



Planning Board

July 9, 2014 – 6:00 PM - **Minutes**
City Hall, 133 William Street

MEMBERS PRESENT:

Colleen Dawicki, Chairperson
Janine DaSilva, Vice Chairperson
Kathryn Duff, Clerk
Peter Cruz
Arthur Glassman

ALSO IN ATTENDANCE:

Jill Maclean, City Planner

Chairperson Dawicki called the meeting to order at 6:00 p.m.

After review of the June meeting minutes, Ms. Duff noted a correction to the spelling of her name. At Chairperson Dawicki's request, a motion was made (JD) and seconded (AG) to approve the minutes.

Motion passed unopposed.

PUBLIC HEARINGS:

CASE #25-14 – Sidewalk café permit

Jeff Goggin of New Bedford, addressed the board. He stated he is looking to have outdoor service of alcohol at his restaurant.

Ms. Duff inquired as to whether the board had always allowed the outdoor service of alcohol.

Ms. Maclean explained that an applicant needs to come into the planning board for a sidewalk café permit, as well as the licensing board for a permit to serve alcohol.

Mr. Goggin stated they were in process with the licensing board.

Ms. Duff confirmed that the board's approval of the site plan does not give approval to serve alcohol. Ms. Duff further inquired whether the front foliage on Union Street is maintained by the applicant. The applicant explained he did not, but the landlord did some maintenance.

Ms. Duff confirmed there were plantings in the area, and the applicant confirmed that there were and that he would be maintaining those.

Ms. Dawicki suggested the board have the planning staff review the final design.

Mr. Glassman felt it was a class operation with top shelf performance. He also reiterated his suggestion that an applicant returning year after year for such a permit could be dealt with by a staff determination as opposed to an appearance before the board.

Mr. Cruz inquired as to the installation of the temporary fence. The applicant explained that it is not a permanent installation and there is no ground anchor.

A motion was made (JD) and seconded (PC) to open the public hearing, which passed without opposition.

In response to Ms. Dawicki's invitation to speak or be recorded in favor, Ward 1 Councilor Jim Oliveira addressed the board. He stated he is intimately familiar with the Goggin family, having been a downtown worker for the past 35 years. He noted the family's County Street business which operated for some 40 years as a neighborhood business, as is Brick. He felt both the father and son will do an impeccable job.

There was no response to Ms. Dawicki's invitation to speak or be recorded in opposition.

Ms. Dawicki suspended the public hearing. She also noted the letter in support.

A motion was made (JD) and seconded (KD) to close the public hearing which passed unopposed.

A motion was made (JD) and seconded (AG) that the planning board approve the sidewalk café permit for Brick Pizzeria Napoletana at 163 Union Street (Map Plot 53, Lot 134) with a portion of north side of Union Street (Map Plot 53, Lot 133) to provide outdoor seating within Wings Court for a restaurant, with a final review and style approved by planning staff.

Motion passed 5-0.

CASE #26-14 – Site plan review

Alan Heureux, a civil engineer with Boucher & Heureux Inc. of Westport, addressed the board, accompanied by architect Joseph Booth of JMV Architects, and Rich Bornstein, CFO for the Kennedy Donovan Center. The proposed site is located at the southwest corner of County and Hawthorn Street, bounded by commercial properties north and south and across the street, with residential properties to the west and the St. John/St. Joseph Catholic School to the southwest. He displayed an aerial exhibit showing the proposed site layout. The property has approximately 200' of frontage on County Street and approximately 250' frontage on Hawthorn Street.

The project plans to renovate the existing school and synagogue buildings into a cohesive office campus, with a new entrance addition in the front of the building and completely new off-street parking facility. Mr. Heureux stated they had met with department heads and city officials seeking input and presenting a preliminary parking facility layout. He stated they had responded to their concerns.

Mr. Heureux showed the existing condition with highlighted areas of proposed demolition. He stated they would remove and dispose of the front stairway/porch area and the concrete patio. He noted that all front pavement would be removed and disposed of, and stated he had submitted Mr. Booth's detailed demolition plan to the planning staff.

Mr. Heureux then went over the layout plan, showing the new entrance and parking facility, which will not disturb any street trees along County Street but will remove three wrought iron fence sections. He stated there were 57 proposed spaces, all designed in accordance with City of New Bedford standards. The applicant is proposing a Hawthorn Street entrance as a second means of access to the site for employees and emergency vehicles.

Mr. Heureux displayed the existing entrance on Hawthorn Street to a small service area, which they propose to use for employee parking spaces and seek to leave as is.

He went over the proposed main entrance, sidewalks and the handicap ramp to the temple elevation with the handicap spaces.

Mr. Heureux next addressed the grading utilities plan and pointed out the drainage system designed to meet all DEP standards for recharge, treatment and solids removal. He stated there will be two leeching facilities, the parking area site running down southeasterly towards County Street. He noted three catch basins that flow to a storm ceptor.

He noted existing water service on Hawthorn Street and an existing sewer line at Russell Street, the proposal being to replace the entire sewer at the easterly end of the property up to the renovated building. The site will have municipal gas as well.

Mr. Heureux then displayed the landscape plan prepared by Mr. Booth. He noted the 15-30 foot green strip along County Street and Hawthorn Street. City officials made clear that maintaining the green state in these areas was important. He noted there would also be screening planting in the parking area, and perennials and shrubs in front and around the building.

Mr. Heureux displayed the details and notes sheet with technical information, the last of the five site plan sheets. He invited questions from the board.

Ms. Dawicki first addressed traffic. She noted concrete aprons at the curb cuts on Hawthorn Street and inquired if there was one for County Street as well. He applicant stated the Hawthorn Street sidewalk runs continuously as it set back from the curb allowing for the apron. The county Street sidewalk is right up against the curb and as such does not allow for the apron. County Street will have the handicap ramps and pads at both sides of the intersection.

Ms. Duff noted the Hawthorn Street entrance is currently a nightmare and she cannot imagine another curb cut at that intersection, especially with rush hour traffic in the am and pm. She suggests an entrance only there with a "do no exit" or "entrance only" sign.

Joe Booth, architect at 47 North Second Street, New Bedford, addressed the board. He noted the project purpose is to provide private office space for Kennedy-Donavan which currently has offices all over the city, with really no public servicing in the facility. He expects the workers to be out in the field most of the time, though he agreed the intersection has always been a nightmare. He stated the curb cut was added to satisfy the fire department and their access concerns. They are seeking drive-through capability. He noted there will be no vans stored on this site.

Mr. Glassman confirmed this will not be a school of any sort, even though it is referenced as the "school building" but office space, as will the 1st floor of the synagogue.

Mr. Booth stated they had intentionally moved a curb cut away from Hawthorn Street.

In response to a question from Mr. Cruz, the applicant stated the Hawthorn Street curb cut is 22', the two-way traffic minimum. Ms. Duff inquired as to the one-way traffic minimum. The applicant believed for fire truck access the minimum would be 18'. Mr. Cruz supported a reduction to 18' with one-way traffic only.

Ms. Duff raised a concern about employees being able to back up. The applicant noted the spaces were the standard size, 20'x9', with a 16' lane and a 10' curb cut.

Mr. Heureux stated the applicant was also proposing a new ground sign, as shown in detail on the landscape plan. Mr. Booth commented that their intention is to minimize the impact of the school building appearance, and one approach is to install a stone veneer on the building bottom, which will also be incorporated into the internal lighted sign. The sign will list the various departments and is expected to be within zoning dimensions.

In answer to Ms. Duff, Ms. Maclean noted the required spaces were 87 and the applicant had 57, though they had shown more spaces during the permitting process, which they were asked to remove in order to provide green space on the boundaries and a buffer for the Grinnell Mansion.

Ms. Dawicki inquired if this parking lot would allow for parking of cars from across the street, to which the applicant responded it would not.

Mr. Cruz noted that everything met criteria. He noted the plans lacked erosion control. Mr. Heureux stated they would put an erosion control barrier all around the site. He noted there would be a 50' stone entrance during construction. He stated there would be silt fence around the perimeter. The applicant agreed to Mr. Cruz's suggestion of straw bales on the lower end. With regard to protection of existing catch basins, Mr. Cruz suggested silk sacks. The applicant agreed to do so on the three on-site catch basins, but noted they expect the work to happen very quickly.

Mr. Cruz noted only one city owned catch basin at Hawthorn & County Streets. The applicant again stated the runoff will be southeasterly.

Ms. Duff expressed the site had the opportunity to have a rain garden on the easterly edge, as opposed to curbing and traditional catch basins. Mr. Heureux felt the site was too steep, and opted for more green landscaping areas.

Mr. Cruz expressed concern with concrete curb and inquired about granite to fit in with the downtown atmosphere and neighboring sites. The applicant stated that would be a large additional expense. Mr. Booth reminded the board that the group is a non-profit with limited funding to put the building back into service.

Ms. Dawicki inquired about lighting. Mr. Booth stated the lighting had not yet been done. He anticipates the lights to be modern down-lighted fixtures.

A motion was made (PC) and seconded (KD) to accept the lighting cut sheet, which passed without opposition.

Mr. Booth noted it was an energy efficient LED fixture on a 14' pole.

The applicant in response to Ms. Dawicki, stated they were willing to work with planning staff on possible modifications. The applicant stated the necessary light will be installed at egress points with a canopy containing down lights, but there is no planned floodlighting.

Mr. Booth, in response to Ms. Dawicki, stated they would be replacing the jealousy windows but would retain the aluminum siding. The current gymnasium will be mostly glass with a wood panel. The school building will have the stone veneer and a window change out, but will retain the blonde brick currently on the building.

Ms. Duff inquired as to how many trees would be removed from the property. Mr. Heureux stated six would be removed. Mr. Booth stated they were proposing to put trees back into the green space to offset those removed. Ms. Duff suggested shrubs and low trees be brought back to the area where grass is planned, for more of a buffer along County Street. She had hoped that there would not be a net loss on trees. She expressed appreciation for more green space instead of asphalt, but is leery of little grass strips due to maintenance needs. She suggest shrubs along the area.

Moving onto sign discussion, Ms. Duff confirmed the stone will be facing County Street. She requested that the sign be shut off an hour or two after the close of operations.

Mr. Cruz inquired if the entrance on Hawthorn would have granite pillars. The applicant responded it is proposed to just be an opening. Mr. Cruz inquired about any dumpster location. Mr. Booth indicated the proposed site for the same and explained access would be on Orchard Terrace.

Ms. Duff confirmed the wide elevation of the sign would be north and south, not east/west as noted on the elevation plan.

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

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

There was no response to Ms. Dawicki's invitation to speak or be recorded in opposition.

The public hearing was suspended for further board discussion on conditions to include in any approval, such as additional shrubbery, granite curbing, the shutting down of sign lighting after hours, extending southern boundary screening, straw bales, no Hawthorn Street exit, et cetera.

Mr. Cruz inquired about lining the site with granite as a compromise. Ms. Duff wanted granite at least at the entrances on County & Hawthorn Streets.

The applicant responded to Ms. Duff's inquiry that the decommissioning of the synagogue had already been done.

A motion was made (JD) and seconded (AG) to close the public hearing, which passed unopposed.

A motion was made (JD) and seconded (AG) to approve the special permit for reduction of the minimum off-street parking requirement at 385 County Street, Plot 41, Lot 289, from the required number of 87 to 57. Motion passed 5-0.

A motion was made (JD) and seconded (AG) to approve the site plan review for a proposed conversion of an existing building to office use and new construction of off-street parking area for the property at 385 County Street, Plot 41, Lot 289, in a Residential A zoned district. with the following conditions: that the applicant abide by any comments submitted DPI; that the applicant abide by any conditions set forth by the Traffic Commission; that the applicant install a do not exit sign on the Hawthorn Street entrance; that the applicant narrow the opening on the same Hawthorn Street entrance from 22' to 18'; that the applicant install straw bales for erosion control on the southeast edge of the property; that the applicant review lighting on the site with staff approval; that the applicant provide more landscape screening of low shrubs along the northern, eastern and southern edge of the property; that the applicant install a programmer on the internally lit sign on the northeast corner of the property; that the applicant install straight granite curbing on the site at both entries for the radius; and that the applicant submit the landscaping plan for review by planning staff and planning board installation. Motion passes 5-0.

OLD BUSINESS:

With regard to **Eastland Terrace**, Ms. Maclean reported that an engineer had been hired and has met on-site with DPI. They have stated it should only take a couple of weeks to finish the work. The attorney is preparing to issue the city the performance bond to cover the remaining work and to release the covenant that exists on the lot on the north side of the street once the surety is received.

In response to any inquiry from Mr. Glassman, Ms. Maclean stated it had been determined that that was not a separate lot and belongs to the property on the northeast corner of Eastland Terrace. The intent is when the surety is released, the sign would be removed.

Mr. Glassman expressed concern that once the developer leaves any strip of land would have to be maintained, especially where there is no association.

Ms. Dawicki confirmed with Ms. Maclean that the Eastland Terrace project was moving ahead.

With regard to the **Bismark Meadows** subdivision, Ms. Maclean informed the board that both the planning board and Conservation Commission have worked diligently to try to close this matter. She stated one of the developers, Mr. Holding, had recently passed away, leaving the city to deal with the remaining partner Mr. Steen.

She stated the Conservation Commission had requested Mr. Steen to attend their last meeting and they declined. An enforcement order for the drainage basin has expired. She stated they were also aware that the matter was on the agenda for this evening's planning board meeting to seek some type of action.

Ms. Maclean stated that on June 25th a demand letter was sent, per solicitors, which Ms. Maclean read into the record. Ms. Maclean noted that Manny Silvia of DPI reported that as of this date, no work had commenced and no documentation regarding the homeowners' association. She stated she had received a return e-mail from Mr. Steen requesting further clarification, which Mr. Maclean provided. Mr. Steen noted that prior to releasing any subdivision lots he had filed a homeowner association with the registry of deeds. Ms. Maclean stated she had not seen any such documentation attached to any of the deeds for the properties sold.

Ms. Maclean stated she had encouraged Mr. Steen to be present this evening.

In response to Mr. Glassman, Ms. Maclean stated that \$23,000.00 is being held and the estimated cost for the city to complete the project would require taking that entire amount. Ms. Maclean noted that \$11,200.00 of the amount included the acceptance of the detention basin as well, which at this point, lacking any homeowner association paperwork regarding maintenance of the basin, was recommended to be taken as well.

Mr. Cruz confirmed that \$11,200.00 was the DPI estimate for the detention basin.

Ms. Maclean noted that some of the cement work also needs to be completed, as well as streetlights, cleaning of the structures, and miscellaneous items, title search since Bismark Street is private. In order for Bismark Meadows Road to be accepted, you must accept out to the nearest public street. The title exam would have fallen on the developers, but in the event of a seizure of the funds, the city would have to determine who has the rights to Bismark Street and get their consent for the street acceptance as well.

Mr. Glassman stated he has previously expressed his feelings on subdivisions, and felt it was time to take action and get tough to send a message that developer obligations must be fulfilled. He was in favor of the city taking it over and finishing it.

Ms. Dawicki agreed that in this instance the developer had made no attempts to provide any alternative to this board or the Conservation Commission, and felt nothing was apparently going to get done otherwise, especially with seasonal considerations looming.

In response to Ms. DaSilva's inquiry, Ms. Maclean noted the subdivision had been non-compliant since mid-October 2013.

In response to Mr. Glassman's inquiry about completion prior to the winter snow, Ms. Maclean stated she believed the remaining work would consist of only a couple of weeks, but the complicated item would be the title exam and street acceptance which could take a couple of months to go through the process. She felt waiting till August to act would put the city at a disadvantage to complete the process.

Mr. Glassman stated that they had already tried to get this done prior to the winter season last year, and felt the board had to act this evening.

Mr. Cruz inquired about whether the city would bring the detention pond to needed standard. Ms. Maclean noted that the conservation Commission had issued a second enforcement order to the developer requesting the detention pond be reconstructed in compliance with approved plans by July 15, 2014. Ms. Maclean read that letter into the record.

Ms. Duff felt the 3 week estimate could double considering the coordination that would need to take place to complete the work, but stated this evening was the first step.

Mr. Glassman was hopeful this would send a message.
Ms. Maclean read an 8/10/12 letter into the record.

Ms. Dawicki commented that there was sufficient evidence that ample time had been given to the developer. She invited public comment on whether the developer should be given more time or the performance bond should be seized.

In response Craig DeMelo of 29 Bismark Meadows Road addressed the board. He stated he had purchase in 2011 and noticed ground water that first spring. He stated Mr. Holding had been contacted, and Mr. DeMelo believes his home and one other needs a pipe to be run underneath the property from the footing to tie into the street for ground water escape. The excavation company quoted him a \$3,500.00 price to accomplish that. He stated the developer, his brother, and Anna Reis would not respond to phone calls or e-mails. He was wondering if this repair was included in the funds.

Ms. Maclean stated that it was not, and private property work would have to be looked into by the solicitors.

Mr. DeMelo stated he was told it was covered in his warranty but remained unaddressed. He felt the money should be taken to do what needs to be done.

Eric DeSouza of 54 Bismark Meadows Road addressed the board and said he had spoken with the planning board several weeks ago about the status of this subdivision, and confirmed that all the residents had had negative experiences with this builder and warranty issues, pushing things off till the warranty expired. He stated he had not really dealt with Mr. Steen, but relatives have told him about disastrous dealing with Jim in the past.

Councilor Jim Oliveira addressed the board and stated he had been alerted to the Bismarck Drive issues since his election to office. He expressed that he has made numerous phone calls regarding ongoing problems. He implored the board to take the money, fix what needs to be fixed, and get the street accepted. He assured the board that the city council would expedite this in any manner possible.

Councilor Linda Morad addressed the board as an abutter and owner of 128 Bismark Street. She stated she owns a buildable lot on Bismark Meadows Road. She stated the board should be aware that the streetlights do not operate, especially on the north side of the street. The grass ribbon strip on both the north and south sides of Bismark Meadows road are weeds. She stated the new homes built at the top of Bismark Street were originally landscaped properties prior to developer coming in and are now nothing but weeds. She stated property owners should not now have property that looks less than what it did when this developer began the project.

She stated there are weeds growing through the road asphalt and most driveway brows don't match the street and create a bump to drive over.

She stated the tree plantings are not straight and will create a future problem. She stated she believed that as part of the subdivision plans the developer must put a stub/sewer connection on every buildable lot, and it was not done here. She asked that matter be rectified.

Ms. Maclean did not recall offhand what this plan had included.

Ms. Morad asked how the issues on Bismark Street would be addressed by the \$23,000.00 bond.

Ms. Maclean stated the engineer today noted grass strip issues on the west side of Bismark Street, but stated this decision does not go to the complete terminus.

Ms. Morad stated that as part of the original planning board discussion, there was supposed to be curbing on the east side of Bismark Street from the junction of Bismark Meadows Road to the terminus. She asked the board to look at and address those issues for the benefit of the current residents and not for the perpetual retention basin.

In response to Ms. Dawicki, Ms. Maclean stated the planning board decision was denied in the housing court decision, so the plans would be from that decision and there is no more than the \$23,000.00.

Ms. Dawicki confirmed that those finds can only be used to complete the plans. Ms. Maclean noted that part of Bismark Street is on the plan.

Mr. Cruz noted the basin issue needs to be addressed. He stated it was designed correctly but installed incorrectly, and the \$11,200.00 needs to go to fix that basin itself.

Ms. Morad stated her memory is that the \$11,200.00 was to perpetually maintain the retention basin, as is commonly taken by Commissioner LaBelle.

Ms. Maclean stated that would be true if the developer were doing the work. She stated the funds must now be used to fix the basin and get the street accepted.

Mr. Cruz stated the basin would need to be redone to the permanent basin.

Ms. Duff interpreted Ms. Morad's comments to mean that any left over money after the basin repair should be used to fix some of the problems she listed.

Mr. Glassman stated that is why he has advocated taking a little more money, 10%-20% above. He again stated he was in favor of seizing the money.

Mr. Cruz agreed.

Ms. Dawicki and Ms. Duff commented that there are issues between the property owners and the developer that the board cannot address.

A motion was made (JD) and seconded (AG) that the planning board seize the funds in the Bismark Meadows Subdivision account to make any necessary repairs to the subdivision so that the street can be accepted. Motion passed 5-0.

There being no further business, a motion was made (PC) and seconded (AG) to adjourn, which was unopposed.

Meeting was adjourned at 7:43 pm.

The next meeting will be August 13, 2014.