

Planning Board Minutes July 10, 2007

BOSTON PLANNING BOARD JULY 10, 2007

PRESENT: Patricia Hacker, Chairman

David Stringfellow

David Bernas

Bill McGirr

Santo Tricarico

EXCUSED: Robert Chelus

Tim Kirst

Jeff Mendola

ALSO Brian Downey Town Attorney

PRESENT: Brien Hopkins Councilman ? Town Board Liaison

Jonathan King Prospective member

William Brunner Applicant ? 7166 Boston State Road

Chairman Hacker called the meeting to order at 7:31 PM.

MINUTES

Mr. Stringfellow made a motion to accept the minutes of June 26, 2007, seconded by Mr. McGirr and carried.

CORRESPONDENCE

Secretary Faulring reported the correspondence:

- Brian Downey letter dated April 24, 2007 regarding conflicts of interest.
- Planning Board letter dated June 27, 2007 to Town Board with recommendation of the appointment of Jonathan King as an alternate member
- Scott Kinsman review dated July 9, 2007 for the Boston Valley Complex proposed project
- CEO William Ferguson's end of month report for June
- DCEO's Lisowski and Juda end of month reports? for June

SITE PLAN REVIEW ? COMMERCIAL ADDITION ? 7166 BOSTON STATE ROAD

Mrs. Hacker read the correspondence:

- Planning Board letter dated June 30, 2007 to William Brunner requesting he be in attendance at this evening's meeting
- Scott Kinsman review dated July 9, 2007
- Richard Brox review dated June 27, 2007

Planning Board members stated their comments and concerns.

Mr. Stringfellow:

- All setbacks are not shown
- Many trees are being taken out ? not many being put in
- Construction materials not described - elevations looks like a brick building matching what is there now?

Mr. Brunner: yes

- Requirements for Final Site Plan review require more than tonight's conceptual plot plan, you need to review the Site Plan Review in the Code Book and make sure everything is covered

Mr. McGirr: Nothing at this time.

Mr. Bernas:

- What about a dumpster location?

Mr. Brunner: We were planning on putting in a dumpster surround all the way to the back. I did want it by the lamp post that lights the back parking lot?

Discussion followed regarding the type of lighting.

Mr. Brunner: If I eliminate the two parking spaces closest to the rear of the building, to save the tree, then it's really the same parking area that it was. I think the lighting that is there should light the parking area, if it doesn't I would move one back a little further, I don't think it should need another new light post and more lights on it.

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Mr. Stringfellow: Our concern is that the lights from a commercial site don't shine on the neighboring properties, they don't like it. We usually ask that you restrict the lighting to your own property. I think what Foit-Albert is requesting is what kind, what model is going to be there.

Mr. Brunner: I wasn't going to change lighting at all.

Mrs. Hacker: We need to have a description of the size, shape and type of lighting.

Mr. Stringfellow: The make and model number of the fixture.

Discussion followed regarding elimination of parking spaces in order to save the 14-inch maple and either a lilac or another 12-14-inch maple.

Mr. Brunner was advised that with the submission of the final site plan submittal a landscape plan will also need to be provided.

Other concerns to be addressed:

- Letter of intent for the project
- Letter of representation if Mr. Brunner is not able to attend a meeting
- Neighboring existing buildings need to be identified
- No existing or proposed contour lines or elevations are shown
- Review Chapter 97 as advised in Foit-Albert review
- Not in favor of landscaped island by handicapped parking
- o Painted chevron more desirable

LIAISON ? COUNCILMAN HOPKINS

Mr. Hopkins introduced himself to Mr. King and advised the Board members that the Town Board would vote on the recommendation for his appointment at their July 11 meeting.

OLD BUSINESS

Kids Country Child Care ? 7346 Boston State Road

Mrs. Hacker read letter of invite to Ms. Betz.

Mrs. Hacker read portions of the minutes from June 26, 2007.

Planning Board comments:

- Play yard dimensions are written, but play yard is not shown
- Approved site plan shows 3 trees, but are not shown on submitted as-built site plan

Ms. Betz: I apologize for not having what I thought was an "as-built" site plan. I hired someone to draw this and obviously he was not competent in doing the job correctly.

Ms. Betz: This small island in front of the building, if there was supposed to be a tree there, I'm thinking about putting a storage shed there to house the lawnmower, snow blower, yard tools. Currently all of

these have to be transported here because I have no storage. Obviously, you can't put something with gasoline in it in the center itself. In the winter I'd have to dig out to the back to get to the snow blower.

Ms. Betz: The tree that was near the sign is there, we never took that tree out. The other tree, I didn't put a tree back because my neighbor's sign is in the wrong place and it's already difficult to see (out the driveway). So if I missed a tree I'm sorry I don't know which one you're talking about.

Mrs. Hacker: We approved a site plan that has not been built as approved. We don't want you running a business that's not on paper as approved. The placement of the play yard has not been shown; what we approved is not what's there.

Mr. Hopkins: If the shed is a new issue, first of all would it be 10-feet away from the side line, also you can not put a shed in-front of a building that would have to go before the Zoning Board of Appeals for a variance.

Mrs. Hacker you need to address omission of a tree; getting a variance for the placement of a shed. We'll keep this in old business until then and have an as-built drawn to show that.

Ms. Betz: Then I should address the fence at the same time? But I can't address the fence until I find out that I'm going to get the grant from the State.

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Mr. Downey: The Planning Board only has the right to make, and is required to make you do things according to the code. If there's anything you want to do that the code does not allow you to do, they don't have the right to allow you to do it. You have to go to the Zoning Board of Appeals. However, you've got something that's been longstanding, and I'm not sure that the Board wants to wait for a grant. You can always go to the ZBA when that comes through, but you've got an open case here that has created an open case in the Court.

Ms. Betz: Do I have to actually put the shed on the property before I get the as-built done? I honestly don't have the money to do this right now; this is something I was going to be doing.

Several individual discussions followed.

Ms. Betz: The third tree is there, it was never taken down. The sign was supposed to be on the left, but because of the pole the utility company put in, they couldn't put the sign there so they put it under the tree, that is the one change to the front; that's why I'm confused about the three trees, there should just be two ? the one in the middle island and the one in front.

Mrs. Hacker: This was brought to our attention by the Code Enforcement Officer, because it wasn't to the plans that were approved. We thought that having an as-built, and then approving that as-built site?

Mr. Downey: I don't know if you're allowed, I'll have to look, usually you're not.

Mrs. Hacker: I would like to table this matter, until we find out what we're allowed to approve. Is this Board willing to accept the plan, when they are redrawn by a licensed certified engineer, as-built to include the play yard, the omitted tree, the play yard physically drawn in properly, show the utility pole, show us what is actually there?

Mrs. Hacker made notes on the site plan and gave it to Ms. Betz

Mr. Downey: You have to show what is there. It's supposed to be exactly the same. Right now the only issue that is of real question is this tree, in the sense of any legal question. We know that this has to be corrected. Show the tree, the playground.

Mr. Stringfellow: There is also another tree that was supposed to be planted to the left as you go out of the driveway.

Mrs. Hacker recapped changes to be made, but not limited too:

- Play yard location

- Omitted tree
- Addition of one tree
- Utility pole placement

Mr. Downey: You really need to have him go to the property and draw what is there. It's really not fair for this Board to tell you what this guy didn't do. Clearly he didn't go out and look at that property; which is what as-built means. Generally you go out and take pictures; and measurements and he didn't do that. It's not this Board's job, or your job, it's part of his job.

Mrs. Hacker: We will keep this in old business. We will wait for an opinion from the attorney and we will ask Mr. Brox to review the issue.

Mrs. Hacker asked if there were any further business.

Mr. Bernas: We asked for a copy of the conflict of interest from Downey and Downey, why did we ask for a copy of that letter?

Mrs. Hacker: Because of the projects that we have coming up, that we already know there will be conflicts ? the fire hall, the number of members that will be able to participate...

Mr. Bernas: I have issue with the letter dated April 24 and read part of paragraph 1 of the letter which states in part: ??any member who has a conflict of interest on a matter before the Planning Board should not take part in the discussion and vote on the matter and recuse him or herself from the process on the pending application.?

Mr. Bernas: What's to say that I recuse myself from some Planning Board activity, and take a seat with the public and I am going to say whatever I want to say?

Mrs. Hacker: Nothing, you can do that.

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Mr. Downey: No, I think you need to recuse yourself, you don't really?

Mr. Bernas: How can I be prevented from speaking?

Mr. Downey: Because there is an appearance of impropriety.

Mr. Bernas: In the example that was attached, I don't think that it said that somebody had to recuse themselves from the presence of the meeting. My problem, there is a matter before the Board that is going to affect me as a neighboring property owner, and I'm not supposed to say anything because I'm on the Planning Board ? the Webber property directly across the street from my house. I can say that I'm going to excuse myself from the Planning Board meeting that night, but I'm going to show up as a part of the public.

Mr. Downey: I'm not sure you can do that.

Mr. Bernas: How can I be prevented from doing that?

Mr. Downey: Because the Board can ask you not too. The problem is that once you're on the Board you have a?

Mr. Bernas: I don't forfeit my right to speak as a taxpayer on an issue that's before the Planning Board; I'm no less of a member of the public than anyone else that's entering. I didn't give up that right when I joined as a member of the Planning Board; and if that was what should have happened then that should have been told to me before I signed on with the Planning Board.

Mr. Downey: I think if you look at the conflict of interest in the front of the (Code) book, which everyone was supposed to read before they signed on, I think there is a discussion about that.

Mr. Bernas: That was never mentioned when I was interviewed.

Mrs. Hacker: Not at the interview, when you signed the book.

Mr. Downey: You were supposed to have read that; technically it says ?I read it? when you sign on. The problem is it's the appearance of impropriety and stepping back from that. I can, if you want, get a formal opinion on it; but I recall in another situation that doing that, it appears that you are in a position within that Board.

Mr. Bernas: Does the Code book read that the minute I sign on that I give up my right to speak on a matter that's before the Planning Board as a neighboring property owner? In other words, did I relinquish the privilege?

Mr. Downey: I can find if there is some limitation on it.

Mr. Hopkins: For the years I've been here, they were never handed that book until they signed the oath book.

Mr. McGirr: We can't even get a book now. Dave won't give me one.

Mr. Downey: It's online.

Mrs. Hacker: We do discuss the conflict of interest during the interview.

Discussion followed.

Mr. Bernas read from Section 16 3 E, under the Code of Ethics.

Mr. Downey: I will check on the limitations.

Discussion followed.

Mr. Stringfellow made a motion to adjourn at 8:26 PM, seconded by Mr. McGirr and carried.

Respectfully submitted,

Patricia J. Hacker

Chairman

PJH:tjf