

NEEDHAM PLANNING BOARD MINUTES

February 24, 2015

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, February 24, 2015 at 7:10 p.m. with Messrs. Eisenhut and Warner and Mss. McKnight and Grimes as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Correspondence

Mr. Jacobs noted a draft letter from Stephen McKnight, Chair of the Needham Transportation Committee, in support of a study of a quiet zone. Ms. Newman stated this was an initiative she has been interested in for a long time. Ms. McKnight stated Town Meeting voted 3 or 4 years ago to study this. Mr. McKnight had some Northeastern University undergraduate students do the study but it was not complete enough for presentation. She stated the quiet zone is where the trains do not blow their horns. The Selectmen are seeking \$35,000 at Town Meeting. Mr. McKnight is the delegate for the Planning Board to the Transportation Committee. Ms. McKnight stated Mr. McKnight would like the Planning Board to send a letter of support. Ms. Grimes stated she is in favor of that. Mr. Warner and Mr. Jacobs agreed. Mr. Eisenhut stated he is in favor of a study; he commented he remembers the discussion at Town Meeting and it was a lukewarm vote. Mr. Jacobs asked Ms. McKnight to prepare a draft letter.

Mr. Jacobs also noted the following correspondence for the record: a reprint of a Globe article regarding teardowns; a copy of the Babson College student study and an updated meeting list.

Decision: Rockwood Lane Definitive Subdivision: Wayside Realty Trust, Chris Kotsiopoulos, Owner and Trustee, 36 Rockwood Lane, Needham, MA, Petitioner (Property located at 36 Rockwood Lane and 5 adjacent parcels, Needham, MA, Assessors Plan No. 17 as Parcels 22, 23 and 24 and Plan No. 20 as Parcels 57, 60 and 61).

Ms. Newman stated she has revised the draft decision to incorporate comments she received from the Planning Board members and Engineering, who were able to review the draft. The construction minimizations and mitigation measures and the Construction Period Prevention Plan and Erosion Control Plan are now incorporated into the revised draft. She noted Attorney Peter Barbieri, who could not be at this meeting, was satisfied with the draft as prepared. Ms. Newman stated the big thing that was added was a requirement for a plan modification to include the Storm Water Pollution Management Prevention Plan. That is a plan modification on page 13 of the decision and the developer has agreed to that. Mr. Jacobs noted Town Engineer Anthony DelGaizo was at the meeting if there were any questions.

Mr. Warner stated the cutting of trees and chipping rock has extra water running. He asked what is being done now, prior to construction of the subdivision, to prevent that. Town Engineer DelGaizo stated the applicant will build a swale. Mr. Warner noted water is a nuisance problem and has been for a long time. He asked if there is something temporary that could be done. Town Engineer DelGaizo stated the applicant could put in erosion control to act as a dam. He noted he would angle it to a collection point.

Mr. Warner stated he feels the Board has been supine and put in a very difficult spot. The petitioner has created a problem he claims could be fixed with a 9 house subdivision as he has designed it. The neighbors have asked the Board for help now because the storms are flooding their properties. Why has the town not been able to help the abutters? The developer has created a nuisance that violates their neighbor's rights and something should be done temporarily to give them relief.

Mr. Warner stated this design calls for 9 houses and 6.8 inches of rain. What will happen if the maximum is exceeded by an occasional storm like the storm on Long Island? He asked if this is designed for a fixed maximum? Town Engineer DelGaizo noted there is, on average, a 16 to 18% reduction in the peak run off into a

dry well. The approach the developer took with the design is to increase infiltration through the surface. The developers did a very conservative rate of water that goes into the ground and provided a proposed cross section in the design. The developer is obligated at this point to do what they said they will do. The developer is leaving a width of natural ground, then constructing a swale on the uphill side of the wall they are putting in. In the bottom of the swale is an under drain and all of this water will be carried to a collection point under the road to the town system. He reiterated the developer is reducing the peak rate of runoff, which is what they are required to do.

Mr. Eisenhut noted there is a margin of error over and above a 100 year storm but it is difficult to calculate what that is. He asked if the Town Engineer was confident this would handle a 100 year storm. Town Engineer DelGaizo stated he is confident this will handle a 100 year storm as the developers are reducing the runoff. He stated the original existing condition is 16 to 18% more runoff to Richard Road. Ms. Grimes noted she wants to be clear engineering believes this will work. Town Engineer DelGaizo stated yes, it is a simple infiltration system.

Town Engineer DelGaizo noted a temporary fix could be hay bales and erosion controls. This will not have significant cost to the developer. He could install hay bales now and would relocate them when construction begins. He does not see this as a big deal. He stated he does not know if anyone has asked the developer to do this. The developer should be willing to do this. He noted there will be an inspector on site to report any issues. Mr. Jacobs stated erosion control is one of the things the applicant needs to do first. That is already in the decision. Mr. Eisenhut stated the Board should ask the applicant if they are willing to do this.

George Giunta Jr. stated erosion control is the first item. The intent all along was to do erosion control as soon as they start. The builders would probably be more than happy to go along. Mr. Warner stated for months the neighbors have been asking for help. The applicant needs to have in place the help as soon as possible regardless of the construction schedule. The abutters need interim help.

Ms. Grimes stated the Board has imposed more conditions than any other project she has seen done. This has dragged out a long time. She feels the conditions proposed for the decision are more than adequate at this juncture and the developer needs to get construction started and address drainage at the start. Mr. Warner commented he feels the neighbors should have a definitive date when the project will get moving. He wants a date of intent for when the protections will go in. Mr. Giunta Jr. stated as soon as the town gives them the green light the applicant will get started.

Town Engineer DelGaizo stated erosion control can be put in at anytime since it does not fall in Conservation Commission jurisdiction. He stated, as a practical matter, snow should be removed before the applicant could install the 2 foot hay bales. He would probably wait until the snow melts. Ms. McKnight asked what it is referring to when it says "during the construction period" and where the construction period is defined. Town Engineer DelGaizo noted, to him, the construction period would be the moment the applicant puts down erosion control to when the project is completely built. He reiterated an inspector will be on site overseeing the project.

Ms. McKnight stated she wants to make sure erosion control barriers are in place before construction begins. Where is that in the documents? Town Engineer DelGaizo stated the applicant does have to show that on the Storm Water Pollution Prevention Plan and it is required by the EPA. Those controls have to be in place and identified on the plan which engineering will review. That will address a lot of the vagaries that are in not only the construction minimization but also the Construction Period Pollution Prevention Plan and Erosion Control Plan.

Mr. Jacobs asked what is the document that tells the beginning date of construction and the end date of construction. Town Engineer DelGaizo stated it is called the SWPPP and there are 2 documents: the first is the schedule the town is asking the applicant to provide and then the plan that accompanies it that gives the specificity into where and exactly how and what they are doing. Mr. Jacobs asked when does the applicant put down erosion control? Mr. Giunta Jr. noted his client will commit to within 2 weeks of getting the green light the applicant will put erosion control down. Ms. McKnight stated a phrase or sentence should be added to the erosion control

document. Mr. Jacobs noted within 2 weeks of the later to occur of the following x, y, z and just lay out what those things are.

Mr. Giunta Jr. stated the 2 builders that are coming in to buy the property would not do anything until there is a decision. He will commit to within 2 weeks of the construction being authorized the builders will put in erosion controls. The builders would like to get going on this project. Ms. McKnight stated the Board could approve the decision tonight with the extra wording discussed. On page 13, the Board could add "and revised document to provide for as a plan modification." Mr. Giunta Jr. noted on page 20, paragraph 36, they talked about heavy equipment. He asked if this should be defined as something such as Class 2 trailers, dump trucks, delivery vehicles or such. He wants to define construction traffic to exclude personal passenger vehicles, pickup trucks and panel trucks with a maximum weight of 3 tons. It was decided in paragraph 52, rather than "no construction parking" it should be "no parking of vehicles related to the construction." Mr. Giunta Jr. noted in paragraph 36, passenger vehicles including pickup trucks and panel trucks should be excluded. This was agreed.

Mr. Jacobs asked on page 14, paragraph 7, is "on the turn-around" clear enough? Ms. Newman noted she could call out where it is at the very end abutting Lot 6. Mr. Jacobs noted on page 23, paragraph 58, it should be a "deed of easement" not "deed." This was ok. Ms. McKnight noted Exhibit 58, the Rockwood Lane Subdivision Stormwater Management Summary is a different name than on page 17, Item 22 which is Stormwater Management Report. Ms. Newman noted she will check this. It should be the summary.

Ms. McKnight added there is a sentence that says "as revised by Exhibit 87." Ms. Newman noted a portion is being modified. There is a whole portion that is being revised but the document has not been revised yet. Mr. Jacobs stated "as revised per the requirement in Exhibit 87." Ms. McKnight stated that was correct. The same comment should be in paragraphs 24, 25 and 26. Ms. McKnight stated number 31 on page 19 – 86 should say "as modified." Also 33 should say "68 as revised in response to requested modification of Exhibit 87." She questioned the terms in item 58 on page 23. Ms. Newman stated the terms were correct.

Mr. Warner read a statement he had prepared. He noted his admiration for his colleagues on the Board and gave 3 reasons why the Board should not approve this permit. Ms. Newman stated the Board needs to address when the hay bales will go down and the chain of events. Ms. McKnight reiterated within 2 weeks of certain events. Mr. Eisenhut suggested the Board ask Mr. Giunta Jr. to speak with his client and see if they would be willing to do the hay bales earlier.

Ms. McKnight suggested page 13, Section (c), be further revised to provide for erosion control installation within 2 weeks of the later of x, y and z or the timely installation of erosion control barriers. A motion was made to approve the draft decision as amended tonight and approve the requested waivers. After discussion this motion was withdrawn. A motion was made to approve the subdivision as shown on the plan as modified with conditions and waivers as set forth in the draft decision subject to the amendments that were discussed at the meeting tonight.

Mr. Eisenhut noted he understands Mr. Warner's concerns but the Board needs to accept the expertise before us. He noted the Board members are not engineers or scientists. Ms. McKnight commented she appreciated Mr. Warner's recognition of the Boards hard work. She rejects the suggestion that if the Board were to approve this plan they are exposing the town to litigation. She stated this Board would never expose the town to litigation.

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

VOTED: to approve the subdivision as shown on the plan as modified with conditions and waivers as set forth in the draft decision subject to the amendments that were discussed at the meeting tonight.

Ms. Newman stated she will make the modifications and send it to the Town Clerk this week.

Public Hearing:

7:30 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, November 5, 2014, December 2, 2014, January 6, 2015 and February 10, 2015 meetings of the Planning Board.

Mr. Jacobs noted the following correspondence for the record: a revised submission from Attorney George Giunta Jr., dated 1/22/15; a letter from Police Lt. John Kraemer dated 2/3/15; a letter from Attorney George Giunta Jr., dated 2/19/15, with title information; a letter from Town Engineer Anthony DelGaizo, dated 2/20/15, with comments and recommendations; a letter from Attorney Robert Smart, dated 2/20/15, with exhibits and copies of title documents and copies of the 11/16/14 minutes pertaining to this hearing.

Mr. Giunta Jr. reviewed the proposal. He noted there are 6 old lots off the 1895 plan. He supplied a blow up of the lots. He noted 3 lots front on Oak Street and 3 lots front on Cypress. Cypress is an unconstructed private way. The proposal is to build Cypress to provide for the back 3 lots – 84, 85 and 86. Lots 78, 79 and 80 front on Oak Street. There are over 10,000 square feet and over 80 feet of frontage. He referenced the Berg case. Under existing Needham subdivision rules and regulations the Planning Board has discretion to deal with this with hammerheads or turnarounds.

Mr. Giunta Jr. noted the revised plan is due to engineering concerns with drainage. He noted the applicant has changed the proposed house design. There will be a side load garage with a drive that goes to the street. The hammerhead is incorporated within the driveway. Ms. Grimes asked if the easement is the drive. Mr. Giunta Jr. noted just the first 20 feet of the drive less pavement. There is ample parking in the drive beyond the easement portion. Mr. Jacobs noted on Sheet 2, he was confused as to what the red dotted line is. Paul Beaulieu, of Field Resources, noted that was the building envelope. Mr. Giunta Jr. stated the developer has changed the driveway/house and tweaked the drainage a bit. It now goes to infiltration chambers.

Steven Poole, of Field Resources, explained the drainage. He noted there is less volume leaving the project than exists today. The applicant has brought the grade up 2 feet. They have used larger chambers and doubled them up at the back of the property. Mr. Beaulieu noted the applicant took a look at the opening and went with more of a broad flair. Mr. Poole has put stone on both sides of the drive. Mr. Jacobs noted the Town Engineer's letter. He noted the applicant has not submitted a plan with a 60-foot radius turnaround area and has not done a stormwater drainage check list letter. Mr. Poole noted the drainage information has been submitted subsequent to the Town Engineer's letter. He stated he has not put notes or detail on the plan regarding the mini manhole yet but that is no problem. The applicant is ok with the last comment.

Mr. Giunta Jr. noted as part of the letter that was submitted was an Exhibit A, which was a capture from the town GIS Department. It shows the existing layout of existing houses and driveways. All properties that have rights have driveways that access out to other ways and not Cypress. They are not using Cypress as a regular access. Mr. Giunta Jr. gave a summary of his 2/19/15 letter. He noted 4 properties on Cypress have access rights. All have easement rights and ownership in the fee. A piece of the D'Addesio lot that has been carved off now fronts on Maple. Rights in Cypress that are only pertinent to that strip and not the house. He noted 110 Linden Street should have ownership rights in Cypress, however, the applicant is not making any claim based on that. The lot has full rights of access over Cypress.

Mr. Jacobs asked if Mr. Giunta Jr. believes his client has a right to change Cypress. Mr. Giunta Jr. stated he does believe that. His client has a right to make it passable as long as they do not affect others rights. Mr. Eisenhut stated this is one additional lot but a 50% increase in the right to use. Ms. Grimes stated the applicant does not comply with the Subdivision Rules and Regulations with the turnaround.

Mr. Jacobs noted the practice has been to have the applicant show a 60 foot turnaround. Then the applicant can talk about a hammerhead or such. If not, the applicant has not met the By-Law. Mr. Giunta Jr. stated he disagrees with that. It has been the practice with new roads where none existed prior to show a 60 foot turnaround. When it is an existing street it has not been the practice to show a 60-foot turnaround. Glen Terrace, Mayo Avenue and Davenport Road are all examples that did not show a 60-foot turnaround. The practice and

policy has been with a paper street to allow upgrading. He does not want anyone to confuse a paper street upgrade versus a new street. Mr. Eisenhut stated he believes a land registration is irrelevant. He thinks the issue is if it is deemed to defeat the reasonable expectation of the abutting owner. Is there an unreasonable defeat of the client's rights? Mr. Giunta Jr. stated the applicant is going to honor those rights.

Ms. Grimes stated she has a problem with part of the driveway being the hammerhead turnaround. The owners will have cars in the driveway. She asked if there is a letter from the Fire Department. Ms. Newman noted there was no letter. Mr. Jacobs noted the Fire Department letter dated 8/20/14 states they will accept the plan if Cypress Street only services one home. He requested the Planning Director get a letter from the Fire Department. Mr. Giunta Jr. stated all 4 lots could put driveways out over Cypress Street now. Mr. Jacobs stated it could say the turnaround has to be on Lot 84 as shown on the plan.

Ms. McKnight commented she appreciates the argument that there is a distinction between a way shown on a plan, even though the way is not in existence, and raw land. This way is not in existence, however; thus approval under the Subdivision Control Law is required. The idea is the Board has a policy that the applicant needs to show they could do a 60-foot turnaround. Mr. Giunta Jr. has pointed out there have been some occasions where the Planning Board did not do that, and she stated she could live with the distinction. Mr. Warner stated the town should use the Needham Land Trust or Park and Recreation to make this a park and the applicant could use the Linden Street property to build. He commented the applicant is taking a path that is destroying the park. Ms. McKnight stated she agrees with the rights of abutters having access rights to a way and having the right to improve. All have the same rights. Anyone could have done this. Mr. Jacobs asked if the utilities will be through this way and was informed they were.

Robert Smart, Attorney for Kathy D'Addesio of 110 Linden Street, stated the rules require the applicant first show a 60 foot turnaround before they can get it waived down. That has been the Board's consistent practice. Other examples were Plan and Profile and do not apply. He stated if the Board is going to change its practices it should notice and invite other departments to weigh in on it.

Mr. Eisenhut asked the Planning Director what the policy is. Ms. Newman stated the Planning Board philosophy was they did not want to open up the land for development through a waiver process. Ms. Newman stated the applicant needed to show whether they could get 2 or 3 lots. It did not start out with the expectation of waivers. Mr. Jacobs asked if there were any examples. Ms. Newman stated Armen Way, off of Nehoiden Street, did not require a 60 foot radius. Mr. Giunta Jr. stated a hammerhead was approved on Parkland Road.

Mr. Smart stated he disagrees with Mr. Giunta Jr. as to whether his client retained a fee interest in the street, but he does not think it makes a difference. His issue is a 60-foot turnaround. He noted on page 8 of the Subdivision Rules and Regulations, Section 3.2.3, he thinks it is a good practice, but he is not convinced, for a roadway shown on a plan, it is a practice the Board should be following. Mr. Eisenhut asked why there is a distinction.

Ms. McKnight stated she went and drove around the area. She drove down Oak Terrace and there is no turnaround at all. Mr. Eisenhut stated he would like the Fire Chief to check this out. Ms. Grimes stated she would like confirmation there is only one other paper street in town this would work for. Ms. Newman stated she was not sure if she could get that information but she would try. Ms. Grimes feels the Board is opening a can of worms but they need to get the answer. Ms. Newman will look and see what is possible. Mr. Giunta Jr. stated he will look also.

Karen Trask, of 98 Linden Street, stated she has rights and has been maintaining the park and street. They have been using the property and she feels it is important for it to remain the same. John Levin, Attorney for Ms. Trask, stated this is a tremendous inconvenience for Ms. D'Addesio, Ms. Trask and her mother. He asked who would do snow removal. Mr. Warner stated those interested in the park issue should contact Roy Cramer. The hearing will be continued to 3/10/15 at 8:00 p.m.

Request to extend Temporary Occupancy Permit: Major Project Site Plan Special Permit No. 2014-04: ONE Nation Fitness, LLC, 15 Kenilworth Road, Wellesley, MA 02482, Petitioner (Property located at 10-16 Charles Street, Needham, MA).

Mr. Warner stepped out of the room.

Ms. Newman noted the Board should give the applicant an extension to work out an issue with the Conservation Commission.

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

VOTED: to extend the temporary Occupancy Permit to give the applicant time to work with the Conservation Commission.

Mr. Warner returned to the room.

Discuss Zoning Amendments for Annual Town Meeting.

Ms. Newman stated she put this on as a placeholder but it is not ready.

Minutes

Ms. McKnight noted on the minutes of 11/18/14, page 7, 1st paragraph, should say “she fears.”

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

VOTED: to approve the minutes of 11/18/14 with changes discussed.

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

VOTED: to approve the minutes of 12/2/14.

Report from the Planning Director.

Ms. Newman distributed a draft report she had prepared. Ms. McKnight noted the report did not need the sentence at the top of page 2 regarding if these services were not performed. Mr. Eisenhut noted on page 2, the FY 2014 accomplishments starts with FY 2010 information. This should be background. Ms. Newman will add a heading. Ms. McKnight noted on page 5, the last sentence of the 3rd paragraph, she feels “overarching goal” is too strong. It should be changed to “important.”

Board of Appeals – February 26, 2015

Chestnut Street Donuts, Inc. c/b/a Dunkin’ Donuts – 397-399 Great Plain Avenue.

Ms. McKnight stated there is not a take-out food counter or lunch counter. She does not think it fits in these accessory uses. Mr. Warner stated seating is not a counter. Mr. Jacobs stated it should be called out if it falls within 3.2.3.2g. Ms. McKnight stated the applicant is going to put in a deli counter. Ms. Grimes noted it is more like a food prep area and all Dunkin Donuts do the same. Ms. Newman asked if they were coming in as an accessory to a lawful principal use.

David M. Nectow – 190 Edgewater Drive

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

VOTED: "No comment."

Dan M. Rutowicz, DPM, PC , tenant – 145 Rosemary Street

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

VOTED: "No comment."

First Choice Management, Inc. – 16-18-20 Highland Terrace

Ms. Newman stated the applicant is partially reconstructing what partially collapsed.

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

VOTED: "No comment."

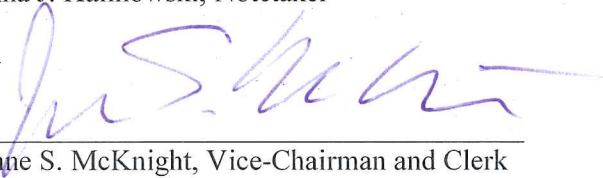
Viola E. Miller – 9 August Way

Mr. Jacobs stated he drove in from Wellesley Avenue to August Way. There were 3 trucks on Lot 5 covered in snow. Lot 6 had lots of trucks and Lots 7 and 8 had trucks. Ms. McKnight stated the garage is huge. Mr. Jacobs stated the whole area is a parking lot. Mr. Eisenhut noted the storage of commercial vehicles is inconsistent with the decision. Mr. Jacobs stated it is a clear violation of the subdivision decision. Ms. McKnight stated the Board should say "the Board granted relief in the subdivision based on residential only and granted a restriction to the town that is separately enforceable."

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

VOTED: to adjourn the meeting at 10:25 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Jeanne S. McKnight, Vice-Chairman and Clerk