NEEDHAM PLANNING BOARD MINUTES

September 3, 2013

The regular meeting of the Planning Board held in the Charles River Room of the Public Services Administration Building was called to order by Bruce Eisenhut, Chairman, on Tuesday, September 3, 2013 at 7:30p.m. with Messrs. Warner and Jacobs and Mss. McKnight and Grimes as well as Planning Director, Ms. Newman.

Plan Endorsement: Webster Street Definitive Subdivision: Southfield Associates c/o Petrini Corporation, 187 Rosemary Street, Needham, MA 02494, Petitioner (Property located at 1135 Webster Street, Needham, MA).

Roy Cramer, representative for the applicant, stated they are asking for a plan endorsement. The appeal period has passed and revisions have been made. They want the application to be endorsed. He noted a closing is coming up. Ms. Newman stated they are in the process of finalizing the documents that will be recorded with the plan. They are all set to be signed.

Upon a motion made by Mr. Jacobs, and seconded by Ms. Grimes, it was by the five members present unanimously:
VOTED: to endorse the plan as required.

Correspondence

Mr. Eisenhut noted the following correspondence for the record: a notice regarding a public hearing on regulations for food trucks. The Board of Selectmen will have a hearing on 9/10/13 at 7:05 p.m. at the Needham Town Hall. The Town Manager's office would like any comments Board members have. Ms. Newman noted a letter regarding the location of medical marijuana to Planning Director Lee Newman from the Board of Selectmen encouraging the Board to limit the location of dispensaries to the Industrial, Industrial-1, Mixed-Use 128 Business Districts in the immediate vicinity of the Highland Avenue Interchange.

7:30 p.m. – Discussion of proposed Solar Photovoltaic Zoning District Overlay District.

Hank Haff, of the Public Facility Construction Division of the DPW, noted the last time he met with the Board, he presented the first draft of the Zoning By-Law amendment. There were several iterations of this draft following discussions with Mr. Jacobs and Ms. Newman. They are accepting and endorsing a revised amendment and requesting approval. Mr. Warner asked, if the maximum lot coverage should be 50%, why the self-denying ordinance. Mr. Haff stated it came out of the discussions with Mr. Jacobs. He noted a potentially broader expanse in the future would enable other sites in town, potentially, to have the Planning Board expand either this overlay or the opportunity for others to incorporate it.

Mr. Jacobs noted the change is to allow 50% lot coverage and prior to that it was 25%. He noted the 25% came because Mr. Haff was focused on the RTS site. He stated he worked on the By-Law and he is ok with the language as is if it is focused on, and limited to, the RTS site. The RTS is 71 acres and they are only using 18-20 acres. He feels 50% would not make any difference. Mr. Haff stated some land area is wetland, some is not used and some is heavily used. He would not object if they want to make it greater than 50%.

Mr. Jacobs stated he agrees with Mr. Haff and going to 50% is fine with him. He stated his issue is he does not want to limit this to the RTS site. He wants to encourage more on a town wide basis. He feels they should allow solar photovoltaic installations anywhere in town on at least a 10 acre site. He noted Ms. Newman has 2 concerns --they have not studied it and at Town Meeting trying to widen it like that may defeat what the town is trying to do. Mr. Jacobs stated he does not feel there is much to study. The drafting of something townwide is not an issue. The state, in a sense, has declared that these are not noxious and they are not going to cause a problem. It is a very passive use. He does not feel there is a lot to fear.

Mr. Jacobs noted one question is how many such locations are there in town in excess of 2 acres? He stated he asked Assistant Planner Alex Clee to get a list of all pertinent lots in town. There are 75 in town; 34 are owned by the town and others are owned by private entities totaling 54 of the 75. He stated that leaves 21 lots and of that there might be 15 or 16 commercial lots that may be affected. He noted this may not be the best use economically but he does not feel that is an argument against including those as possible sites. He would like to propose they consider expanding and making it available to others on other lots, particularly commercial interests. He stated among other things there is a fairness issue. He commented he applauds what the town is doing and has no problem with it.

Mr. Eisenhut stated he has substantial concerns. He is fully committed to goals and what they are trying to accomplish. He is willing to commit here and to Town Meeting, for a further process to explore what Mr. Jacobs is talking about on private residences or on lots of 10 acres or more. He stated people have concerns about aesthetics. He feels they have not really looked at it carefully. There is no private property owner to his knowledge that is pushing for it. He stated all the public notices the Board has put out have talked about the Zoning District Overlay with a focus on the RTS. He feels this is opening it up beyond the confine of what they have noticed and talked about in the past. Ms. Newman stated they have not noticed this yet. The process has not been started yet.

Mr. Eisenhut stated they have noticed it but not formally. This is what the public is being told. They have learned through other proposals like this in the past that you need to be overly sensitive to neighborhood concerns when you are proposing something dramatic like this. His view is to treat this as a separate and distinct process, get it through and then to commit to open up a broader view. They could even notify the 21 property owners affected by this. Mr. Jacobs stated the key reason the town is in a hurry to do this is a potential loss of financial incentives. The opportunity may be lost if done as a 2 stepper.

Ms. Grimes stated she happens to live next to 4 of the lots mentioned. She does not want large solar photovoltaic installations near her house. She does not think other residents would either. She has not looked at the exact map but she is directly affected by this and she is not the only one. She is fine with the proposal as they planned to present and will go forward with that but she would not be willing to move it further than the RTS. Mr. Eisenhut asked if she was willing to look at it for the future. Ms. Grimes stated she would but she is not sure she will be in favor.

Mr. Haff stated as of right an industrial user/residential user can install these on rooftops. That is granted through a state law. Installations are already in town with probably many more to come. He stated distributed energy systems with a broader network makes a lot of sense in terms of feeding the network. For larger individual users, if it was profitable for them and they had the ability to put on a roof, they might consider it. He noted they may want to consider, in the future, relaxing some of the height limitations if it is for solar photovoltaic.

Ms. McKnight stated the basic issue is drafting. She would not support any such By-Law that would apply to any zone other than this site unless the facility were allowed by Special Permit so the Board could say no, this is not the right site. Here they are only talking site plan approval so the facility is allowed as of right in the overlay district. She would not want to have a solar photovoltaic facility allowed by right subject to a mere site plan approval anywhere but here. They would need to reword this if it was going to be something they would use townwide, to get her support anyway. This would probably not be controversial at Town Meeting if it was to go forward with this site. She would like to stick with this. She would like, to the extent possible, to make it such that, with some very minor changes, it could be used for other sites.

Ms. McKnight stated for the wording issues, the definition section used coterminous with the temporary Meteorological Towers Overlay District. She does not think they want those words. They are not going to work if they are ever going to use it anywhere else but they do not know if that is what Town Meeting is going to vote. That is under Article 2 and they cannot predict this will be coterminous. The words are not necessary.

Ms. McKnight asked, in the definition section, why they provide a definition of Onsite Solar Voltaic installation. Mr. Jacobs stated it comes out of the model By-Law. Ms. McKnight stated there is no reason to follow the model By-Law if it does not make sense. She would take the definition out. It is not used in the By-Law. On page 5, a3, she stated she would request re-vegetation of the site. The Planning Board may allow them to leave landscaping and below grade foundation in place. She does not know what they are referring to. Mr. Haff thinks it means any vegetation put in for screening or erosion control. He stated it gives the Planning Board some flexibility. Ms. McKnight stated they should say re-vegetation as necessary. She is not sure what vegetation is being left. Mr. Haff stated it was typically grass and loam.

Ms. McKnight noted the section at the bottom of the page has an amount needed for surety. This is not to exceed 125% as determined by the project proponent. This does not make sense. Why is it not reasonable as determined by the Planning Board? She feels the use of terms is inconsistent.

Ms. Newman stated the goal is to get it on the November Town Meeting. The article needs to be referred to the Selectmen and then referred back. She then needs to schedule it for a public hearing. She feels they can take the article, and Ms. McKnight's changes, and send it to the Selectmen. Then they can fiddle with the language. She feels they should get the process going. Mr. Eisenhut stated they can fiddle with the language but they cannot expedite it. Mr. Jacobs noted they can use the model for the as of right Zoning By-Law, allow these in all non-residential districts above a certain acreage and require a special permit. That would be his general proposal. Ms. McKnight stated she would second that motion for discussion purposes.

A motion made by Mr. Jacobs, and seconded by Ms. McKnight, to use the model for the as of right Zoning By-Law, allow these in all non-residential districts above a certain acreage and require a special permit. Mr. Jacobs voted in the affirmative, Mr. Eisenhut, Mr. Warner, Ms. McKnight and Ms. Grimes voted in the negative. The motion did not pass.

Mr. Eisenhut stated they should move on the proposal before them with Ms. McKnight's substantive comments to be tinkered with. Ms. McKnight summarized they would delete the coterminous wording with the temporary meteorological overlay, delete the definition of on-site installation and reference to it in a lot of uses and delete "exceeds more than 125% of the costs."

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

VOTED: to delete the coterminous with the temporary meteorological overlay, delete the definition of on-site installation and reference to it in a lot of uses and delete "exceeds more than 125% of the costs."

Diminimus Change: Major Project Site Plan Special Permit No. 2011-04: Permanent Public Building Committee for the town of Needham proposed Senior Center, Petitioner (Property located at 300 Hillside Avenue, Needham, MA).

Mr. Eisenhut noted the following correspondence for the record: a letter from the Town Engineer, dated 8/3/13, with no comment or objections; a memo from the Fire Department with no concerns or objections and a memo from the Police Department with no concerns. There is a letter that describes the revisions in detail. Mr. Eisenhut asked the applicant to summarize the revisions and why this is diminimus.

Steve Kaufner, Director of Design and Construction of Public Facilities, noted, in general, a number of minor adjustment were made to the site plan with regard to landscaping and some with regard to hardscape. All were relatively minor and resulting from field conditions they encountered. They kept all changes to this final review. He noted they went before the Design Review Board and they also put in an application with the building department for building design. Mr. Eisenhut commented they have had bad experiences with transformers. As they are relocating it, he would like him to speak about that.

Mr.Kaufner stated the transformer is located at the north east corner of the site next to the dumpster enclosure with Baltic ivy planting. N Star suggested routine maintenance would be difficult with Baltic ivy and it would not survive back there. They have suggested mulch around the immediate area, then they relocated the ivy and thickened up some of the other plantings. The other issue is there is a pull box for the transformer because the pathway changes slightly so there is a fiberglass top in one planting bed.

Steven Popper noted the transformer faces the train tracks. It is hardly noticeable. NStar placed the poles and they had no control of where they put the poles so they are sitting back farther than was anticipated; to allow the Town to do snow clearing, there is a certain distance required, so they created a shallow arc to allow their vehicles to come around to plow sidewalks. Ms. McKnight noted benches and the outdoor sitting area and asked if they are shaded at all. Mr. Kaufner noted they are behind some trees in the summer. There are benches at the walkway leading up from Hillside Avenue and there is ground cover next to them.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to determine the requested changes to be diminimus in nature and not requiring a hearing.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by the five members present unanimously:
VOTED: to approve the changes as outlined.

Mr. Kaufner noted the timetable. They anticipate occupying at the beginning of October and, in order to move forward, the final paving is not done. They cannot submit the Asbuilt. Currently they are trying to get a permanent Occupancy Permit from the Building Department. Ms. Newman stated she has issued a permanent occupancy permit outside of a Board meeting with Board authorization in the past.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by the five members present unanimously:
VOTED: to authorize the Planning Director to issue a permanent or temporary Occupancy Permit at her discretion.

Discussion: Accessory Apartments.

Mr. Eisenhut noted there was an update to the August 2008 report in the packet. Ms. Newman stated she was asked to update the plan done earlier. Basically an update on the demographics they provided. Mr. Eisenhut stated 60% of Needham residents earn more than \$100,000. The median income is \$118,000. Mr. Jacobs asked if they were looking at this for information purposes only. Ms. Newman noted they were. This has been accepted by the Selectmen. There is a request for a group home on Charles Street.

Mr. Eisenhut stated Mr. Warner thought they need to do more to encourage moderate income individuals in Needham. Accessory apartments may do that. Mr. Warner note the income of the tenants needs to be taken into account.

Ms. McKnight stated Barnstable has been a real pioneer in the creation of accessory apartments and the creation of apartments that are arranged to be countable in the low income inventory. She noted it has to be pursuant to a local intiative program which involves the Zoning Board of Appeals through the 40B process. She stated Community Preservation funds can be used for this. To be countable the affordable housing restriction has to have a term of at least 15 years. They would need to adopt a local initiative program, get comprehensive permits, restrictions are recorded in the Registry of Deeds and the owner would have to rent according to that restriction. Ms. Grimes clarified it is actually deed restricted. Ms. McKnight stated yes, it runs with the land.

Shirley Pelaggi, of 96 Wyoming Avenue, stated she did not think the first article in the newspaper on this subject was tied to the income level at all. Mr. Warner stated it was not. Ms. Pelaggi stated she thinks renting to lower income people really makes an impact on the Town. They want to preserve the quality of the town. Most elders want to support the school but if they are on limited income they cannot support continued tax increases. She commented she was surprised more people were not there. She feels it is a good thing to keep on that level. Mr.

Eisenhut stated they should take the 40B issue off. Ms. Grimes noted it does not have to be tied to the 40B. Mr. Warner agreed.

Ms. Newman stated Newton, Lexington and Lincoln have accessory apartment By-Laws. Most are written to service a specific use such as in-law apartments. Mr. Eisenhut stated they just become 2-family. Ms. Grimes asked how do they prevent them from becoming a bunch of 2-families. Mr. Warner stated they should be available to people 65 and over. There are 2 requirements – owners must be 65 or over and they must not be debt adverse. Such units would be scattered around the town and not be numerous.

Ms. McKnight feels there will be a hard time limiting occupancy of the units to persons 65 and over. Mr. Jacobs asked why limit it to 65 or over. Mr. Warner stated he thinks there is a fear of a 2-family invasion. They can come up with something attractive. Ms. Newman noted it is good timing. They have ZBA funds and she is writing a job description for a housing planner who could work on this type of issue.

Mr. Eisenhut suggested they survey other towns and see what their experiences have been and any enforcement issues. Mr. Eisenhut asked how you enforce rent to the tenants. Ms. McKnight stated anyone can rent rooms. Mr. Eisenhut noted you need to go through an inspection process. There may be a Special Permit process for accessory apartments. It will increase the Planning Board work load. Mr. Warner commented he does not think there will be many. He proposed they form a committee. Ms. Newman stated she was setting a committee for McMansions and it may be too much. Mr. Warner noted that should be the priority. He thinks the town wants that. Ms. Newman stated she will set the committee for McMansions and get a housing planner in place.

Ms. McKnight noted they should avoid saying "having accessory apartment will help reach the 10% goal." This will not help unless the apartments are deed restricted. They do not need to involve 40Bs and the ZBA. Mr. Eisenhut stated he does not want to go down that road. Ms. Grimes stated they should consider and form a committee on it. Ms. McKnight stated the basic idea is it must be owner occupied. Mr. Jacobs noted he wants to see the definitions.

Report from Planning Director

Mr. Eisenhut noted the bond agreement in the packet. Ms. Newman stated she needs the agreement signed. She wants to issue a temporary Certificate of Occupancy. The Board signed the agreement.

Ms. Newman noted the cinema block and one of the store fronts in Mr. Mackins' property. The owner of VO2 Max now wants to open a new fitness center. He cannot expand the existing center because a fitness use cannot exceed 2,500 square feet. He is looking at doing something in the Mackin building. He would like to open a training facility with yoga. It is not an ideal use. Ms. Grimes stated this angers her beyond belief. She asked why they cannot get good tenants in there. This does not help the downtown. Ms. Newman noted it is a Special Permit use and asked what the grounds would be for turning him down. Mr. Warner stated inadequate parking.

Ms. McKnight commented they should not prejudge the situation. Ms. Grimes noted there was no prejudgment. She was just disappointed. She wants stores in downtown. She feels it is a waste of prime real estate. Ms. Newman stated he would be taking Bays A, B and C for 1,900 square feet. The use is limited to 2,500 square feet. Ms. McKnight stated this is a real issue. With his coming before us under a different name would be essentially a violation of the By-Law. Mr. Eisenhut asked why they are restricting the use. Ms. Newman noted they do not want them in downtown. Ms. McKnight stated it is basically the same establishment in the same zone and they are trying to circumvent the regulations. Mr. Jacobs stated he is totally neutral. Ms. Grimes agreed.

Ms. Newman noted the Urgent Care Centers of New England, Inc. She has asked the Building Inspector to take action. They need to keep the door on Highland Avenue open. They have a sign on it to go around the building to the back. Ms. Clee stated the door was locked when she went there. Ms. Newman noted the permit states it will be open. Ms. Newman stated the Building Inspector spoke with them. Ms. Grimes asked if they could pull the permit. Ms. Newman stated they could schedule it for a hearing to revoke the permit but she would not like to do that. Mr. Jacobs noted under Section 3.28 of the decision it says they will notify them in writing. Is there anything in writing? Ms. Newman noted there was not. Building Inspector David Roche spoke with them. Mr. Jacobs stated he would follow the decision and send them something in writing.

Mr. Jacobs asked if there were any updates on the Pollard School parking situation. Ms. Newman noted she contacted them. They said they counted spaces and assured her they will try to resolve it. Mr. Jacobs stated he does not want them parking there (outside the paved parking areas) at all. He has documented they do not need to park there at all. Ms. Newman will contact the Superintendent.

Minutes

Ms. McKnight noted on the 5/13/13 minutes the motion stated "if an amendment was proposed at Town Meeting the Board would oppose it." She noted they focused on the anticipated amendment to postpone the effective date of the Planning Board article to clarify the lot width. Ms. Clee stated she would add that to the vote. Ms. McKnight stated there were 2 places they talked about diminimus change. It should say it should be processed as a diminimus change and not a Special Permit amendment.

Mr. Jacobs noted on the 5/21/13 minutes, page 4, 2nd paragraph they should take out the words "site is 100% identical. The." In the next paragraph it is "trex" not "treks."

Board of Appeals – September 19, 2013.

Town of Needham, Permanent Public Building Committee, 1471 Highland Avenue, Needham, MA, 02492 -- 470 Dedham Ave, Needham MA

Ms. Newman noted they are requesting an amendment to a Planning Board Special Permit. She suggested the Planning Board offer no comment on this application but would like to draw to their attention the requested modification of the existing Special Permit that was issued on a piece of that building that has been noticed for public hearing. Mr. Jacobs asked if the Planning Director was convinced they have offered enough parking. Ms. Newman stated they have. The permit will be corrected to reflect the operational needs on this site.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:
VOTED: to state the Planning Board offers no comment on this application but would like to draw to their attention the requested modification of the existing Special Permit that was issued on a piece of that building that has been noticed for public hearing.

T-Mobile Northeast LLC, 15 Commerce Way, Suite B, Norton, MA 02766 -- 350 Cedar Street, Needham, MA

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

Stephen and Heidi Frail, 29 Powers Street, Needham, MA -- 29 Powers Street, Needham, MA

Ms. Newman noted this was confusing to her. Mr. Warner noted they are opening what was a closed porch making it look more like the abutters. Mr. Jacobs noted the front elevation does not make sense. Ms. Newman noted they extended it earlier. The ZBA issued it and they want to make it lawful and open it. Ms. McKnight commented they never did what was on the 2009 plan. Mr. Jacobs agreed they never did it. The 2003 plan shows 2 entrances and the 2009 plan show a single entrance. Mr. Eisenhut noted they want to extend it laterally. Ms. Newman noted they need a variance. They could do something with the existing enclosed porch.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:
VOTED: to call out the By-Law in the case cited and comment on the confusing application.

Carbus 4, LLC d/b/a Lapels Dry Cleaning, 8 Sunnyfield Drive, Annandale, NJ 08801 and 962 Washington St., Hanover, MA 02339 -- 1189 Highland Avenue, Needham MA in

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

Rhythmic Dreams, Inc. d/b/a Rhythmic Dreams, 22 Harrison Road, Canton, MA, 02021 -- 422 Hillside Ave, Needham, MA

Ms. Newman stated she would like to postpone this to the next meeting. She is not sure about the basis for the parking number used. There were concerns with this site. First it was a major project, then a minor project. She would like to put the facts together before they look at it.

JBP Holdings, LLC d/b/a The Juice Bar Project, 20 Skyline Drive Westwood, MA 02090 -- 1257 Highland Avenue, Needham MA.

Ms. Newman noted this is a take-out eating establishment. It was going to go downtown next to Harvey's Hardware, then where the cleaner is and now here.

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

Minutes

Upon a motion made by Ms. Grimes, and seconded by Ms. McKnight, it was by the five members present unanimously:
VOTED: to approve the minutes of 5/21/13, 6/4/13 and 4/2/13.

Ms. Newman gave an update on the Trip Advisors building. She has been given the construction management plans. They want to begin constructing the driveway and have distributed site plans for the project. They will come in with a modification to the building then apply for a building permit. They are concerned about being able to get the roadwork done before it gets cold. She noted they want to redesign the building.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the five members present unanimously:
VOTED: to adjourn the meeting at 9:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Sam Bass Warner

Sam Bass Warner, Vice-Chairman and Clerk