

NEEDHAM PLANNING BOARD MINUTES

March 5, 2013

The regular meeting of the Planning Board held in the James Hugh Powers Hall at Needham Town Hall was called to order by Bruce Eisenhut, Chairman, on Tuesday, March 5, 2013 at 7:30 p.m. with Messrs. Warner, Ruth and Jacobs and Ms. McKnight as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Public Hearing:

7:30 p.m. **Article 1:PB Amend Zoning By-Law – Interim Regulations for Medical Marijuana Uses**
Article 2:PB Amend Zoning By-Law -- Dimensional Regulations
Article 3:PB Amend Zoning By-Law – Lot Width Definition/Measurement
Article 4:PB Amend Zoning By-Law – Definitions
Article 5:PB Amend Zoning By-Law -- Dimensional Controls for Exempt Uses
Article 6:PB Amend Zoning By-Law – Dimensional Regulations from Mixed-Use 128
Zoning District

Article 1:PB Amend Zoning By-Law – Interim Regulations for Medical Marijuana Uses

Daniel Matthews, Vice-Chairman of the Board of Selectmen, noted the purpose for him being there was to ask for a moratorium on Medical Marijuana dispensaries pending the development of further regulations from the state and the town. The Board of Health is in support and also Police Chief Phillip Droney. He noted an important point is the Board of Selectmen recognizes the community supported medicinal marijuana in the November referendum and the petition is now law. The concern in Needham is the Business District is long and narrow and mostly in abutting residential neighborhoods. He understands it may not be possible to prohibit distribution of Medical Marijuana under local zoning, but the law is silent on the issue of siting. He stated they are doing nothing but to allow for thoughtful consideration of issues raised here.

Selectman Mathews stated substance abuse issues may become an issue. He feels the time will benefit everyone. They could see what other communities are doing.

Police Chief Philip Droney stated he prefers not to see dispensing in town. It is speculative as to where the dispensaries would go. He feels it would bring a criminal element to town and will impact the police department. He asked what would it do to other parts of town and what will it bring to Needham.

Stephen Epstein, Needham Board of Health, noted he was in support of the moratorium article. He agrees it should be temporary and for some limited uses. He is concerned with the language. They are actively considering how they would regulate it from the Board of Health. They would be regulated as restaurants as they serve food but also as a pharmacy. There is the question of how they would deal with medical waste. Also, if they are allowed to cultivate marijuana if they are in a building with other uses. With regards to security, who is inspecting them? They are actively discussing this. They are meeting with a physician next week. There are a number of different considerations. He noted they need to see what the Department of Public Health comes out with. He feels the right approach now is to get the right regulations.

Carol Reed, of Needham's Coalition for Youth Substance Abuse, stated they are in agreement with the Health Department. They understand making Medical Marijuana available is the will of the voters. She has seen how it impacts young people. She noted drug driving incidents have doubled. They have seen in other state dispensaries they sell food and maybe other products. There is no minimum age written in the law and no parental consent is needed. They are working with advocacy groups. There could be 35 stores in the state and up to 5 in each county. In Massachusetts any cardholder can carry up to a 60 day supply. That is not defined. She wants to look for guidance from the Department of Public Health.

Mr. Jacobs asked Selectman Matthews what zoning issues need to be clarified. Selectman Matthews stated he does not think the State Department of Public Health intends to deal with zoning issues. He noted they did not talk about facility siting at all though the Department of Public Health will license the sites. The current understanding is they intend to default on that issue and siting will be left to each town.

Mr. Jacobs asked Police Chief Droney why he feels there will be a criminal element. Police Chief Droney noted he looked at Los Angeles. There are a lot of robberies and break-ins around the dispensaries. He noted a lot of the dispensaries have been closed down. He has looked at LA as they had them the longest. He added Colorado's fatality rate has doubled with medical marijuana.

Mr. Jacobs asked Mr. Epstein if the Board of Health could say no to food products being sold. Mr. Epstein stated they would regulate it like a restaurant. Mr. Jacobs asked if they could say no to food. Mr. Epstein stated they could deny the permit but he is not sure. He reiterated they would regulate it like other restaurants. Mr. Jacobs stated the law talks about dispensaries and home growing. He asked what is the interplay? Is there less chance to grow at home if they have access to dispensaries? Would the town avoid more danger from home growers if they allowed dispensaries? Selectman Matthews stated it goes to the ambiguity in the statute. There are problems with the statute that should be clarified. The main problem is siting of dispensaries. The Department of Public Health will be regulating home growers. He commented he feels it would not be a good idea to do nothing.

Police Chief Droney stated he had experience with improper drug prescriber already about 10 years ago on Gould Street. Dr. Jane Fogg, Board of Health, stated the law says financial hardship or transportation hardship.

Mr. Warner stated it seems food is a problem and growing is a problem. He noted the preferred spot would be the pharmacy at Beth Israel. He asked if it was possible to narrow to a single dispensary. Mr. Epstein stated he did not think so. The state says up to five per county. Moe Handel, Board of Selectmen, said they want to give the town the ability to approach this in a deliberate sensible way. Selectmen Matthews reiterated there is ambiguity in the law. The permits are issued by a state agency. A town cannot limit the number of permits but may be able to limit the siting.

Ms. McKnight asked how a dispensary would be regulated under the current By-Law with no moratorium. She asked if Building Inspector David Roche has given any thought to where it would be allowed if allowed. Building Inspector Roche stated he has not given it any thought. Ms. McKnight stated it is an important issue.

Anthony Bibbo, of West Street, noted in Section 8.5.2 of the proposal they could extend to homegrowers. The way it is written now it seems it is to be allowed in his home. He asked if that was true. Selectman Matthews stated they want to limit it during a one year moratorium. There will be no siting in residential neighborhoods. Mr. Bibbo noted studies have shown no increase in crime around dispensaries. Selectman Matthews stated dispensaries are a business. He feels it is better to limit businesses to certain zones. The statute does not say it could be in residential sections. The intent is to prohibit it for a year. Mr. Bibbo stated he is in opposition to a moratorium.

Ross Donald noted he was a new Town Meeting Member. He stated the newspapers indicated the Planning Board would not endorse this. Mr. Eisenhut clarified the Planning Board said the Board of Selectmen should sponsor this. The Planning Board has not made any comments. They are keeping open minds. Mr. Donald stated his impression was the Planning Board was not willing to sponsor it but willing to deny it. Mr. Eisenhut reiterated they are keeping an open mind and have not made any recommendation.

Mr. Donald stated the Police Chief has said what his preferences are and people have spoken but it is still not settled. What are reasonable expectations? There is no end to the questions and he wants to know when they are going to move on it.

Mr. Eisenhut noted the following correspondence for the record: a memo from the Board of Health; a fact sheet; a letter from Thomas Mullen, P.C.; and a copy of the MMA Annual Town Meeting 2013.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to close the hearing.

Mr. Eisenhut noted the following correspondence for the record: the Rail Trail Public Workshop and an email from Jeanne McKnight regarding the Large House Committee.

Article 2:PB Amend Zoning By-Law -- Dimensional Regulations

Ms. Newman noted Article 2 – Dimensional Regulations. Ms. Bailin noted it did not say if taken by public domain what would happen. They feel they shall be entitled to grandfather protections. They want to avoid the obvious detriment to individuals. Ms. Newman noted the Board was concerned with unintended consequences. The March 5 memo from Assistant Planner Alexandra Clee stated there were 9 lots in question. Ms. McKnight stated they do not know if these lots were part of a taking. She noted if there were a taking, damages would have to be awarded if land becomes unbuildable, and this is the issue to be addressed. Mr. Ruth stated he wants to be thoughtful.

Ms. Newman noted Town Counsel David Tobin is doing an investigation now. They will have more information in a few days. Mr. Jacobs asked if the intent is to make a recommendation. Ms. Newman noted it was. She noted at the next Planning Board meeting they will have Town Counsel Tobin's information. Ms. McKnight suggested they not close the public hearing or leave it open only for a limited purpose.

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

Article 3:PB Amend Zoning By-Law – Lot Width Definition/Measurement David Roche, Building Inspector noted this clarified how you measure lot width. He looked at a couple of other towns and their definitions. He stated this needs a clearer definition. Mr. Jacobs stated he agrees with Robert Smart's email that a diagram would be helpful. Ms. Newman stated others towns do have diagrams. Needham has not historically done that. Ms. McKnight stated she also agreed with Mr. Smart. She does not understand the wording in the second section regarding how something can be perpendicular from a point. She does not understand the sentence. They need an explanation and clearer words. Ms. Bailin stated it is perpendicular from the front lines. Ms. Newman clarified they can work out language for the next meeting.

Upon a motion made by Ms. McKnight, and seconded by Mr. Ruth, it was by the five members present unanimously:
VOTED: to continue the Article 3 hearing.

Article 4:PB Amend Zoning By-Law – Definitions

Ms. Bailin stated Article 4 was very simple. She noted they should add the words "located in all districts." Building Inspector Roche stated 30% is an issue. He would like the Board to increase to 50%. Ms. Newman stated they were going to study this with large houses.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to close the hearing.

Article 5:PB Amend Zoning By-Law -- Dimensional Controls for Exempt Uses

Ms. Bailin noted the provision in Article 5 is illegal. This only applies to exempt uses. It should fall under the same rules and regulations as other uses. This does not apply to all institutional uses, only exempt uses. They need to make it applicable to all uses not just those exempt.

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

VOTED: to close the hearing.

Article 6:PB Amend Zoning By-Law – Dimensional Regulations from Mixed-Use 128 Zoning District

Ms. Newman noted Article 6. Ms. Newman noted the Council of Economic Advisors wanted to make these dimensional regulations equal to others. This would allow a Special Permit if the maximum height exceeds 72 feet and FAR allowed as of right. This allows an increase in density. This does not include residential overlay issues. Mr. Ruth stated he does not sense anyone cares about this. No one is here and there are no letters in support. He asked why they are doing this. Ms. Bailin stated they should have parity along 128. People were at the symposium. There is no reason for zoning to be different.

Ms. Bailin stated the Council of Economic Advisors did a study on this and feel it is the right way to go. She noted the owners want these things changed. Mr. Ruth stated he would like to hear from the owners that they want this. Ms. Bailin commented the Council has waited 1½ years and expects it to be voted on and approved at this Town Meeting. Ms. McKnight noted Simon Boyd's email to Planning Director Newman. He feels they should incorporate a limitation in the zoning. He is presenting that FAR limits be relaxed. Ms. Newman noted Mr. Boyd's position is there should be no FAR.

Ms. McKnight noted at a meeting of the National Association of Industrial & Office Properties (NAIOP) she went to Needham was singled out for praise for the changes made recently. Mr. Warner asked why not adopt the same FAR for the business zone. Ms. Bailin noted they are 1.0 FAR as of right. Ms. McKnight noted in the amendment for Footnote 1, does 84 feet apply within 350 feet and the heights limitations within 70 feet? She noted in 4.9.2 the word "to" should be removed from Floor Area Ratio. Ms. Bailin stated it was oddly written in the original.

Mr. Jacobs asked Ms. Bailin if she thought there would be support from business owners at Town Meeting. Ms. Bailin stated she feels there will be support if the Planning Board wants support. Mr. Ruth stated he would like a letter from a couple of business owners.

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

VOTED: to continue the hearing.

8:30 p.m. – Amendment to Major Project Site Plan Special Permit No. 91-3: North Hill Needham, Inc., Petitioner (Property located at 865 Central Avenue, Needham, MA).

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

VOTED: to waive the reading of the public hearing notice.

Roy Cramer, representative for the applicant, stated they have a master plan. They did the first part in September 2011. They would like to do the new skilled nursing facility and entrance to the individual living facility as shown on the plan as a dotted line. They are asking for approval for the skilled nursing facility, a 45 unit independent living facility and some minor façade changes. There will be a connecting link between the facilities. They are also requesting to withdraw the request to construct Phase VI at this time.

Mr. Cramer stated they filed a listing of all changes from the approved plan. There are 5 phases. Phase 1 is the same, phase 2 is the same with the maintenance building. They want to follow the formal approval in September 2011. He noted they will get a Certificate of Occupancy Permit after each is done or the Planning Board could authorize the Building Inspector to issue zoning relief under 7.74. There are parking waivers and 6 spaces are not compliant. Section 5.1.2 notes the number of spaces. He reviewed the calculations and noted there were plenty of spaces. The waiver request is 51 but they feel there will be excess and there will be a 10% surplus. This has been approved by the Design Review Board.

Christopher Nowak, Project Engineer, noted this is a 60 acre site with 32 acres of conservation/woodland. There is a 5 acre off-site drainage easement. The maximum build out is 341 individual living apartments and 72 skilled nursing units. The 2011 master plan noted 72 skilled nursing beds and 375 individual living apartments. It has been consolidated down. The skilled nursing has been relocated as well as the maintenance building. There have been improvements to the off-site storm water retention basin. There are new roadways and new parking areas. He noted they analyzed the full impacts in 2011 for full build out. He noted constructed to date are the maintenance building, roadway, town green and the commons area or phases 1 and 2.

Mike Parma, architect, noted there are some minor modifications. He described the modifications. He noted Level 1 is below grade. The buildings are interconnected and the connector link is a one-story link. Mr. Cramer noted they would like to modify the floor plan without further review within the constraints. Mr. Ruth asked if the connector was on grade or on stilts. Mr. Parma noted it was on grade. Mr. Eisenhut asked if there were any issues regarding energy efficiency and if they were going for LEED certification. Mr. Parma stated they are not going for LEED certification. He noted the DPH mandates 50% credits. Needham uses the Stretch Energy Code and they are all set for that. He added they are at about 70% credits for LEED Certification.

Ms. McKnight clarified they are not dealing with construction of 45 units and a new garage. Mr. Cramer stated that was already approved in 2011. They are not going forward with Phase 6. Ms. McKnight noted page 5 and the analysis of parking waiver. Mr. Cramer stated they did not need one back then but now they do with all the phases. He stated the entry is on Central Avenue.

John Copley, of the Copley Wolff Design Group, noted the guard house is going and they are pulling the slope back. They are using field stone for retaining walls 4 feet high with the address and name. The Town Engineer has no comment. He noted the police, fire and Board of Health all have no comments. Ms. McKnight stated Charles River is the only abutter. She asked if they have any concerns. Kevin Burke, of North Hill, stated they have seen the proposal and are supportive. They have had meetings with the abutters and have not heard anything. Mr. Cramer stated they would like to mirror the September 2011 relief.

Mr. Eisenhut noted the following correspondence for the record: a memo from Anthony DelGaizo of the DPW dated 3/1/13; an email from Attorney Roy Cramer dated 2/27/13; a memo from Lt. John Kraemer of the Police Department dated 2/28/13; an email from Fire Chief Paul Buckley dated 2/28/13; and a memo from Janice Berns of the Health Department dated 2/20/13.

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

VOTED: to close the hearing but for receipt of a letter regarding compliance with LEEDS.

Report from Planning Director

Ms. Newman noted Vinodivino is going in the Trader Joe's building. They have gone to the Design Review Board for the door. Ms. McKnight stated she wants to make sure all conditions imposed apply to this location. She would like a copy of the conditions for the plaza. She feels the door is important but it should be a de minimus change. Mr. Cramer stated the Design Review Board has approved the door, sign and awning. Mr. Ruth commented he thinks it is ok as insignificant. Mr. Warner suggested getting a picture of the door. Mr. Eisenhut stated they will do it as de minimus at the next meeting.

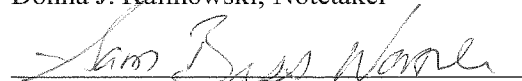
Mr. Cramer noted they received approval for Wingate. They want a minor modification. They had a meeting on 11/1/12. There are some landscape and minor façade changes. Ms. Newman stated they could approve as insignificant changes. Mr. Cramer stated there is much more gravel than they thought. They put in stone. There is a net increase in storage capacity. That is the only increase. He does not think they need a full amendment. Ms. Newman stated she has a concern with drainage and capacity. Mr. Eisenhut noted as long as there is notice to the abutters he is ok with it.

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

VOTED: to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Donna J. Kalinowski, Notetaker

A handwritten signature in cursive script, appearing to read "Sam Bass Warner", is written over a horizontal line.

Sam Bass Warner, Vice-Chairman and Clerk