

## Planning Board Minutes December 11, 2007

BOSTON PLANNING BOARD DECEMBER 11, 2007

PRESENT: David Stringfellow, Vice Chairman

David Bernas

Robert Chelus

Jonathan King

Bill McGirr

Jeff Mendola

EXCUSED: Patricia Hacker

ALSO Brian Downey Town Attorney

PRESENT: Brien Hopkins Councilman ? Town Board Liaison

Richard Brox Planning Consultant

Teri Betz 7346 Boston State Road ? Kids Country Child Care

Jim Rumsey R.A. ? 7346 Boston State Road

Donna Harnett Attorney ? 7346 Boston State Road

Chris Wood P.E. ? 7346 Boston State Road

David J. Avino St. Francis High School

Angelo T. Filippone St. Francis High School

Vice Chairman Stringfellow called the meeting to order at 7:30 PM and appointed alternate member Jonathan King as regular member for this evening's meeting.

## MINUTES

Mr. Chelus made a motion to accept the minutes of November 27, 2007, seconded by Mr. McGirr and carried.

## CORRESPONDENCE

Secretary Faulring reported the following:

- ? Announcement of and registration forms for the Association of Towns Meeting in NYC, February 17-20, 2008
- ? Code Enforcement Officer Ferguson's November End-of-month report
- ? Deputy Code Enforcement Officers' Lisowski and Juda November End-of-month reports

## DISCUSSION ? 7346 BOSTON STATE ROAD ? KIDS COUNTRY CHILD CARE

Mr. Stringfellow: I believe we left this at the point where we felt that what was submitted as an as-built site plan was not complete and was not accurate; Ms. Betz do you have anything to offer at this point?

Donna Harnett: I'm the attorney for Theresa Betz. I was involved with this project from its inception, from when she bought the lot, helped her through it with the construction and the design, her work with the Planning Board in order to get the original design approved. She's gone through various troubles in order to get this operation up and running. She has really worked her heart out in order to make it successful. At the near completion of construction back in 2004 a conditional temporary Certificate of Occupancy was issued dated February 27, 2004, and actually was issued on August 5, 2003 due to fire conditions until June 1, 2004. There were four conditions on the Certificate of Occupancy they were: approval of State variant with regard to a fire hydrant; completion of exterior siding, placement of a dumpster and a sign permit issued as well as installation of the sign. We went back and finalized all the different conditions and were able to complete those. Around the same time there was this drainage/retention pond in the backyard that once it was installed in its location Teri looked at it and said "we're supposed to put a play yard for the kids back here and I can't have a play yard back here with its potentially wet, mosquito attracting retention pond." After we talked about we sent a letter to Mr. Kramer, and he sent a letter out to the engineers at Foit-Albert and the engineers said "fine you can move it," Teri was talking about moving it from its current location to the back of the property, "just ask for the design so that we can look at it and approve it." Well she never ended up moving it and ended up, it was designed and installed and constructed exactly from its original state and it still stands there today as the same. What she then elected to do was move the location of the play ground because her immediate need was the playground because she had several kids signing up, so she did. She moved

it off to the side, what that entailed, however, was moving that plastic little playground piece from this planned area to the side yard; the drainage plan was not changed, the terrain was not changed, no additional concrete pads were changed, nothing. So in compliance with our conditional Certificate of Occupancy it is our opinion that we complied with those conditions and this whole issue about a site plan started because of her original desire to move the retention pond, it was never moved; it was never moved, so we're still kind of where we were on day one as far as the drainage and the condition of the property. It's been constructed as far as the design and that's where we are. We're trying to figure out why we're here, why we still don't have our permanent Certificate of Occupancy, because everything is installed the way it's supposed to be.

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Mr. Downey: It's my understanding that the retention area shown on the plan is not what is out there on the property. We've had Foit-Albert go out and he said that it doesn't match. It's clear to him that your engineer did not go out and look at it and that's the first thing that is a little bit disturbing in the sense that your engineer put his stamp on it and said this is what's there; and Foit-Albert is saying, "no that's not what's there, and if you'd come out and looked at it you would see that's not what's there."

Ms. Harnett: We brought Mr. Rumsey, the architect and Mr. Wood, the engineer in order to answer some questions that the Board may have. I understand the letter that was issued from the engineer talked about the weir that he said was nonexistent, but normally is not visible?

Mr. Wood: Based on the elevations shown in the plans, the elevation of the weir is only a tenth of a foot below the top of the ground, so if you go out in the field and look it may not be evident that it's there, but it may be there.

Mr. Downey: When we were last here we suggested that your engineer call Foit-Albert and make sure there's not a problem. Have you talked to Foit-Albert since?

Mr. Wood: I didn't know I was supposed to.

Mr. Downey: We discussed this with your client that in an effort to solve some of these issues, have your engineer call ours, so that we're not relaying second hand to them. We're trying to do this amicably and we're trying to clarify that he is saying it's not the same, because he's advising us.

Ms. Harnett: I still have an issue with the as-built and whether or not; I understand that you're trying to confirm what actually constructed meets with what the original design called for. But that was three years ago, I'm not an engineer but isn't kind of the proof in the pudding here? The property is draining, have you received complaints from neighbors that the property is not draining.

Mr. Downey: That's not the standard. The standard is?I understand that you're representing your client, but the way this works is that she was supposed to come back here but she had a problem with her builder, and to be very honest this Board was quite lenient and this Board let it go and let it go. Obviously we had no say in that, and we were sensitive to that issue and eventually said it's got to be done, because usually what you do is come out do a final that is supposed to match everything with it. They did these little changes and so we said "do it as built." There's been a couple of go a rounds because we said that doesn't really look like the property, there were a couple of trees. A couple of other things, if you came out to the property you would see that they weren't as you had them on the as-built. So that's our question that if you had gone out and looked at it why they're not in the place that were really out there.

Mr. Woods: The information that's on there, it was our understanding based on information provided to us by people who have gone out in the field and looked at it, but not myself. Another reason why we're here tonight is to understand what exactly is supposed to be on the as-built drawing. Whether you want it to be?initially we thought is was supposed to be an as-built site plan rather than an as-built plan of showing utilities and everything else on there; but now I guess we're supposed to show the detention pond and all the pipes and whatnot in the location and elevations that they were built at?

Mr. Downey: That's what our engineers are indicating, that's why we thought it would be there had been a conversation directly between the two of you as to what's there and why you did or didn't put that on there.

Mr. Stringfellow: Basically the problem has stemmed from the fact that what was built is not what was approved. The building became two feet wider, since it's almost 90 feet long that added almost two hundred feet of floor space which then requires an additional parking space which is not there, I think there is room to put it there, but it is not shown. The play yard is clearly shown on the approved plan at the back of the building and now it's at the side?

Ms. Harnett: The play yard that is just some playground equipment picked up?

Mr. Brox: It's a fenced area next to the neighbor therefore its got to be on the site plan and it's got to be in the approved location or a modified site plan and approved, you just can't stick in a fenced play area and think well the neighbors aren't going to complain, you can't do that.

Ms. Betz: That was approved by Dennis Kramer.

Jim Rumsey: I'm the architect. I understand why we're at the Planning Board, because the site plan was revised. That site plan's been revised; what we would like to do is get an okay from the Planning Board and then go back and work everything out with your Town Engineer. Can we get an okay for the site plan tonight the way it is and then?

Mr. Downey: That's not how it works though, the engineer tells us that it meets his approval and then this Board approves it, so you kind of have it backwards, I understand what you're trying to do but

that's why we said maybe it's a good idea to have this done beforehand so that our engineer can tell us it's okay with him or there are a few things and as long as they do this we could condition it upon those things being done; but we're kind of at a loss because we don't have the conversation between the engineers, and then we've got to relay it back to the engineer; we can't do it that way.

Mr. Brox: The other thing I noticed on the plan is that the detention area with the 1% swale going down to some unknown stopping point, it looks like it's to the right of the weir, which is just a high spot in the grass, has no ability to drain ? the water is just going to sit there possibly a foot deep until..

Mr. Wood: The pipes aren't shown there ? there is a pipe that goes from that catch, I have the original set of plans and I'll look at it.

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Mr. Brox: The as-built doesn't have it on there.

Mr. Wood: There's a pipe that goes in and a pipe that goes out.

Mr. Rumsey: So our understanding is that the Board before they sign off on the final site plan has to have engineering approval, your consulting engineer.

Mr. Brox: Yes.

Ms. Harnett: So if our engineer works with your engineer and is able to resolve all the issues, then it would just be a matter of coming back one more meeting and then?

Mr. Brox: The only other thing is the discrepancy in the parking.

Mr. Wood: We have room to show another two spaces.

Ms. Harnett: So if the engineer would report directly back to the Planning Board, and then the Planning Board would notify Ms. Betz of anymore problems or would she have to come back to the Planning Board one more time?

Mr. Stringfellow: We would want to see an as-built site plan that shows the things that are not on the plan?

Mr. Downey: She wouldn't necessarily have to come back. Obviously we would need the plans.

Mr. Stringfellow: To clarify: detention, parking spaces, drainage calculations,

Mr. Downey: The engineering firm has changed to TVGA, allegedly the documents have flowed over to them; what I would suggest is contacting them.

Mr. Stringfellow: I want to be careful here that we do not tell you do this, this, this and we will approve it because we have to see an as-built site plan that is true and it has to meet all the requirements of the Town Code, just as any other site plan does.

Mr. Downey: Some of the concern is that some of the stuff is not matching that if it comes back and there's another change, now you go and look at it and it's missed. Generally as far as we know, if nothing else changes those are the only things, outside of any other changes.

Mr. Bernas asked if they had the Foit-Albert review dated November 13, 2007 and the Brox review dated November 8, 2007, as it was those reviews that we based our discussion on and tabled it.

Ms. Harnett: Yes, we have them both.

Mr. Downey: We've always tried to keep this amicable, it's just trying to clarify and it's been a long period of time and there have been some changes and we want to get it all done. This Board has given her a lot of extra time because they understood her position and we just want to get it resolved.

Mr. Stringfellow: We will table discussion pending receipt of revised as-built site plan.

#### LIAISON ? COUNCILMAN HOPKINS

Councilman Hopkins reported from the Town Board meeting of December 5, 2007:

? We passed a resolution for windmills, basically right now to keep companies from coming in and buying up large parcels

- o They're about \$60,000 per windmill
- o We've created regulations and distances for all windmills
- o Have checked the regulations from Tonawanda and Hamburg
- o We have several residents interested in installation of windmills on their private property

Mr. Hopkins: Sorry I wasn't at the last two meetings, but I've been working with the Christmas Lighting Committee and have been putting up lights through Town for the past month.

A lengthy discussion followed on windmills.

## CODE BOOK REVISIONS

Mr. Stringfellow distributed new copies of Proposed Chapter 97.

Mr. Downey reported that the Town Board is retaining the jurisdiction over the final decisions on site plans and SEQR.

57-3 B - sentence 2 will begin with Town Board

No changes to Chapter 97 prior to 97-3, with the exception of section numbers and titles.

### 97-3 Requirements and Submittals

B. (4) add sentence to the end of the following:

?..Schedule of Fees. The submittal shall be automatically referred to the Planning Board.

97-3 C. delete: Transmit one copy to the Town Board for referral to the Planning Board

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### 97-3 (continued)

D. Change to read:

Within two (2) weeks after receipt of their copy of the site plan review submittal, the Town Engineer and Town Planner shall each submit to the Planning Board Chairperson a written report containing the results of their review. The Highway Superintendent and Town Attorney may also submit written reports, if appropriate, within that time.

E. Upon receipt of the aforementioned reports, the Planning Board Chairperson shall:

(1) Instruct the Planning Board Secretary to forward copies of those reports to the Planning Board members and alternate members.

(2) Set date of the Planning Board meeting at which the conceptual site plan will be considered. Said date shall be no more than thirty (30) days after receipt of both the Town Engineer's and Town Planner's reports.

(3) Instruct the Planning Board Secretary to notify all interested parties of the meeting time, date and place.

#### 97-4 Written Project Description

B. Change sentence to read:

A description of the construction materials which will be used on the site if they are not described on the Conceptual Site Plan.

#### 97-5 Conceptual Site Plan

A. - H. Will remain as discussed at the November 26, 2007 meeting

I. this subsection will be the wording that is currently 97-5

#### 97-6 Final Site Plan Submittal

A. (1) ? (2) Will remain as discussed November 27, 2007

(3) [addition] Payment of all fees as set out in the Schedule of Fees.

(4) Will remain as discussed November 27, 2007

#### 97-9 Approval of Final Site Plan

Opening sentence to read:

The Town Board shall approve, approve with modifications, or disapprove the final site plan, stating its reasons based upon:

A. - D. Will remain as discussed November 27, 2007

E. (removed)

## 97-11 Circulation System

Change only to item E.

E. There shall be an adequate amount, in suitable locations, of pedestrian walks, malls, and landscaped spaces in order to discourage pedestrian use of vehicular ways, and to separate parking and loading areas from vehicular circulation ways.

Mr. Stringfellow: Unless there are any objections I am going to declare that we have finished our work on Section 97 and move on to our work on Section 104, seconded by Mr. McGirr and carried.

## CHAPTER 104 SUBDIVISION OF LAND

### 104-3 Terms Defined

Alleys: leave as currently written

Delete:

Cul-de-sac

Add:

Dead End Street: A street intersecting another street at one end and terminated at the other end.

Add:

Double lot ? discussion followed.

Mr. Stringfellow will check the Code Book for the section where reference is made to Double Lot before determining whether this definition needs to be added.

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Add:

Minor Subdivision - Division of land into four (4) parcels or less provided that:

(1) Separate land surveys and property legal descriptions are submitted for review to assure that parcels meet the

minimum lot requirements for the zoning district in which the property is located, and

(2) All parcels shall front on an existing street

Reverse Frontage Lot:

After composing a definition for, and following a very lengthy discussion, it was decided not to add a definition for reverse frontage lot to the Code Book.

Streetlight District:

No definition will be added to the Code Book.

104-4 Applications to Planning Board.

A. (wording change): The Board may adopt such application forms as it deems necessary and make such amendments to said forms as may be from time to time required.

D. (wording change): All applications must be presented to the Planning Board at least 30 days prior to the meeting

of the Board at which such application is to be considered.

104-8 Rezoning for Subdivisions . (title change)

Delete current A. and B. and replace with:

If rezoning is required for all or part of the proposed subdivision land, a rezoning request shall be submitted to the

Town Board prior to preliminary plat submission. A copy of this rezoning request shall be submitted to the Planning Board with the preliminary plat. All property shall be zoned in the Zoning District that first permits the use proposed by the developer.

104-9 Submission for conditional approval.

- A. Change 10 prints to 22 prints of the preliminary plat?

104-10 Distribution of prints.

- A. Ten copies to the Planning Board
- B. One copy to the Town Engineer
- C. One copy to the Town Planner
- D. One copy to the Highway Department
- E. One copy to the Town Attorney
- F. Five copies to the Town Board
- G. Two copies to the Town Clerk
- H. One copy to the Building Department

104-11 Requirements.

- A. (5) change to beginning of paragraph:

Ground elevations on the tract based on a datum plane approved by the Town Engineer. For land that slopes less

than approximately 2%, spot elevations at all breaks in grade, along all drainage channels or swales and at selected points no more than 100 feet apart in all directions, shall be shown?

- A. (6) delete current paragraph and replace with:

Subsurface condition of the tract shall conform to the requirements of the Erie County Health Department if individual sewage systems are proposed.

- A. (8) correct to read:

Other condition on adjacent land: the approximate direction and grading of the ground slope, including any embankments or retaining walls; the character and location of buildings, railroads, power lines, towers and other nearby nonresidential land uses?

C. (1) Streets:

delete at end of sentence: ?similar data for alleys, if any.

D. Additional preliminary plat data.

(1) (a) change to read:

Profiles showing existing ground surface, finished lot grade in conformance with Drainage Design A, B or C as shown in [A reference to the location of Drainage Designs A,B, and C in the Code is to be inserted here.]

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D. (3) Stormwater management plan.

Change to read:

All new subdivisions, planned unit developments (PUD), and residential developments greater than one acre, and/or exceeding 5% transverse slope shall include a stormwater management plan. The stormwater management plan shall include, but not be limited to, the predevelopment runoff, post development runoff, proposed retention and/or detention facilities, erosion control during and after construction and pollution mitigations. This includes submission of drainage calculations.

Mr. Downey: I think that?s (stormwater management) is being changed, but I don?t have it with me. New York State is requiring each municipality to have their own plan by January 8, 2008.

F. Proposed zoning.

Change to read:

Prior to approval of the preliminary plat, such plat shall be submitted to the Boston Town Board. The Town Board may make recommendations regarding the preliminary plat to the Planning Board.

104-12 Hearing.

Change to read:

Within forty-five (45) days after receipt by the Chairman of the Planning Board, of a preliminary plat that complies with the provisions of these regulations, the Planning Board shall hold a Public Hearing, which

hearing shall be advertised at least once in a newspaper or general circulation in the Town at least ten (10) days before such hearing.

#### 104-15 Petition to Town Board

After the preliminary plat is approved, the applicant shall petition the Town Board for final action on any of the following:

Delete current A.

- A. Creation or extension of a sanitary sewer district.
- B. Creation or extension of a storm sewer maintenance district.
- C. Creation or extension of a water district.
- D. Creation or extension of a streetlight district.

#### 104-16 Application for approval.

Change to read:

A. Application by the owner to the Planning Board for final plat approval shall be made in the form provided therefor and shall be accompanied by the following.

(1) Three (3) reproducible prints of the final subdivision map, and in a format suitable for filing with the County Clerk.

(4) A certified check payable to the Town of Boston in the amount set forth in the Schedule of Fees.

#### 104-17 Requirement for submittal of map.

Change to read:

The applicant shall not submit the final subdivision map to the Planning Board until all the approvals required on the final subdivision development application have been obtained from the appropriate officials.

#### 104-18 Specifications.

Change to read:

A. Form and scale of final plat. The final subdivision plat shall be clear and legible prints, as provided herein, in a format suitable for filing as a map cover in the Erie County Clerk's Office.

Mr. Mendola made a motion to adjourn at 9:30 PM and to begin the next Code Revisions discussion of Chapter 104, with Section 104-18 C at the top of page 5, seconded by Mr. Chelus and carried.

Respectfully submitted

David Stringfellow

DOS:tjf Vice Chairman