

Planning Board Minutes February 26, 2008

BOSTON PLANNING BOARD FEBRUARY 26, 2008

PRESENT: Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

David Bernas

Jonathan King

Bill McGirr

ALSO Brian Downey Town Attorney

PRESENT: Cathy Maghran Councilwoman ? Town Board Liaison

Richard Brox Planning Consultant

Randy Barker 7380 Boston State Road

Bill Biscore MediaFlo USA

MINUTES

Mrs. Hacker made a motion to accept the minutes of February 12, 2008, seconded by Mr. McGirr and carried.

CORRESPONDENCE

Secretary Faulring reported the following:

? Code Enforcement Officer end of month report for January

? Deputy Code Enforcement Officers? end of month reports for January

? TVGA letter dated January 21, 2008 to Theresa Betz at Kids Country Child Care, 7346 Boston State Road, with their request for submittal of an as-built site plan and what is to be included on the as-built

? Letter dated February 15, 2008 from Attea and Attea, Attorneys, with inclusion of Randall Barker letter which stated occupancy of his building at 7380 Boston State Road

? Town Clerk letter dated February 21, 2008 with information regarding the NYMIR Land Use Training

? Letter dated February 15, 2008 from Attea and Attea, Attorneys, to Supervisor Eagan regarding 7380 Boston State Road (this letter was faxed on February 26, 2008)

? Richard Brox review dated February 25, 2008 for North Boston Fire Company

? Aaron Tiller e-mail received (via Tim Kirst) on February 26, 2008 addressing responses to Planning Board concerns; and to Ken Hoefler at TVGA addressing the engineer's concerns

SITE PLAN REVIEW ? CO-LOCATION 8971 ZIMMERMAN ROAD

Mrs. Hacker read the correspondence:

? Planning Board letter dated February 19, 2008 to Margaret Smith at MediaFlo USA requesting that she, or her representative, be in attendance at this evening's meeting

? TVGA review dated February 25, 2008

o Copy given to applicant

? Richard Brox review dated February 25, 2008

o Copy given to applicant

Mrs. Hacker asked for questions or comments from the Board.

Mr. Stringfellow: This site is visible from the road so we may want to consider the landscaping aspect.

Mr. Bernas: I make a motion that we table this until these points are addressed.

Mr. Biscore: A lot of these points will be on the construction drawings. As far as the landscaping is concerned we are willing to put in any type of shrubs that the Board would request and we will show them on the construction drawings. As far as the cement pad is concerned the size of that is approximately 12 by 14. The heat exchanger and generator goes on it. The building is a pre-fabricated building. These are standard buildings used in the wireless industry; the size of it is 11½ feet by 20 feet and only 10 feet high.

Mrs. Hacker: Isn't that quite a large building, compared to the other buildings on location?

Mr. Biscore: I've seen buildings 15 by 30, 15 by 35, 15 by 10. The size is determined by what's going inside the common space.

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Mr. Bernas: The motion on the floor is because we just received the engineer report and the Brox report and we need time to discuss those issues.

Mr. Stringfellow: I second the motion to put it on the table, and bring it up for discussion.

Mrs. Hacker: The motion's been made, all in favor. All were in favor of the motion.

Mr. Brox: We have strongly urged co-locations so that there wouldn't be a lot of towers all over Town; and they're just adding this antenna to an existing antenna and the building is back where the tower is. I didn't look at the landscaping as a real serious concern. I wasn't aware of all of the engineer's concerns. I just looked at it from the point that it meets Code and the Comprehensive Plan, and it's a co-location. The building that they want to put in is about three times the distance from the road as the existing building is.

Mr. Stringfellow: Are the contours shown? Is that going to be down lower where it's out of sight?

Mr. Biscore: It's the 470 foot tower that everyone is going to see, not the building.

Mr. Stringfellow: But when you drive by, you very clearly see the building that is there now.

Mr. Brox: The building that is there now is right out by the street.

Mr. Biscore displayed an overhead view of the tower and explained that the building would be going in behind the existing facility.

Mr. Biscore: So the visual impact of the facility, of the equipment, the building or the shelter, is minimal. There's already a building there.

Discussion followed.

Mr. Biscore: What's proposed by the engineer ? on page A-1 of the drawings, it spells out everything that is proposed, what MediaFlo is bringing to the site, to the facility.

Mrs. Hacker: But it doesn't answer all our engineer's questions.

Mr. Biscore: The exterior elevation plan; structural analysis is not complete. I'm under the impression that structural analysis isn't required for the Planning Board, that's what I was told by our attorneys, but that the structural analysis is required by the Building Department to get the Building Permit. So we didn't provide it because I didn't think it was a necessity for the application; we're in the process of doing it.

Mrs. Hacker: That's only one of seven items submitted by the engineer.

Mr. Biscore: As far as landscaping is concerned, as you can see from that overview shot, if the Planning Board would request that MediaFlo to do some landscaping, we can provide landscaping to the north and south of the access road. There is no reason to put landscaping on the side where our equipment is going because that's all forest. You want the landscaping to shield it from the road. So what we would propose is an odd-even of shrubs to decrease the visible impact of the facilities. I would request a conditional approval, rather than to get it tabled because a lot of these things?

Mrs. Hacker: Our Board doesn't give conditional approval.

Mr. Downey: They really avoid doing that, it's not something that they do, especially with a list like this, it's just not their policy to do that; we've had problems in the past. If there are things on here that the engineer wants, and you can convince the engineer that things don't need to be done or should be

done in a different fashion, that's fine, you can talk to them, engineer to engineer. But the Board is not going to give a conditional and deal with it later. I know that you came from Albany, but as far as doing it, the Board wants it done; then show it to the engineer and make sure it's okay. If you want to talk to the engineer you're welcome to do that. If you can get it to them ahead of time, they can look at it and get it signed off and then they can give approval to us. If you want to do that, that's fine; you don't have to go through us to get to the engineer; but they are not going to give a conditional approval, especially with a list like this.

Mrs. Hacker: Because of the timing we normally would have just tabled this and we wouldn't have had an open discussion on it just because we haven't had a chance to see what's requested from the engineer. We haven't even been able to openly discuss the fact that maybe we should do a drive by and see what we feel is necessary for landscaping issues and how we would address them. Having it tabled we're looking at March 11 and a March 25 meeting schedule. So in order for you to be on the March 25 agenda we would need your submittal by March 11.

Mr. Biscore: Are there any other questions besides what the engineer has?

Mr. Hacker: We do like co-locations, but we are paying our Town Engineer for advice on these projects and his advice is something we will follow through on, and we will go line by line.

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KIDS COUNTRY CHILD CARE ? 7346 BOSTON STATE ROAD

Mr. Downey: I spoke with Bill Ferguson about the four items that were on the Temporary C.O., and he said that three of them are done, yet he confirms, both visually as far as the dumpster goes, that was never done. So that, technically, was not done, so what are they doing with it? Obviously it's not there. I think that's something we're going to have to look at because their attorney said "yes, they had met all those requirements" and as you recall we discussed this: did they really? Because she had made a bold statement that it had, been and apparently they have not. So I think that is something we need to deal with. Obviously we have not had a response to our engineer's letter either.

Mr. Bernas: To be honest I'm lost in this whole process. I don't know what we're asking anymore.

Mr. McGirr: Seems like every time this comes up we're asking for something else, we keep adding to the list.

Mr. Downey: That's not true. What has happened is she comes back and each time she has given us a site plan that has differed, an as-built site plan that is different each time she has given us one. The history of this is she went to build it, had a permit; had a site plan review and then she had a problem with her builder and so she needed a Temporary C.O. So they agreed to a Temporary C.O., she had four items she had to do; long period, I guess there's litigation, on whatever, that went on. So then she came back and she made changes, so she didn't keep everything the same as what was on her site plan. So the Board, trying to work with her, asked for an as-built so you could see what was done. The building was two feet longer, she had changed the play yard, plus the fact that the sign wasn't shown on there; there wasn't a tree in place.

Discussion followed referring to the many issues of previous meetings and discussions.

Mrs. Hacker read the TVGA letter dated January 21, 2008 that was sent to Theresa Betz and copied to the Planning Board.

Discussion followed regarding health issues, State regulations, and the disposal of dirty diapers.

Mr. Downey will send a letter to Theresa Betz asking that she address the concerns in the TVGA letter dated January 21, 2008, and the dumpster placement issue.

Discussion followed.

LIAISON ? COUNCILWOMAN MAGHRAN

Mrs. Maghran: The Town Board meeting was cancelled last week due to Town Board members being in attendance at the Association of Towns meeting in NYC, so I really have nothing for this evening.

NON-AGENDA ITEM

7380 Boston State Road ? Randy Barker

Mrs. Hacker: Randy Barker is the owner of the property across from B-Kwik. This is not on our agenda for tonight, because we do not have a site plan to review for it. The Board wasn't sure whether you were the owner or if the other gentleman actually has closed on the property. The last time he was here we were under the impression that he was going to do that in a couple of days.

Mr. Barker: I am still the owner of the property, that didn't close.

Mr. Downey: When he was here it was asked of him if the premises had been inhabited and discussion of whether it's been over a year or not being used. Basically he said, "no it's not been for over a year," so to let you know the information that we got was from him. The issue came up with what is he doing and so on; so he's the one that said no it hadn't been.

Mr. Barker: He should know better; the Outback popcorn guy is in there; my landscaping equipment is in there; it's been occupied since day one that I've owned it. He told me that he's been working with the Building Inspector, and even had a letter supposedly to show me that everything was kosher, supposedly, and the Building Inspector?

Mrs. Hacker: Who's the letter from?

Mr. Barker: The Building Inspector; and the Building Inspector called him today and told him there's a meeting that you need to go to; and he just showed up. That's why I'm here.

Mr. Downey: He didn't come in with a plan, he came in unofficially and said "I'm buying it, I'm going to put my stuff in there; what do I have to do? People do come unofficially to get a sense of this Board, as to what we're doing, they bring plans, whatever; what do I have to do? He just came in and said, "I'm doing anything I need to do," kind of thing.

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Mr. Barker: I had no idea he was coming. We were supposed to close last Tuesday and he called me the day after the meeting. I talked to my attorney, wrote a letter, he I guess issued the letter here. I'm just here tonight to hopefully resolve any questions about occupancy or what we have to do.

Mr. Downey: It sounded to me and to the Board ? he made it sound that he wasn't going to change anything in the building, and it's my understanding there's no special use permits in the building, is that correct?

Mr. Barker: It's zoned commercial for as long as I've owned it. There is no special use permits.

Mr. Brox: Theoretically it requires a special use permit because there are, by your own letter or Attea's letter, at least two different businesses going on at the same time, if not three. The Town Code only permits, one.

Mr. Barker: When he buys it that'll be gone.

Mr. Brox: The issue then is when he buys it, it becomes a change of use from whatever businesses that you have going, the corn guy, your own fence business, your own landscaping business?

Mr. Barker: The fence guy is gone. There's my personal use stuff and the popcorn guy.

Mr. Brox: Then he can buy it, it's zoned properly for what he wants to do; that shouldn't have been an issue at the closing. He still has to come in for a site plan review because it's a change of use because he's going from landscaping business and the corn kettle guy, whatever he did there beside store a truck, to an enclosed building retail operation.

Mr. Barker: That's what I had been doing there when it was Ranco Equipment and I had sold that. I was doing a landscaping business there with my son and I continued doing that. There was a fence guy in there doing retail, he had the up front showroom there for a long time and about a year ago he moved out of the front part, and just had the warehouse part. He was still doing the retail operation, but because of costs he just couldn't afford everything.

Mr. Brox read parts of Town Code Section 123-71 B 3; and from 123-128, which is a reference.

Mr. Barker: When he was supposed to close, the lawyer thought it was his obligation to tell the lender that there was a problem, and he didn't know where it was and so they said we can't close until we get something from the Town basically saying it's zoned properly to run this business out of here, so we can close.

Mr. Brox: I would suggest that if the Town Attorney feels comfortable with putting up a letter?

Mrs. Hacker: We have never done that, getting involved with the closing of a property and I sure don't want to sign my name to anything.

Mr. Downey: I think after he leaves I would like to go into Executive Session to discuss this.

Mr. Barker: All we're looking for is something that says it's zoned?

Mrs. Hacker: He has still got to do Site Plan Review.

Mr. Downey: We're going to have to discuss this because there are other issues too. Part of the problem is that he's giving us information different than you gave us; it was haphazard, he just showed up at the meeting; he showed up kind of with the impression that we were going to give him a rubber stamp right then and there for whatever he wanted to do; he said "well I opened up at other places and I didn't need to do all this." That was a one use, same use situation, it was like he was expecting us to tell him exactly what he has to do and not do; that it was okay to do whatever he wanted to do. If he is sure that he needs it, that's up to him, but you can't walk in here and expect us to tell him with no information and nothing in writing, that it's okay to do what he wants to do. We were kind of blind as to what? and he wasn't happy that we wouldn't tell him that it was okay to do what he wants to do. He said he met with Code Enforcement, which is fine, but if he had any questions, then why is he down here? It was really confusing as to what he was doing here and why he was seeing us if he didn't think that he didn't need us. If he didn't think that he needed to do a site plan, then why is he here? We handle site plans, not permits.

Discussion followed: most of the previous conversations being repeated.

Mr. Barker: I just wanted to make sure that you knew that it hasn't been vacant. I wrote to the people that used to run it, you can call their businesses and ask them. You're more than welcome to come down and go through it; the popcorn guy is still there.

Mr. Downey: I really think he needs to be at Code Enforcement. If he wants to know if it's zoned properly, which I think it is, that comes from Code Enforcement. The next step is: what about the uses? I don't think that he laid out clearly for Code Enforcement everything that he's planning to do and if there would be a change.

Mr. Downey suggested that both Mr. Barker and Mr. Witkowski talk with the Code Enforcement Officer so that everyone is on the same page.

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Mrs. Hacker made a motion to go into Executive Session, seconded by Mr. McGirr and carried

Following discussion Mrs. Hacker made a motion to return to Regular Session, seconded by Mr. Stringfellow and carried.

CODE REVISIONS ? DISCUSSION

Due to the lateness of the evening, Mrs. Hacker postponed the discussion on Code Revisions.

Mr. McGirr made a motion to adjourn at 9:30 AM, seconded by Mr. King and carried.

Respectfully submitted,

Patricia J. Hacker

Chairman

PJH: tjf