trying to get the money released at the end. The bond is appropriate for 2 lots but not 3 lots. The Board members agreed there is no compelling reason to go against the Board of Health requirement.

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 approve and adopt the definitive subdivision decision for 40 Highland Avenue and 14-16 Riverside Street as presented to the Board in the packet and with the changes agreed to this evening.

Heather Lane Definitive Subdivision and Heather Lane Extension Definitive Subdivision/Residential Compound Special Permit Bond Reduction.

Ms. Newman noted the Town Engineer has recommended a reduction in the roadway improvement bond for Heather Lane. The Town is holding $109,000 -- $95,000 for roadside improvements and $14,000 for Off-Street Drainage Surety for Lots 1, 3, 5 and 6. The Town Engineer is recommending a reduction of $80,000 to $15,000.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a vote of the five members present unanimously:
VOTED: to reduce the surety for roadway improvements in the Heather Lane Definitive Subdivision by $80,000 and retain $15,000.

Ms. Newman noted the Town is holding $28,000 for the Heather Lane Extension. Engineering is recommending the release of $17,000 to $8,500.

Upon a motion made by Mr. Block, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: to reduce the surety for roadway improvements in the Heather Lane Extension by $17,500 per the recommendation from Engineering and retain $8,500.

Ms. Newman stated some money is being held as the As built Plan is outstanding on the Extension and some bounds need to be set.

Review of Planning Board Goals

Ms. Espada stated there is a memo with the Planning Board goals in the packet. The Large House Review Committee is a goal if there is no referendum and the Design Guidelines are on hold. If grant money is received the parking study will be done. Ms. Newman thought she would hear about the grant last month but has not heard yet. Ms. Espada noted Accessory Dwelling Units (ADUs) need to be in compliance by February. Ms. Newman noted that will not be done by February. The regulations are not complete and in effect yet. The regulations are needed in order to work on them. She noted the Board already has a By-law that allows ADUs by right within the structure itself. There is no By-law allowing detached structures so that will need to be added. The Board had that earlier as a proposal and can relook at that. She will pull the existing By-law and what was proposed earlier so the members can look at it.

Mr. Alpert asked if there is someplace else there is no compliance or is it only ADUs. Mr. McCullen noted it is only ADUs. Ms. Espada would work on guidelines and HONE recommendations. She feels that would take up a lot of their time. Mr. Block would send the design guidelines to the Design Review Board (DRB) for their review. Ms. Newman put together an RFP and would hire a consultant to do that. Creating is a lot of work to ask the DRB to do. The DRB can review it but the Board needs to know what the proposal is before doing the design guidelines. Ms. Espada noted a lot depends on the MBTA Communities. The Board created site plan review guidelines for the MBTA Communities. She asked if that could be related to the Dover Amendment also? She is not sure how difficult that would be to review.

Mr. Block stated this Board needs training on site plan review authority and special permit authority and then, once trained, another module could be what they want to do. The members need to understand the fundamentals before they get more advanced. Ms. Espada noted Mr. Heep created something for site plan review as of right that is exactly what the Dover Amendment is but the Dover Amendment does not have that right now. She feels the same process should be used. Ms. Newman feels they could use Mr. Heep to draft that. She noted she sent training data to the members. Ms. Espada feels the Board members do need training. She thinks they can reuse some of the MBTA Communities.

Mr. Block believes they need training on site plan processes. He stated the Board is making arbitrary decisions now. Mr. McCullen commented there should be training on what the members have the authority to do and what they do not have authority for. All agreed training is necessary. Mr. Alpert is not sure anyone out there can put together a process for site plan review. It is not in the statute but is developed by case law. That is going case by case and is being changed all the time. Different land court judges have different decisions. Town Counsel may be able to put something together. He feels one issue is they should get rid of "special permit" in their "site plan review" as it confuses the issue. Ms. Newman will reach out to Mr. Heep. Ms. Espada feels the members should take advantage of any educational opportunities.

Mr. Block stated the members need to have very clear training. He stated time and time again it is clear the Board does not know what it is doing. They are putting the cart before the horse. They need to understand areas we need training and then go from there and get the training so they are informed. He noted this was talked about 3 years ago. Ms. Newman stated the framework is already in the zoning, what the mix is under the special permit process and what is as of right. They have the criteria and the Dover Amendment falls somewhere in the middle. The Board discussed the training opportunities available. Mr. Alpert noted the subdivision control regulations have not been reviewed/updated in a long time. Mr. McCullen feels it should be a priority. Ms. Espada stated the Board will review the goals again at the next meeting.

<u>Vote on Large House Review (LHR) Committee appointments.</u>

Mr. Crocker stated he and Mr. McCullen have already interviewed 9 or so people and have 4 or 5 tomorrow. There are some strong candidates but no decisions yet. Mr. McCullen and he will make a recommendation on Monday. Ms. Newman will post a zoom meeting for Monday, 11/25/24, at 3:45. Mr. Block may not be able to attend. Ms. Espada asked what the make up is on the interviewees. Mr. Crocker stated he and Mr. McCullen felt the committee should be expanded to add more citizens at large so the committee has been increased from 12 to 14. Mr. Block asked if the Real Estate Broker, developer and architect would have conflicts if working in Needham. There will be conflicts if they work in Needham while on the Committee. Mr. Block stated they should be told this. Mr. McCullen noted others were not notified in previous committee appointments. They are making recommendations and not setting policy. Mr. Crocker noted they talked about conflicts during the interviews. Ms. Newman will have a conversation with Mr. Heep.

Mr. McCullen informed the Board he never said he would be available to be on the committee. He said he would help but cannot commit to being on the committee yet.

<u>Board of Appeals – November 20, 2024,</u>

<u>77 Charles Street – Elmo Fudburger, LLC</u>

Upon a motion made by Mr. Alpert, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: "No comment."

<u>324 Chestnut Street – Monsoon Indian Kitchen, Inc.</u>

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a vote of the five members present unanimously:
VOTED: "No comment."

<u>250 Highland Avenue – Rainbow Angel, Inc.</u>

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a vote of the five members present unanimously:
VOTED: "No comment."

695 Highland Avenue – DEI, Inc.

Mr. Alpert stated he will abstain from voting as this property is across the street from the Temple and he is on the Board.

Upon a motion made by Mr. McCullen, and seconded by Mr. Block, it was by a vote of four of the five members present (Mr. Alpert abstained):
VOTED: "No comment."

Minutes

Upon a motion made by Mr. Block, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: to adopt the minutes of 9/24/24 as they appear in the packet.

Report from Planning Director and Board members

Ms. Newman presented the budget to the Town Manager. It includes an additional Planner. The Town Manager understands the need for another planner and recognized this. She is not sure the money is there but feels she will hear in the next month.

Correspondence

Ms. Espada noted the following correspondence for the record: a memo from Dorina Moriarty, dated 11/6/24, regarding LCRA concerns; a memo from the Citizen Planner Training Collaborative, dated 11/18/24, regarding the CPTC Workshop Series and a letter from Town Manager Kate Fitzpatrick, dated 11/16/24, regarding a Letter of Support from the Town of Needham.

Upon a motion made by Mr. McCullen, and seconded by Mr. Block, it was by a vote of the five members present unanimously:
VOTED: to adjourn the meeting at 9:05 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

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Artie Crocker, Vice-Chairman and Clerk