



## ***Planning Board***

January 8, 2014 – 6:03 PM - **Minutes**

The Warming House in Buttonwood Park, 425 Hawthorn Street

### **MEMBERS PRESENT:**

**Arthur Glassman**

**Peter Cruz**

**Janine DaSilva**

**Colleen Dawicki**

### **ALSO IN ATTENDANCE:**

**Jill Maclean, City Planner**

Colleen Dawicki called the meeting to order at 6:03 p.m. and called the role.

### **Public Hearings:**

#### **Case #40-13 –Special permit review**

Donald Perry representing the Irmandade Do Espirito Santo Das Nove Ilhas Dos Acores, Inc. addressed the Board regarding the property at 197-199 Bonney Street and the proposed use of 199 Bonney Street, which is street level of the premises and is zoned as “Commercial” or “Business Mixed Use”. The present owner is the Non-Profit Massachusetts Corporation Charitable Religious Purposes which is devotion to the divine Holy Spirit, which has owned the property for about twenty-eight years. The proposed purchaser and petitioner for the permit, is also a Massachusetts Non-Profit Corporation with a charitable and religious purpose. They are not making changes of any kind to the property and will be continuing the same use as the current owner. They will be using the property for storage of religious banners, procession articles, etc. and to hold meetings.

In response to an inquiry from Ms. Dawicki, Mr. Perry explained that they are requesting a reduction of the minimum amount of off-street parking from fourteen to five. He explained that they only have twelve to fourteen members who are not generally all there at the same time.

Mr. Perry replied to Mr. Glassman’s query that the use of the property will remain the same as the previous owner as a charitable religious organization staffed by volunteers.

At this time, Ms. Maclean read some questions that Kathryn Duff, who was absent at this meeting, had posed. Ms. Duff had inquired on the number of the spaces being requested to reduce. It was answered that there would be a reduction from fourteen to five spaces. Mr. Perry had already spoken to her next question, the continuation of the same use. She had also mentioned concern that the proximity to the adjacent property is less than five feet and that the fire rating meet the building code requirements. Ms. Maclean injected that she knows the Fire Department and the Building Commissioner have reviewed the plans and would have to sign off on the building permit.

Ms. Duff had a question regarding whether or not there was handicap access to the building; and if there is not, is there a provision to add handicap access to the site.

Mr. Perry noted the city council did approve the special permit. The Inspection Department noted he would consent but that it would require a fire rated ceiling and this reduction in parking special permit, but there were no other requirements. There are no modifications planned on the interior other than the fire rated ceiling.

Ms. Duff also inquired that the set back requirements shown on the drawing are for residential “A” zoning district, but the application states that it’s a mixed use zoning district. Mr. Perry confirmed that it is business mixed use zoning and has been for many years. He also submitted a copy of a signed abutters list all in favor that was used at the City Council special permit application most of which are neighbors

A motion was made (PC) and seconded (JD) to accept the petition.

Ms. Dawicki addressed the public explaining that the petitioner is requesting a special permit under Section 31.20 of Chapter 9 of the city code, which states that parking requirements may be reduced upon the issuance of a special permit by the planning board if we find that a reduction is not inconsistent with public health and safety or that a reduction promotes a public benefit.

A motion was made (AG) and seconded (JD) to open the public hearing.

Upon invitation by Ms. Dawicki to anyone who wished to speak in favor of this project, Joseph Lopes, Ward 6 City Councillor of 75 Dudley Street, addressed the board stating that in four years he has not had a single issue or complaint against the petitioners from any of the abutters. He stated that he had personally spoken to several abutters of the property and none opposed this request and all only had positive things to say about the petitioner.

There was no further response to Ms. Dawicki’s invitation to speak in favor.

In response to Ms. Dawicki’s invitation to be recorded in favor of the project were:

- Joseph Pereira, President of the Holy Ghost Society of 934 Main Street in Acushnet
- Walter Coimbra of 370 Orchard Street New Bedford, Massachusetts.
- Debbie Vicente of 38 Winterville Road New Bedford, Massachusetts.
- Maria Machado of 30 Cottage Street New Bedford, Massachusetts.
- Ida Mirand, Bonney Street New Bedford, Massachusetts.
- Louis Vicente of Winterville Road New Bedford, Massachusetts.

There were no further responses to Ms. Dawicki’s invitation to be recorded in favor.

There was no response to Ms. Dawicki’s invitation to speak in opposition to the application.

There was no response to Ms. Dawicki’s invitation to be recorded as opposed.

A motion was made (JD) and seconded (PC) to close the public hearing.

In response to a prior question by Ms. Da Silva’s regarding what precipitated the need for the special permit, Ms. Maclean explained that it was just a change of ownership of the property.

A motion was made (JD) and seconded ( AG ) to approve the Special Permit for a requested reduction of off-street parking spaces from fourteen to five, a reduction of nine spaces, for Irmandade Do Espirito Santo Das Nove Ilhas Dos Acores, Inc. at 199 Bonney Street (Plot 30, Lot 185).

Motion passes 4-0.

A motion was made (PC) and seconded (JD) to accept site plans.

Rich Riccio, with Field Engineering on behalf of NSTAR. Addressing the three main issues that had been discussed at the last meeting, he spoke with the clients and they have no issue with the white roof. It causes them no hardship and they will accept that as a condition. The next issue was dressing up the front with additional landscaping. The suggestions at an interim meeting of red maple, river birch and swamp oak have been incorporated into the planting plan. Across the front Red Maples were added in landscaped islands causing the loss of some parking in front. The Swamp Oak and River Birch are being used more toward the wetland side of the property, being more water tolerant plants. The third issue addressed was the addition of landscaped islands throughout the property by sacrificing some parking spaces. He stated petitioner felt they had addressed the concerns of the Board from the last meeting.

Mr. Glassman expressed his approval of the current plans and how they addressed previous concerns.

Mr. Cruz confirmed the existing tree line with the applicant, and Ms. Dawicki confirmed the caliber of trees on the current plan to be 3.5 inch.

Ms. Maclean inquired as to the current owner of the property and the time frames of the development. Mr. Riccio explained that Highland New Bedford Associates is the current owner. He is not sure of the exact development time frame but believes it is something they would like to get done during construction season this year so they can move from the waterfront location.

Ms. Maclean read comments from Ms. Duff in her absence. It was agreed that all the concerns had been addressed and met with the changes to the plan.

A motion was made (JD) and seconded (AG) to approve site plan review for Case #26-13 for a proposed NSTAR Electric & Gas Corporation Service Center at 200 Theodore Rice Boulevard (Plot 136, Lots 323, 354 and 466) with the condition that all the changes to the plan submitted tonight be adhered to and with the condition that the applicant adhere to DPI's comments and the Conservation Commission. And that three full sets of the revised plans be submitted to the Planning Department in PDF. Motion passes 4-0.

### **Case #35-13: Continued Public Hearing of Site Plan Review**

Attorney Michael Kehoe of 128 Union Street New Bedford, Massachusetts representing the applicant. Also Christian Farland engineer from Thompson Farland. And Gary McNaughton from the firm McMahon and Associates who have prepared the technical memorandum to supplement the traffic report what was previously submitted to this board and discussed at the last public hearing.

The board requested we project out five years for not only our use but also for the existing uses in the area and those that have submitted additional plans, of which there was only one, ABC. The technical memorandum that was submitted to this board about 2 weeks ago essentially corroborates what's been said at the previous public hearings. Namely that the intersection works, it's adequate, and it's adequate for the proposed use. Our increased traffic is not detrimental to that intersection. However, there are certain things that the applicant would be willing to consider doing to the intersection. Specifically, you have a system that doesn't work right now because of technical failures, perhaps due to an unrealized project or maintenance that wasn't done. The wires that would be used for the loop system aren't working. Petitioner would certainly agree to repair that at their expense. Mr. McNaughton can go into more detail with the technical memorandum.

Mr. Kehoe stated he had reviewed a letter sent to the City Planner from Mr. Labelle, the Commissioner of the Department of Public Infrastructure. Many of the things he's requesting are already incorporated in what we

suggest we do. Namely the faulty loops, and provide new home run cables to the comptroller cabinet. Adhere to access management strategies to the site that limit the number of access and egress points. As this had been discussed at previous meetings, we have already eliminated one of the curb cuts and are discussing the limitation for the left-hand turn on Hathaway Road. We have already addressed providing sidewalks and ADA conforming ramps along the frontage. We haven't discussed the fifth suggestion from Mr. Labelle which is to have new thermo plastic striping within 200 linear feet of each direction or grater on the turning lane needs. Mr. Kehoe suspects that would probably be okay. Number six, remove and replace non- conforming retro reflectivity MUTCD signs within 400 feet of each approach. That also seems to be acceptable.

The problem the petitioner has is with Mr. Labelle's suggestion to replace the controller, conflict monitor, signal sign equipment, etc. Having us do this would not change your traffic and applicant doesn't understand the connection. Mr. Kehoe also indicated that in the letter it's pretty clear there's no empirical data to indicate that the traffic signalization system is obsolete. Admittedly it's not functioning, but that is not obsolete. I am most concerned by the indication in this letter that there are potential future developments possible for the Price Rite Plaza, the former Building 19 and possibly Central Plaza. To my knowledge there have been no approvals of any of those projects. To expect the applicant, who has proven they are not creating a problem, to lay the groundwork for future developers who haven't even come before the city is fundamentally unfair.

Mr. Kehoe pointed out applicant was responding the recently received concerns of Mr. Labelle, and finds it a little troublesome to link in something that might happen in the future offsite without any empirical data to indicate that suggests this won't work, even without the applicant's proposed improvements.

Mr. Glassman inquired of Mr. Kehoe what the expected cost of the first issue raised by Mr. Labelle would be. Mr. Kehoe replied he expects that it would be somewhere between \$75,000 to \$100,000.

Gary McNaughton with McMahon Associates with a local office in Taunton, MA addressed the board. He stated that as requested at the last meeting, we did update the analysis. We looked at a few things. First, projecting out five years, identifying other projects and background growth. The one project that was identified was the CNG facility. Most of their use is for their own existing trucks. They are going to have a couple of "quick fill" pumps that are open to the public. There is really not a lot of data on these. From personal experience, as there is one in my town, they don't generate an appreciable amount of traffic. What we did is assume they were a regular gas station with two fueling positions so that is a conservative assessment.

Also, over the next five years we projected out a 1% background growth rate, which is standard for what Surp Ed's been using in this region. We then projected out both future build and no build traffic conditions, and that is all included in the updated memorandum. We also did some seasonal adjustments, to address questions over summer volumes. In a worst case scenario, we feel that timing adjustments can more than mitigate the known projects and even general background growth over the next five years.

To speak to some of the specific intersection improvements that are identified in item one, these are equipment upgrades but none of those changes will effect how the intersection operates. In item two, where we would be replacing the loops will effect how it will operate and will make it more responsive to traffic operations. Changing out signal heads and controllers will not change the way the signal operates.

With regard to traffic analysis, Mr. Cruz asked the applicant to go over the chart on Page 5 to let the public know what mitigation is being proposed. He responded that the mitigation that's being proposed is the signal timing adjustment brining the grade from a D to a C by utilizing traffic engineering grades, loops and timed signals to move the traffic more efficiently.

Ms. Dawicki asked if anyone had questions for non traffic related issues and verified that everything outside of traffic was already discussed at the last meeting. Ms. Maclean responded that the hours of operation for the café and the store had not been discussed. Mr. Cruz interjected that he had a further question on the traffic issue. He doesn't think it's fair to have the applicant upgrade all the equipment if the existing equipment is

operating and new equipment would make no change to the operation he was concerned about the precedent that would set for future applicants in the City. Mr. Glassman agreed with this assessment. Ms. Maclean communicated that DPI reviewed the traffic study, questioned the study being done in December and determined that there will be a lot of “new” movements to the intersection.

Mr. Glassman reported that he feels the applicant addressed that with the different loops. Ms. Dawicki suggested opening the public hearing before continuing, first explaining to the public the hours of operation that were discussed at the last meeting. It is proposed that this site be a 24 hour operation. As discussed at the last meeting, there are a number of similar businesses e.g. Cumberland Farms, in the city that are closely abutted and do not have 24 hour operations. There have also been some concerns from City officials in terms of safety and the impact on abutters.

Ms. Maclean expressed that the staff consensus for the City is that it should not be 24 hours. It would be preferred that closing would be 11 pm for the store and that the outdoor café could run similar to sidewalk café's. Seasonally from May 1<sup>st</sup> to October 31<sup>st</sup> to close by 10 pm. Ms. Dawicki queried what Ms Maclean and Mr. Cruz had determined from their review of Cumberland Farms what the standard opening time was if it wasn't 24 hours. Ms. Maclean explained that she had only noticed closing times. Ms. Dawicki suggested that she had seen 6 am – 11 pm as the standard. Some other cases were 5 am – midnight.

Mr. Cruz questioned whether the petitioner would need to come before the Planning Board yearly to renew the permit for the outdoor café. Ms. Maclean explained that the applicant didn't need a permit for it because it is on their property and not a public sidewalk.

A motion was made (JD) and seconded (PC) to open the public hearing.

There was no response to Ms. Dawicki's invitation to speak in favor.

There was no response to Ms. Dawicki's invitation to be recorded in favor.

Upon invitation by Ms. Dawicki to speak in opposition, Attorney Matthew Thomas of 4 Park Place, New Bedford, Massachusetts, representing Adonis Ferreira of 28 Liberia Lane addressed the board. He stated that Mr. Ferreira does not oppose Cumberland Farms, as it is a permitted use, but continues to have concerns about the traffic. A motion made by Ms. DaSilva at the last hearing that the revised traffic study discusses the impact of the proposed development on the Upton Street bus stop. I don't see that addressed in this revised report.

Also, the traffic study and the site plan were to present only a right turn out of Hathaway Road. Mr. Kehoe confirmed this to be correct and that the chart incorporates the 'no left turn' on to Hathaway Road. Mr. Thomas asks that given the experience at other locations in the city with similar conditions, that the site plan be amended so that it forces a right hand turn onto Hathaway Road.

We are still concerned with the grades of service at the intersection. As we know, mitigation is supposed to improve the conditions. As the area develops, the upgrade of equipment at the intersection will be a cost to the City of New Bedford or we could try to bring Cumberland Farms back here and make them change something that could be done now. He suggests that the cost is relatively small to a multimillion dollar project and provides peace of mind to the residents in the area. He reiterated that fixing the loop and changing the timing is currently the only mitigation planned.

There was no further response to Ms. Dawicki's invitation to speak in opposition.

In response to Ms. Dawicki's invitation to be recorded as opposed, abutter Victor Faria of 7 Upton Street New Bedford, Massachusetts.

There being no further response to be recorded in opposition, a motion was made (JD) and seconded (AG) to close the public hearing.  
Motion was unopposed.

With regard to DPI comments, Ms. Maclean stated the items are integrated and you can't really do some of the items without doing them all. The equipment plays off of one another and is tied together. DPI feels very strongly that these conditions are required and necessary at this time. Ms. Maclean urged the Board take into account DPI comments and not put the cost on the City to pay for these upgrades at a future date. She noted that most of the other Cumberland Farms open at 5 or 6 am. Given that this location is near the highway and we have many commuters heading to Boston I think 5:00 am is reasonable for getting gas or coffee before hopping on the highway. Most of them close at 11:00 pm.

Ms. Maclean stated that in addition to the Hathaway exit being a right out, they would also like it to be a right in. We would like to avoid people traveling west bound on Hathaway Road trying to cut across two lanes of traffic. We would like to see the curbing extended out to force a right in only and a right out only at that site exit.

In reviewing the comments from the last meeting, the landscaping looks good. After speaking with the Traffic Commissioner, the project would still need final approval, but it does appear that there could be a crosswalk installed at Upton Street east/west across Shawmut Ave. and on the southerly side of Upton Street. It was also discussed to remove the current crosswalk, at least on the street side to perhaps slow cars down visually. But eliminating the walking path in the island landscape so it doesn't encourage kids to cross at that path rather than the crosswalk closer to Upton Street.

Mr. Cruz reminded the Boards that some landscaping along the wall and the neighbors backyard was previously requested by Ms. Duff.

In response to Ms. Dawicki, Mr. Farland explained that the intersection will have eight new ADA ramps and four new crosswalks. Also stated that the standard Cumberland Farm hours are 5 to 12.

During further board discussion on hours of operation, et cetera, Mr. Cruz and Mr. Glassman expressed concern with the DPI suggestion of conditioning that the applicant be responsible for upgrading the current equipment because it will not change how the intersection functions now or in the future absent more land. Ms. Dawicki expressed that she is inclined to follow DPI's suggestions to avoid problems in the future. Mr. Kehoe interjected that he wanted to be clear that the applicant has not agreed to this condition stipulated by DPI.

There was further board discussion on the crosswalk and the elimination of the southern crosswalk along with the formation of conditions to be included in any proposed motion.

A motion was made (JD) and seconded (PC) to approve site plan review for Case #35-13 for a proposed convenience store with fueling station and ground sign at 943 Shawmut Avenue (Plot 95, Lots 233, 303) with the following conditions:

- That the applicant adheres to the comments submitted by the Department of Public Infrastructure
- That the applicant install a forced "right in" "right out" curbing on Hathaway Road
- That there is an addition of a crosswalk on the south side of Upton Street per approval by the Traffic Commission
- That the hours of operation be from 5:00 am to 11:00 pm.
- That the outdoor café adhere to the regulations as stipulated by the City of New Bedford being open from May 1<sup>st</sup> to October 31<sup>st</sup> and closing at 10:00 pm.
- That there be additional plantings on the west wall of the property
- That 3 full sets of the site plan plus a PDF version be submitted to the Planning Office.

Motion passes 4-0.

**Case #11-13:** Continued hearing on Preliminary Subdivision, Definitive Subdivision, and Site Plan Review

Mr. Rich Rheume of Prime Engineering, Inc., addressed the Board, accompanied by applicant Richard Hopps. He stated that since the last meeting, they reduced the number of lots and created a separate parcel whose main function is to allow access to Cardinal Street for any future improvement. This is not a buildable lot.

The applicant has revised plans for the catch basins that was sending drainage towards Sassaquin Pond. Now, the drainage is intercepted completely, treated with a storm treatment system, and rerouted to an infiltration system that heads toward Route 140. Applicant bolstered the intermediate leaching pits so that after treatment of the storm water it holds and infiltrates 100% of full range of storms from 1-100 years. The balance of the drainage system goes to an infiltration system which we've changed to a rain garden. So it goes through a storm treatment system then to a fore bay and then to an area that's been planted with herbaceous growth as well as shrubs that help the uptake of nitrogen and phosphorus before being infiltrated in the ground. Applicant has increased the size of that so there is a full foot of freeboard and it's able to infiltrate the full range of 1 year to 100 year storms. We're also providing infiltration for the roofs that are sized so that they can capture full range of storms to store and infiltrate all of the roof run off. It is considered clean roof run off so it doesn't require treatment. Applicant stated they have addressed all of the DPI comments and we also have letters from the Conservation Commission consultant and updated data.

Ms. Dawicki wanted to address the previous concern of lack of frontage for a particular lot and the applicants' solution of providing frontage by changing the angle of Ava's Way. Mr. Rheume explained that presently it is on hold. There is a possibility of acquiring a western lot, and if that occurs there will be the ability to provide a 19 foot wide T intersection to supply this lot. The Fire Department wanted a minimum of 18 foot width and either a "T" or "Y" intersection where they could turn their equipment around. This has been put on hold until issues with the lot are resolved.

Ms. Maclean was concerned about the access to Cardinal Street off of Ava's Way as the rights to pass and re-pass have not been established.

Mr. Rheume stated that they have no knowledge that anyone has rights to it. To which Ms. Maclean explained the Board needs proof of that. Mr. Rheume stated the issue is whether there is the ability to get to each of the lots as it is an old paper street that was shown on a Board of Survey plans and no one has deeded rights to it. Ms. Maclean asked for clarification on how 15 feet was acquired to add to Lot 6 without proof of rights to Cardinal Street. Mr. Rheume noted that there is an inherent right to pass and re-pass over the easement. To which Mr. Cruz added that does not give the right to build or develop it. Mr. Cruz stated that no proof has been provided to the Board of who owns Cardinal Street per DPI comments.

Mr. Rheume explained that in Massachusetts if your deed says to a street, unless the deed says specifically excluding the fee in said roadway, then you automatically own to the centerline of said street.

Ms. Maclean noted that the house that the developer owns doesn't have legal frontage, because Cardinal Street isn't built, so it is not a buildable lot at this time. Mr. Rheume agreed that was correct.

Ms. Maclean expressed frustration that since the origin of this project last April, the applicant hasn't provided proof of who has the rights to Cardinal Street and what those rights are. And two, why Ava's Way can't come up and over and not cut off the three people to the east. Ms. Maclean also noted that driveways to the front of the house are not allowed unless they are set back 20 feet, which according to the plan is not the case. So either the houses need to be set back further or the driveway needs to be moved to the side of the house.

Mr. Rheume expressed that he is still confused by the Board's issue with the development of Cardinal Street, as he feels it would be a benefit to anyone who were to develop on the opposite side of the street.

Ms. Dawicki suggested that the applicant might need to discuss this issue with the City "offline" and not in a public meeting, as there may be legal issues that the Board would not be able to weigh in on at this time. She suggested that the public hearing be opened for public feedback.

A motion is made (JD) and seconded (AG) to open the public hearing.

There was no response to Ms. Dawicki's invitation to speak in favor of the application.  
There was no response to Ms. Dawicki's invitation to be recorded in favor.

In response to Ms. Dawicki's invitation to speak in opposition to the application, Marie Pepin of 1377 Sassaquin Avenue expressed opposition and concern after researching the developer and finding he has had many companies involuntarily dissolved by court order. She feels there are many issues with the plan and is encouraged that the board is looking closely at it.

There was no further response to Ms. Dawicki's invitation to be heard in opposition.  
In response to Ms. Dawicki's invitation to be recorded in opposition to the project:

- Bob Mandeville, 1240 Sassaquin Ave.
- William Markie of 1520 Morton Ave.
- Jackie Andrews of 12 Bluejay Street
- Ryan Barker, 1189 Cardinal Street
- Anita Poyant of 1464 Sassaquin Ave

With no further response to be recorded in opposition, a motion was made (JD) and seconded (AG) to continue Case # 11-13 for the Cardinal Place Residential Subdivision until the February 12<sup>th</sup> 2014 meeting.

Ms. Maclean noted that the ownership/rights for Cardinal Street must be established and proof provided. And that at the last meeting the Board had asked for a ground water contour plan. Mr. Rheume stated he would submit it this evening and noted they show the ground water is moving away from Sassaquin Pond.

A motion was made (PC) and seconded (JD) to receive the plan and place it on file.  
Motion was unopposed.

Ms. Dawicki encouraged the applicant to take into advisement comments from previous meetings and work with the City to revise plans accordingly.

## **The board addressed no old business**

## **New business**

Ms. Maclean read in two correspondences for the Board. The first is from the New Bedford City Council Committee on Appointments and Briefings meeting held on Tuesday December 10<sup>th</sup> 2013. Considered a written motion by Councilor Saunders requesting that the City of New Bedford's Planning Department and the Committee on Appointments and Briefings look into the possibility of making it a requirement that all street lights in the City of New Bedford be in the Washingtonian/New Bedford style of lighting. And further, as street lights are replaced they be replaced with this style of lighting referenced May 24<sup>th</sup> 2012. Motion by Councilor



Saunders and seconded by Counselor Duarte the committee voted to refer this to the Ordinance Committee and the Planning Board.

Ms. Maclean noted the City Staff had already taken this into account, and subdivision regulations call for it regardless. For informational purposes, the Historic District has the gas style of lighting, the rest of downtown has the Washingtonian style of lighting. The rest of the residential areas of the city will have the New Bedford style, which is very similar to the Washingtonian style. Ms. Dawicki suggested the Board should further discuss the energy efficiency and light pollution of the LEED standards of the lighting.

Ms. Maclean noted the other correspondence dated December 16<sup>th</sup> 2013 is from Councilor Dennis Lawrence Jr. expressing his appreciation to the Planning Board for their work.

A motion was made (AG) and seconded by (JD) to adjourn.  
Motion unopposed.

Meeting adjourned at 7:45 pm.