

NEEDHAM PLANNING BOARD MINUTES

January 4, 2022

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Tuesday, January 4, 2022, at 7:00 p.m. with Messrs. Jacobs and Block and Mes. McKnight and Espada, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Alpert took a roll call attendance of the Board members and staff. He noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. He reviewed the rules of conduct for zoom meetings. He noted this meeting does not include any public hearings and there will be no public comment allowed. If any votes are taken at the meeting the vote will be conducted by roll call. All supporting materials, including the agenda, are posted on the town's website.

Zoning Review of Proposed Medical Use: Major Project Site Plan Special Permit No. 2005-07: Needham Gateway, LLC, 66 Cranberry Lane, Needham, MA, Petitioner (Property located at 100 and 120 Highland Avenue, Needham, MA).

Richard Mann, Attorney for the applicant, stated the applicant will be filing a Special Permit Amendment to the current Special Permit soon. The original Special Permit in 2006 has been amended numerous times with the last time in July. He discussed the changes in the retail world that has been going on. He noted there will be 3 vacancies at the end of March – Frank W. Webb, which is in its own building, Omaha Steak and Super Cuts. They have been looking for months for new tenants and would like to discuss one tonight. Carbon Health is a medical service and is owned by a single physician. It does not need a state license as a clinic. He had a discussion with Building Inspector David Roche and Planning Director Lee Newman a couple of weeks ago. He has a letter from the Building Inspector concluding the use is professional office, which is as of right. The Building Inspector wanted to make sure everyone is on the same page.

Mr. Mann noted the project would still need relief. There are parking waivers under the existing permit and there would need to be a continuance of the waiver. He feels his letter is an accurate representation. Mr. Alpert stated he is not convinced it is not a clinic subject to licensure under Chapter 1.11, Section 51. He would want to see a narrative of why it is not a clinic. It is owned by an out of state practitioner. If not licensed in Massachusetts, he is not the solo practitioner. Mr. Mann will get the information together. There is nothing in Statute 1.11 that deals with licensure or state of licensure of the practitioner. He feels this complies. The applicant is seeking other approvals in Massachusetts. Chapter 1.11 is a pivotal issue to them. Mr. Alpert stated the only issue he sees is if this is exempt under Chapter 1.11, Section 51.

Mr. Alpert noted there will be 8 staff and up to 2 of them would be physicians. What will the other 6 staff be? Mr. Mann stated the other staff would be nurses and PA's (physician assistants). There may be as many as 14 on staff but there would never be more than 8 staff at any time on the premises. Mr. Block asked what kinds of testing would there be – X-rays, EKG's, blood tests? Mr. Mann noted there would be a small lab for blood tests. He does not know about EKGs but assumes they will have one. He does not see it on the floor plan. Mike Moskowitz, owner of the property, stated Carbon Health has one location in Chestnut Hill already and may have one more. Mr. Alpert is concerned with Chapter 1.11, Section 52. The description of a clinic says "shall not include one or more practitioners so associated". Mr. Jacobs asked if the intent is to operate like an urgent care. Mr. Mann stated it would be a walk-in clinic. He feels it is odd they are faced with an allowed use or a prohibited use. He feels it should be a special permit use.

Transfer of Special Permit to Affiliate Entity: Major Project Site Plan Special Permit No. 2011-01: Wingate Senior Living at Needham, Inc., 63 Kendrick Street, Needham, MA, Petitioner (Property located at 235 Gould Street, Needham, MA).

Ms. Newman noted the decision for this requires, in the event of a transfer to an affiliated entity under its control, the applicant to contact the Board. She stated they have done that. Mr. Block stated there seems to be a discrepancy in Jonathan Scharf's letters of 12/13/21 and 12/17/21. The grantee of the permit is Wingate Senior Living at Needham Inc. and the facility is being transferred to an affiliate entity WSL Needham AL IL OP, LLC. The other letter says the developer proposed to sell to a different name, EPC Wingate LLC. Ms. Newman stated the difference is between the owner of the property and the entity that would operate it. The permit is linked to the operator. She asked if the Board wants something

on record with the new entity. Mr. Jacobs stated that or something saying that the Board received notice. He does not see a problem with that.

Mr. Alpert asked what the operator is operating – the nursing home or the residences. Ms. Newman noted it would be the residences behind the nursing home. Mr. Alpert stated the only issue he has is the 12/13/21 letter regarding the project and the developer. They are not really changing operations. Ms. Newman stated the applicant represented the operator will remain the same. Ms. McKnight stated 2 addresses are being referred to. Ms. Newman clarified it is not related to the nursing home but the affordable housing units. She will ask the applicant to record something at the registry and let the Board know when that is done.

Board Deliberation: Major Project Site Plan: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28 Needham, MA, Petitioner (Property located at 1688 Central Avenue, Needham, MA). Regarding proposal to construct a new child-care facility of 9,966 square feet and 30 parking spaces, that would house an existing Needham child-care business, Needham Children's Center (NCC).

Ms. Espada recused herself. Mr. Block took over as Chair for the deliberations.

Mr. Block asked members if they were able to review the information Town Counsel had prepared at his request. All members had reviewed it. Mr. Jacobs suggested the Board start with a discussion regarding whether a separate non-residential building on a residential lot where there is already a non-residential building is a violation of our By-Law or not. Mr. Block asked if the barn was truly accessory. Mr. Jacobs wants to focus on the section on page 31 of our Zoning By-law, next to the last use column. Mr. Alpert stated it was a combination of that and accessory use on page 33. Mr. Jacobs asked, on page 31, does anyone believe having 2 non-residential buildings on a single residential lot is allowable? Mr. Alpert noted it has to be combined with accessory use on page 33, which says sheds and garages are allowed. He feels both need to be read together. He is focused on the word "customary."

Mr. Jacobs asked what Mr. Alpert's argument is that he feels is clear on page 31 in the use category. Mr. Alpert noted the opinion from the Building Inspector. The Building Inspector feels accessory use provisions trump the prohibition of 2 non-residential buildings. Mr. Jacobs clarified the Building Inspector says nothing about buildings and only talks about use. His reading is 2 non-residential buildings on a residential lot is not allowed and cannot be done. The Building Inspector does not say otherwise. Mr. Alpert stated the 2 provisions are contradictory. The Board needs to decide if a 2,500 square foot barn equates with a garage, shed or cabana. Mr. Jacobs noted the barn is not one of the items listed in Chapter 40A, Section 3. Mr. Alpert agreed but feels forcing them to take down the barn is an unreasonable regulation.

Ms. McKnight stated her concern is the Board cannot prohibit land or use of structure(s) for primary use as a daycare center. She does not see how they could apply this section. Mr. Block stated the definition of accessory relates to customary use. They do not have a 4,500 square foot building customarily for daycare centers. Ms. McKnight noted that is a different question. If the barn is accessory to daycare, and cannot be prohibited, 2 non-residential buildings on a lot cannot apply. Mr. Jacobs does not agree. Mr. Alpert agrees with Mr. Jacobs. Is enforcing our By-Law an unreasonable regulation? The burden of proof is on the petitioner that enforcing our By-Law is unreasonable. Mr. Jacobs stated if that is how the Board feels, removal of the barn can be required in the context of conditions and one condition would be the removal of the barn.

Ms. McKnight noted the question is if the barn is accessory. She noted the contradictory By-Law prohibits more than one use on a residential lot. Chapter 40A, Section 3 says no zoning By-Law shall prohibit the use of structure(s). Mr. Jacobs said he is not talking about use. The barn was never any part of the applicants' plan. How would this prohibit the use of the land or the structure they want to build? Ms. McKnight commented if the barn is a permitted accessory use to the daycare then it cannot be prohibited. Many properties in Needham have very large barns associated with them. The Building Inspector recently issued a building permit on Dwight Road for a new house and 2 large accessory uses. Mr. Block noted there was no evidence from Attorney Evans Huber that demonstrated a barn, especially of this size, is customary to daycares. This fails the test and cannot be accessory. It is not clear this is a customary use.

Mr. Alpert commented he is not clear if this is a customary use either. It may be customary to residential uses but not daycare centers. The question is whether it is a reasonable enforcement of our By-Law to prohibit that. If the only reason to require them to remove the barn is it is in violation of this By-Law, he thinks it is by definition unreasonable. Mr. Jacobs stated both buildings would create too much bulk on the lot and having more space should relieve the pressure to have more

parking and traffic flow. Mr. Block stated the character of the neighborhood is a legitimate concern. If the building was set back 200 feet like the Temple, that holds. Mr. Jacobs stated one document in the Design Review Board's (DRB) 8/11/21 letter incorporates comments from its March and May letters. The DRB asked both times about the barn. The DRB said the aesthetics are not in keeping with the neighborhood. Mr. Block noted the Board could require the setback and include the barn. The applicant could heat it and plumb it. The applicant is going to have 1,600 feet for play space. With the size of the barn, they could have a large play space and enough for the rest of the facility.

Mr. Alpert proposed alternatives. Two buildings is too much bulk for the neighborhood. That argument alone says the barn should come down. He suggests keeping the barn, moving the building back almost to the barn and having a 5-foot walkway between the barn and building. The design does not have to change. The Central Avenue side of the building would be approximately 130 feet back. He thinks he would be satisfied with a 130-foot setback but not 64 feet. He feels 130 feet preserves the character of the neighborhood. Mr. Block stated that does not satisfy the question of 2 non-residential structures on one non-residential lot. Ms. McKnight asked where the loading area and handicap parking spaces would be. Mr. Alpert noted the parking and drop off area would need to be reconfigured but there is a large amount of land there.

Ms. McKnight stated, with the current design, she likes that the drop off is set back from the front. The long profile faces the Temple and the façade facing Central Avenue is somewhat residential. She would not want parking or drop off to be in the front of the building. Mr. Alpert feels there is plenty of room to reconfigure the parking. Mr. Block is not opposed to parking in front if it is reasonably screened. Ms. McKnight feels to reconfigure parking it may need to be closer to the abutters on Country Way. Mr. Alpert noted there is plenty of room to move behind the barn. He is only talking a few spaces. Mr. Block noted, if the Board is saying they cannot have more than 2 non-residential uses on one residential lot, the bulk is massive and the character is not preserved, it is a legal argument to have the barn removed. The setback could be equivalent to the Temple.

Mr. Jacobs stated it is beyond clear the bulk problem is all with the barn if it stays. It has been made clear the barn has nothing to do with the daycare center. It is an afterthought. Mr. Block asked if Ms. McKnight would regard the barn as a bonafide accessory use. Ms. McKnight feels it is. She noted, if the Board includes the barn, the parking may have been miscalculated. It was not clear the barn was going to be used for accessory. She asked if they have correctly calculated the parking or do they disregard the storage space. Mr. Jacobs noted the daycare was designed not to use the barn for storage. If using the barn, the daycare could be a smaller building. Mr. Alpert stated if the barn is used for storage, it does not need to include parking.

Mr. Block asked if the barn was legitimate. Is Ms. McKnight satisfied with the information from Mr. Huber that a barn of this size is customary to a daycare center? Ms. McKnight is satisfied based on the information for storage needs the anticipated operator gave them. Mr. Alpert noted there is an estimated 800 square feet of storage in the garage and a shed the anticipated operator currently uses. That is not equivalent to 4,500 square feet of storage. Mr. Jacobs noted there is no evidence in the record. Ms. McKnight stated, coming from the point of view the front setback is far enough back and the circular drive is a good arrangement, she does not see a big reason to take the barn down. Mr. Jacobs may be able to live with a 64-foot setback. He has not decided but because of the bulk problem and aesthetics he would still feel the barn needs to come down.

Mr. Alpert stated that building at 64 feet is totally out of place in this neighborhood. Compared to the barn, that is a lot of bulk. All the houses except the Heideman's are set back 100 feet. He wants it set back. He could be satisfied if they kept the barn but set back the building as he said. This does not fit in the neighborhood. Pushing it back preserves the character of the neighborhood, but they would probably need to reconfigure the parking. Ms. McKnight commented there is no such requirement to preserve the character of the neighborhood in their By-Laws. Mr. Alpert stated it is in their By-Laws and pushing it back would also alleviate some traffic issues. He is convinced pushing it back better preserves the character of the neighborhood.

Mr. Jacobs asked about keeping the barn and shrinking the building. Mr. Alpert feels that is an unreasonable regulation to make them shrink the building. Mr. Jacobs feels they have a good understanding of the law. What are the options they want to follow? He does not think there is a consensus. Mr. Alpert referenced the chart prepared by Town Counsel Christopher Heep. He noted in the Primrose School 2 decision the ZBA could not limit the number of students. If they reduce the size of the building it would lower the number of students and goes against the regulation. Mr. Block expressed concern that if the building was sold, they may be able to increase the number of students. Mr. Jacobs noted it is very

important to say the condition stays that there is a limit to the number of students. Mr. Alpert stated they would set out a condition with 115 children maximum and, if it is not appealed as unreasonable, if down the road it is sold and the new owner wants to increase the number, he thinks it will stick. Ms. McKnight agrees with that.

Mr. Heep stated he is comfortable the limit would be enforceable forever. There is a slight chance it could be appealed but he does not like the new owner's chances. The applicant is voluntarily limiting the number of students. Ms. McKnight noted the summary prepared by Mr. Heep was very helpful. She wanted to clarify the Tufts case. They wanted compliance for parking, zoning and setback requirements of the Medford zoning. Mr. Heep stated that is correct. Mr. Jacobs asked for Mr. Heep's view on 2 non-residential buildings on one residential lot and if the Board could enforce that. Mr. Heep feels the barn is protected under the Dover Amendment as used for daycare. If it is not used for childcare he is not sure it is protected. Mr. Block stated Mr. Huber testified the owner originally planned to use the barn for his personal use then changed it to the daycare use. A building of this size is customarily not used as accessory to a daycare. Also, the mass of the new building combined with the barn is too much mass for the site. The first 6 months the barn was regarded as personal property of the owner. Mr. Alpert stated this needs 4 votes so the members need to reach a consensus.

Mr. Heep stated the last testimony was the barn is to be used for the daycare. The Board can take that as fact and set a condition. Mr. Block asked if the building could be set back in keeping with the Temple and keep silent on the barn. Ms. McKnight stated, if the issue is the barn is unnecessary bulk, the Board could say the entire project is too bulky. She could go along with that. She would not go along with pushing the building back. She does not feel that requirement would hold up in court. If appealed because of the condition it would be costly for the Town. The neighbors could appeal if they have an issue with not having a setback that is more than 64 feet, and it would be their cost.

Mr. Alpert disagreed with Ms. McKnight. If this building stays at 64 feet, and is not moved back, it is not reasonable to force the removal of the barn. The bulk is the new building. The barn is dwarfed by the new building. He is not going to walk away because he fears litigation. It is not being frivolous preserving the character of the neighborhood. It is a legitimate concern. The DRB agreed 3 times in writing they did not see this fitting the character of the neighborhood and have said to move it back. He feels the Board would have a legitimate reason to say 64 feet does not fit in the neighborhood. He is willing to compromise to say leave the barn, push the building back and leave 5 feet between the building and the barn. He would not like that, but he is willing to do that.

Mr. Heep noted the Rogers case does talk about protecting the character of the neighborhood, but this is a little bit different. In Rogers, the proposed daycare facility violated the zoning requirement FAR cap. The proposed facility was 3,200 square feet. They wanted to go above and beyond the required FAR. He has not seen this issue of pushing back in case law. Mr. Jacobs agrees with Mr. Alpert regarding the legal issue. Ms. McKnight suggested they discuss the process. As they go through the list of conditions she asked if they could have a majority vote rule here so a vote on the conditions would not necessarily be unanimous. Then when they get to the final vote that is when a super majority would apply. Mr. Alpert stated he would change his vote if outvoted 3-1 on any condition.

Mr. Jacobs stated they are talking 2 tracks here. Keep the setback and impose conditions, one of which may be the barn has to go. A separate track is moving the building back and keep the barn with separate conditions. They could set up separate tracks and then vote for A or B. Mr. Block stated his preference is to be declarative, decisive and move on. Two tracks is too complicated. The Board needs to resolve the bigger issue and then move on to smaller issues. Mr. Block asked if the barn is lawful with 2 non-residential structures on a residential lot. Mr. Jacobs feels it is not lawful under these circumstances. Mr. Block agrees.

Ms. McKnight stated if necessary to the daycare operation they must allow it, but the question is if that is the case. She is inclined to say it is not a legitimate use to the daycare. Mr. Alpert is not as adamant that it is definitely not allowed. He agrees with Ms. McKnight that if it is a permissible use it is allowed. But he does not feel it is a necessary accessory use. It was not necessary until the owner was told it needed to come down. They could get sheds for not too much money. If the building is set back the barn would come down. If the setback is not changed the barn could stay. Mr. Jacobs stated there is no evidence on record a barn this size is customary to a daycare center. Therefore, the barn cannot be kept. Mr. Alpert agreed. A reasonably sized storage building is a customary use. Ms. McKnight, Mr. Block and Mr. Jacobs all agreed. If the barn is no longer there, but they need 1,000 square feet of storage, they could have an accessory use. Mr. Jacobs stated the building was designed to their specifications with the storage they needed.

Ms. McKnight asked if the Board could say a storage building of X square feet could be constructed. Mr. Heep asked if it would be reasonable for the Planning Board to allow a building of X square feet to be built for storage but simultaneously request they demolish a 2,500 square foot barn. He would not discuss appropriate sizes. Ms. McKnight conceded that they do not need to mention a smaller building could be built. All agreed they should keep silent. Mr. Alpert noted a major part of the bulk is the daycare center and it is separated from the barn by 5 parking spaces and a parking lot. It would be unreasonable to remove the barn if the Board does not change the setback. Ms. McKnight is satisfied with the setback. Mr. Block stated there is 65 feet between the buildings. He is not satisfied with the setback. Mr. Alpert is also not satisfied. Mr. Jacobs stated it should be set back further. He does not feel it is necessary to be as far back as the Temple. He feels the process would get very difficult and messy. It may take more than 3 months and he will not be on the Board any more.

Mr. Heep stated, in terms of process, the Board could approve the site plan in front of them. If they require the applicant to make changes, a decision could be written with conditions, and they would be put on a new version of the site plan. They cannot require the applicant to take site plan approval and come back in 3 months. He would be concerned if the next round of review required any discretion. Mr. Alpert noted if they say the building needs to be moved back the applicant would need to reconfigure the parking lot and new landscaping. Mr. Heep stated the Board would need to describe in detail how much parking, where it would go and any landscaping that would be required.

Ms. McKnight noted 3 members agree the setback should be further back. Mr. Jacobs, Mr. Block and Ms. McKnight all agree the barn is not a permissible accessory use and should be demolished. However, Mr. Alpert is inclined to not agree only because the demolition of the barn would be required. Mr. Alpert stated he would go along if the decision is the barn is not a permissible accessory use. Mr. Block stated it was 4-0 on the barn. He noted the building should be set back between 100 and 250 feet. Ms. McKnight is satisfied at 64 feet in the current form. He asked if Ms. McKnight would agree to increase the setback to be in line with the Temple which is the most analogous use. Mr. Alpert asked what is a reasonable setback for this use? He suggested about 130 feet if allowed to keep the barn. He would not be happy but would go along. If the barn comes down, he would move to 150 to 160 feet. There is still plenty of area to reconfigure the parking.

Mr. Block asked if Ms. McKnight would go along with 150 to 155 feet? Ms. McKnight stated that is twice the setback in the By-Law and would be considered an unreasonable regulation. If told to set back and build exactly the same it would be a longer driveway and would alleviate some issues. They would need more landscaping in front and the Board could describe that. With the removal of the barn, the building could be built with the exact same layout, and she is less concerned with a very substantially revised site plan. The concern is if the Board would prevail in the reasonableness of a larger setback. If others agree she would probably go along but she is not going to say it should be done. They have a couple of weeks to think about it. She is not going to deny the permit.

Mr. Alpert stated, if the barn is removed, the applicant could set the building back and everything else could be the exact same with a longer driveway. Ms. McKnight stated there is an advantage with a longer driveway. She has been concerned with a backup on Central Avenue. The applicant may need a continuous police presence. Mr. Block noted if the building is pushed back it would line up with where the back of the barn is now. Mr. Jacobs stated he is not sure he would go to 150 feet. Mr. Alpert stated that is tight for a back parking lot. He would go to 130 to 140 feet. Mr. Block noted all the parking could be combined into one lot. Move the building back to 135 feet. If the applicant wants to reconfigure the parking behind the building and retain the loading dock and circular driveway, the 5 spaces could be moved to where the barn is.

The Board members discussed the parking area and how it could be reconfigured. The parking would not have to be in the back. It could be in front. In back it would require the removal of trees. Ms. McKnight would want a condition that removal of trees of a certain caliper have to be replaced. She wants a sufficient buffer for the abutters. Mr. Block noted a fence would be all the way around the parking. The Board discussed the fence. It needs to be changed from white vinyl on the plan. Mr. Block noted it comes a little further south and gets closer to the abutters but still has the same total area. The members discussed the playground. There is no issue with the playground in front as long as it is fenced.

Mr. Block asked if there was a consensus to increase the setback to 135 feet. Ms. McKnight still has concerns about it. Mr. Alpert and Mr. Jacobs are fine with it. There is a 3-1 consensus for a 135-foot setback.

Mr. Block noted the environmental impact. There is a condition the town would pay for an environmental engineer to survey the site and determine what testing is necessary and what mitigation is necessary and the developer would be required to follow the recommendations. A condition would also be the Board of Health recommendations.

Ms. Newman stated John Diaz is present. She feels the Board should get his input on the setback they decided on. Mr. Diaz stated he cut and pasted and dragged the building back to roughly show the Board what it would look like. He pushed the building back, left the drop off and handicap spots the same and put the parking in the back. There is extra distance for queueing, and it provides extra space for another 6 vehicles in the queue. If the barn goes, it makes parking more functional in the back. The project could get 36 spaces in the back. Mr. Alpert stated the applicant came to the Board with 30 spaces but Mr. Diaz shows 41 spaces. He would condition a minimum number of spaces and if the applicant wants more they can do more. Ms. McKnight agrees. Mr. Jacobs would want the southernmost spaces deleted if they go with the minimum number of spaces. Mr. Block agrees but likes the idea of 41 spaces. The daycare has events with parents. He would want a condition that would prohibit parking at events if too many cars. Ms. Newman stated there are conditions for that. She does not want to overbuild parking.

Mr. Jacobs asked if there was another surface that could be required other than asphalt. Mr. Diaz stated he was going to suggest a rigid system planted with grass for overflow parking. Ms. McKnight stated, up to this point, they were satisfied with parking. Mr. Alpert and Mr. Jacobs agreed. Mr. Block would like more parking. It was suggested there could be a minimum and maximum number of spaces. After discussion, all members are ok with a minimum of 30 spaces and a maximum of 38 spaces. Mr. Jacobs wants a sight buffer from the abutters in the rear. With regards to lighting, Ms. Newman needs a revised plan. The DRB had suggestions and it was not changed on the plan. The DRB and Engineering want to make sure it is followed through with. There was a concern with lights shining into houses across the street. Mr. Alpert stated the center of the driveway is the lot line between the 2 houses across the street. Mr. Block stated, when people turn, the lights will go right into the house across the street. Ms. McKnight noted snow storage. Snow should be cleared, and a minimum number of spaces kept clear of snow. With the sewer, the applicant would have to pave Central Avenue gutter to gutter.

Ms. McKnight asked what enforcement could be done if they find cars are backing up. It was suggested there be a traffic detail from 7:30 a.m. to 9:30 a.m. and 4:00 p.m. to 6:00 p.m. There should be at least one police detail for a minimum of 2 months from opening. After 2 months, if the applicant feels a detail is not necessary, they can come back to the Board. Mr. Block stated the members discussed a post-construction follow up study at 80% of student capacity. Ms. McKnight asked what the follow up traffic study would be. There should be language the applicant would need to get a traffic management plan. Mr. Heep noted, if the deliberations were continued to the next meeting, he would like to think about this. Whatever conditions the Board imposes should be guided by information in the record from their own traffic engineer.

There was talk of a police detail, reconfiguring of the traffic lights at Central and Charles River and a post construction traffic study at 80% occupancy. The police detail could be continued as a condition. Mr. Block would like a traffic study peer reviewed. Mr. Heep stated the Board needs to articulate a standard that would entitle the applicant to relief. They need to eliminate discretionary decisions down the road. Mr. Alpert stated he would need to see a signed lease between the property owner and the tenant for a set period of time. They are basing conditions on information from the daycare operator. Mr. Heep is not sure a lease is required as long as a daycare is involved. Mr. Jacobs stated a condition could be it always be operated by a licensed daycare operator. Mr. Huber sent information today that the operator would be Needham Children's Center. Ms. Newman will begin to prepare a draft decision. She can ask questions at the next meeting if she has any. She noted there is a 90-day deadline from the date the hearing was closed.

Mr. Block thanked Mr. Heep for taking the time to prepare the spreadsheet. Ms. Espada returned to the meeting. Mr. Alpert resumed as Chair of the meeting.

Consideration of zoning to allow brewery uses in Needham.

Ms. Newman stated there had been a long conversation regarding next steps. She talked with Building Inspector David Roche after the Board last met about where they landed with uses. They talked about trying to fit the use into some existing uses within the zoning framework and, for example, found it to be similar in kind to manufacturing use. Both had concerns with approaching it that way as it does not quite fit a manufacturing use. Other towns we look to, to craft zoning, have addressed breweries head on by defining uses. She would like to explore what other towns are doing over the next month. Mr. Roche would like to speak with the Board but is out for the month of January. He will be back in February. She would like to put together information and put it back on the agenda for the first meeting in February. Mr. Block noted Mr. Jacobs raised the point that the process for deeming new types of uses to be similar to uses specified in our By-law was simplified years ago, but he thinks there are other places in the By-Law this would fit. He thinks the best move for the Town is to

articulate clearly what uses are allowed in which districts. They should prohibit in some districts and allow in others. It would be a helpful tool for the Economic Development Director. They need to clarify the Zoning By-Law in time for the May Town Meeting.

Ms. Newman noted it might help to look at Highway Commercial 1 and open up that district to brewery use there. Ms. McKnight stated there are 2 other districts to keep in mind – Mixed Use 128 and downtown. They could say it is similar in kind to some existing uses, but there is time, so the Board should take the time to come up with exactly what they want. Ms. Espada agreed it is an opportunity to plan. It would be beneficial with Ms. Newman's information. Clarifying a little better would be beneficial to the town. Mr. Jacobs stated this may not need to be done but he is not ruling out this effort.

Mr. Alpert noted he is reluctant to keep going to Town Meeting with Zoning By-Law changes and then nothing happens. He would like to do this for something that the town wants to do. Something could be rushed through and 10 years down the line still not have a brewery in town. He is going along with Mr. Jacobs and looking at similar uses, but there is an issue - where it is similar, like manufacturing, it may not be the districts we want it in. He wants to see this as a special permit situation. He feels they should proceed with what Ms. Newman wants to do, see what she comes up with and use the information as a guide. The Board should meet with the Building Inspector in February and see where it goes. Mr. Block noted brewing is not a simple thing. The applicant needs to get a state license and a local license. The first step is site selection.

Board of Appeals – January 20, 2022

1132 Highland Avenue – Needham ACE, applicant.

Mr. Block noted the applicant wants to use the Episcopal Church for an after-school program for 25 kids. Mr. Jacobs thinks an after-school program for 25 young kids with only 2 staff is thinly staffed. He would be careful with that. Mr. Alpert noted early childhood requires one staff member for 10 kids. He would recommend no comment. Ms. McKnight noted her only concern would be parking on Rosemary Street. She would leave it to the ZBA for appropriate conditions.

Upon a motion made by Mr. Block, and seconded by Ms. McKnight, it was by a roll call vote of the five members present unanimously:

VOTED: "No comment."

32 Mark Lee Road – Wes and Lauren Soper, owners.

Ms. Newman noted the Building Inspector stated the setback does not work for the new garage. It is a corner lot with 2 frontages and 2 sides. Ms. McKnight thinks it is complicated. She agrees with the Building Inspector's interpretation. It may be a simple accessory building, but the applicant wants to attach the garage to the house. That makes the garage not an accessory structure but part of the original house. Basically, they are asking for a variance. Ms. Espada noted the current garage is closer to the lot line. They are actually improving the conditions. Ms. Newman noted the old setback standard was 5 feet and it still is. Ms. McKnight stated they could build a new garage and have it 5 feet from the lot line but cannot attach it.

A motion was made to say the interpretation of the Building Inspector of our By-Law is the correct one. Ms. Espada asked if they could add "a proposed garage addition although does not meet zoning is still a better condition than the current." Ms. McKnight suggested leaving it up to the ZBA discretion. All agreed.

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

VOTED: to say the interpretation of the Building Inspector of our By-Law is the correct one.

Minutes

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

VOTED: to accept the minutes of 11/8/21 as presented with the redline.

Report from Planning Director and Board members.

Ms. Newman noted there are 2 projects she needs input from the Board on. The Building Inspector received a proposal from Dunkin Donuts to construct a building that is just a drive through. The Building Inspector's interpretation is a drive through is an accessory use to the principal use. There would be no service in the building and it would not be allowed as a principal use. She noted the location is on Chestnut Street. There have been drive up windows adjacent to food service, but not just a drive up. Mr. Block asked if they were looking to demolish the current building and rebuild just a drive up. They are looking at the bank space. Ms. McKnight stated that sort of thing is allowed in essence now with Covid but it is not the vision the Board wants. Mr. Alpert noted it does not fit into any of the use categories. Ms. Newman stated drive ups have been allowed but only as accessory uses. Mr. Alpert noted the current By-Laws do not allow it. The vision of Chestnut Street is to be a walking area.

Ms. Newman noted the other project was Starbucks who want to put a walk-up window in the Heights on West Street. The Building Inspector is concerned with how it should be managed and if it was allowed under the zoning. If treated as an accessory use it would be treated differently in different districts. This case would be by right. How would it function and be implemented? The Building Inspector is reluctant to treat as an accessory use by right. He is concerned people will jump out at the light to get their order. The question is how is it really going to function and how does the Board want it managed? Accessory use is allowed by right. This would be an amendment to the original site plan approval. Ms. McKnight commented there are a lot of walk-up customers going to the train. Mr. Alpert noted, to a large extent, that is a walking area.

Ms. Newman notes she advertised for the vacant position on the DRB. She only received one application and they did not have the skills the Board wants. Any suggestions would be good. Mr. Block knows someone he will call. Ms. Newman noted the Transportation Committee needs an appointment. Mr. Alpert stated it does not have to be a Board member. Members will think about if they know of anyone.

Upon a motion made by Mr. Block, and seconded by Mr. Jacobs, it was by a roll call vote of the five members present unanimously:

VOTED: to adjourn the meeting at 11:35 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Adam Block, Vice-Chairman and Clerk