

Planning Board Minutes May 13, 2008

BOSTON PLANNING BOARD MAY 13, 2008

PRESENT: Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

David Bernas

Mark Coppola

Jonathan King

Bill McGirr

ALSO Brian Downey Town Attorney

PRESENT: Cathy Maghran Councilwoman ? Town Board Liaison

Richard Brox Planning Consultant

Don Hoefler TVGA ? Town Engineering Consultants

Rich Hawkins Councilman

Jim Pluta Councilman

Donald O'Bryant North Boston Fire Company President

Kenneth Manista North Boston Fire Company ? New Building Chairman

Richard Lee North Boston Fire Company

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

MINUTES

Mrs. Hacker asked if there were any corrections or additions to the minutes of April 22, 2008.

Being none Mr. Stringfellow made a motion to accept the minutes, seconded by Mr. McGirr and carried.

CORRESPONDENCE

Secretary Faulring reported the following:

- ? Code Enforcement Officer Ferguson's April end of month report
- ? Deputy Code Enforcement Officer Juda's April end of month report
- ? Planning and Zoning Summer School registration form and agenda
- ? TVGA letter dated April 21, 2008 regarding Boston Valley Phase 1 Stormwater Management with enclosures of E&M Engineering letter dated March 14, 2008 to Town Clerk Shenk; and Town Board letter dated November 9, 2007 to Raymond Weber
- ? Other correspondence to be read at point in agenda

NORTH BOSTON FIRE COMPANY

Mrs. Hacker read the following correspondence:

- ? Richard Brox review dated May 9, 2008
- ? Don Hoefler from TVGA review dated May 12, 2008

Mr. O'Bryant was given copies of both reports.

Mr. Bernas excused himself from discussion as a Planning Board member, due to his conflict as North Boston Fire Company Fire Chief.

Chairman Hacker asked if there were any comments from the Board members.

Mrs. Hacker said her one concern was addressed after she reviewed the original file copy of the vicinity map. (Members received copies of the original and the requested 200% offset line was hard to distinguish on the copies).

Mr. Stringfellow stated that he feels that this site plan has addressed all of this Board's concerns.

Mrs. Hacker asked for a motion.

Mr. Coppola: I make a motion that we accept and let North Boston move on and go to the Town Board.

Mr. Stringfellow: I'd like to correct that. We recommend that the Town Board approve, we don't approve. With that I will second the motion.

All eligible members voted in favor of the motion.

Mr. O'Bryant asked what to do from here.

Mrs. Maghran: Now that it has been recommended for acceptance here, Thelma (Faulring) will send a letter to Town Clerk Shenk, with the recommendation, and you will be on the Town Board agenda for their next meeting. May 21st.

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Mr. Bernas returned to the Board at 7:35 PM.

KIDS COUNTRY CHILD CARE ? 7346 BOSTON STATE ROAD

There was no correspondence received or sent.

Mrs. Hacker: I did some research, verbally only, with my State of New York Health Department contact and with my contact at Kissing Bridge that used to run the day care, both seemed to feel adamantly that there has to be garbage pick up and removal from the facility. We also went through the Code and David (Stringfellow) pulled 93-7 C, which in part states: ??When approved by the Town Board owners of non-residential properties may collect, convey and disposed of privately generated municipal solid waste by their own containers and/or trucks, provided that they comply with the provisions of this chapter applicable thereto and to the New York State Department of Environmental Conservation regulations.?

Mr. Downey: I did some research too. I called the Erie County Health Department. They said there are no special regulations for daycare. They said they basically have to deal with trash and rubbish as anyone else does. I read that same Town Code section that David referred to, and agree that does allow non-residents of the facility to truck it out themselves.

Mrs. Hacker: Won't they have to get Town Board approval to do that?

Mr. Downey: Yes, with Town Board approval.

Mrs. Maghran: Now I've got things here from the Erie County Health Department that says: "Trash, garbage and combustibles materials must not be stored in any room or outdoor areas adjacent to a facility that are ordinarily occupied or accessible to children." And I have numerous other articles on food, all in regards to day care centers, with the proper disposal of food in containers right away, outside, not accessible to children, not accessible to rodents, not accessible to insects. This is Erie County Health Department Day Care Center Regulations. I have Housing and Hygiene, and Garbage and Refuse. It's the way it's interpreted, but it sounds that it needs immediate storage in hard containers, placed outside; not accessible to children.

Mrs. Maghran gave this information to Mr. Downey for his review.

Mrs. Hacker: Is this the only issue that we have left on this Board for Kids Country Care?

Mrs. Maghran: What about the drainage in the backyard, did they ever comply with that?

Mr. Stringfellow: We are still waiting for them to submit an as-built site plan.

Mr. Hoefler: I was going to ask if that as-built had been submitted.

Mrs. Hacker: Can we get the garbage situation off our Board by referring that to the Town Board, in regards to the Erie County Health Department Regulations; and the Code that so states that they need a special permit for permission from them and get that out of our jurisdiction?

Mr. Downey: Let me look at the information that Cathy (Maghran) has provided. It may almost be a two-headed issue: one is what they do immediately; and then one is what they do afterwards. But let me take a look at this first. I can tell from our Code and from Erie County, I think there are regulations how they handle it, but I don't think there are regulations, from what I can see, that says they have to handle it as far as taking it and putting it somewhere, or having it removed from the premises in a certain fashion. So I think there are alternatives in that situation. Let me just look at this and make sure that there's not something that overlaps, that makes it a possibility for them to do it one way or another. I

thought it was interesting because the woman I spoke with from Erie County, actually went and spoke with a Supervisor, so it wasn't an off the cuff answer, and she was quite sure of her answer.

Mrs. Hacker: More than one person has stated that we would not be able to bring that garbage to our driveway and have it disposed of.

Mr. Coppola: No it has to go to a facility designated for that type of waste.

Mrs. Hacker: No, so therefore shouldn't be put in your personal vehicle and taken home every evening, and put in your own garbage. If we know that's being done, that should be part of the question.

Mr. Stringfellow: To the best of my knowledge, we don't have any knowledge that's being done.

Mrs. Maghran: I believe she told us that. She said she was transporting garbage.

Mr. Brox: So does her lawyer in her letter.

Mr. Coppola read in part from the lawyer's letter: "transports garbage on a daily basis from the property to a suitable disposal facility" that's in the letter from the lawyer.

Mr. Downey: So that's different from taking it to her home.

Mr. Coppola: I think this should be passed on to the Town Board. Why are we dealing with the dumpster?

Mr. Stringfellow: I agree that's not a Planning Board issue.

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Mr. Downey: Let me take a look at this, if I don't see anything objectionable, I agree I think that we should put it onto the Town Board.

Mr. Brox: The trees planted are not the sizes that were specified on their own drawing.

Mr. Coppola: Mr. Downey, in this letter that we have in our correspondence and everybody should have received this, in your statement that "three of the four conditions were completed except for the fourth condition regarding the dumpster" what is this other issue that you're bringing up?

Mr. Downey: Because we don't have a final site plan. What happened is that they got a temporary C.O. and so there were four issues for that temporary C.O. which is kind of a separate issue, in a way.

Mr. Coppola: I thought the dumpster was the only issue. Now I find out there were other issues.

Mr. Downey went on to explain the problems with the contractor and the history of the situation at Kids Country Child Care.

Mr. Coppola: Then I need some more input, because I'm a member of this Board now, in order to be able to speak in an intelligent manner.

Mr. Downey: We'll have to see about getting you some past documents. Some of this is even before my time on this. But the letter does speak to two things that I have mentioned: one is the site plan and one is the dumpster which is regarding the C.O. Because basically we said let's make sure that we deal with all the issues so that we don't have something come back later, and we went back through it. She claims that she has met all four requirements. Town Code says that for final C.O. she has to have Board approval, if we're going to go that way, which we're leaning toward.

Mrs. Maghran: What about the drainage?

Mr. Downey: That's part of the final site plan and we haven't gotten that. She said because of the snow that they couldn't go out to finish that up.

Mr. Downey: As far as the issue on the trees, I think we should make it clear on that and also say that we're waiting on the site plan as to; I think we need to put that in writing to her, so if it comes up it shows that we were following up.

Mrs. Hacker asked that a letter to be sent to Ms. Betz stating that we are still awaiting final site plan, the garbage concern?

Mr. Stringfellow: In spite of everything else, that place looks better as it is now, than it is going to look with a dumpster right out there in front of it. If she can get rid of her garbage legally and acceptably without a dumpster, the Town looks better and I would feel we ought to go that way, if we can legally.

Mrs. Maghran: It's not only the diapers, it's the food, waste and storage.

Mrs. Hacker: Does anyone still have the original plan of the layout to know if there is a back storeroom for garbage.

Mr. Brox reviewed the file copy of the original building plan and reported that there is a walled storage room, adjacent to the sick alcove.

Mr. Coppola: So how is that going to be handled?

Mrs. Hacker: We will table the matter; Thelma will send a letter to her and address those points and we will wait until we hear?we can't require her to get it to us in 20 days, 30 days?

Mr. Coppola: Why can't we put this dumpster issue to the Town Board, and worry about the trees and the site plan?

Mrs. Hacker: Because we don't have an answer on the dumpster, or the garbage and Brian wants to do some research into it for us before we sent it to the Town Board.

Mr. Downey: Because if she is required by New York State to have a dumpster, then we've go to deal with it. As long as we can deal with this, then we'll have to pass it on. But we have to make sure in light of some of this that we're not passing on something that we shouldn't be passing on. Here's the thing it is our problem, if she can't go to the Town Board because of the requirements she has to do, then it is our problem because then we have to deal with it on the site plan; a dumpster or something equivalent.

Mr. Brox: The trees are not an issue. Looking on the drawing the size was not specified. She has planted two trees, another one was not planted because of the sign location.

Mr. Downey: In the letter ? we're still waiting for a site plan, and we are still researching the dumpster issue.

Mr. Brox: Chris Wood mentioned that they could just go back out there and correct it. Apparently they haven't done it yet. I'll give him a call.

Mr. Coppola: Who is going to make the final determination, on whether or not they have to have a dumpster? That's what I don't understand, where they're going with this.

Mr. Downey: What I'm going to decide is if there is a requirement under law for her to have a dumpster or similar-like facility; if she is not then the Planning Board can say ?make an application to the Town Board,? to do what you're doing right now.

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Mrs. Hacker: The site plan will get approval from our engineer, the Town Attorney and from us.

Mr. Coppola: That I understand.

Mrs. Hacker: With those two things done we can sign off on it and we'll send it to the Town Board for their approval.

Mr. Coppola: That's Code Section 63-7 C, not 93-7, you said 93-7.

LIAISON ? COUNCILWOMAN MAGHRAN

Mrs. Maghran had nothing to report from the Town Board.

Mrs. Hacker: Is anyone aware of anything going on at Nicky C's? I got a phone call that there is a secondary business running out of the food service, I think an engraver in the rear portion of Nicky C's. That would make a multiple use. I haven't been in there to see it.

Mrs. Maghran: I was in there about a month ago, but I didn't notice anything.

Mrs. Hacker: I mean Charlap's, not Nicky C's.

Mr. Brox: I'll stop on my way home and check it out, then give you a call.

Mr. Downey: At a prior meeting you had asked me to do some research on open meeting law, requirements for notice for special meetings. The law basically says that it has to be reasonable, there's no bright line. If you have a scheduled meeting, you basically have to give three days notice. If it's not a scheduled, it can be less. Part of it depends on the type of meeting you're having. If it's a really important meeting, they look at that as far as a scale. There was one case where they did one hour's notice, they said your meeting wasn't that important to have one hour's notice. 24 hours apparently has at times been okay. What they usually ask for is, there's two parts to it: 1. is you give notice to people on the Board, so you don't exclude people so that you can precast the vote; and 2 is notice to the public. Sometimes there were cases that said they were called and then maybe sent a letter, which I think the Town Board has done on occasion when they've had special meetings. And also try to publish it at least in one of the papers. Try to put notice up in the Town Hall here, maybe even throw it in the paper if you can. They're looking for, as much as you can, to notice to the public. You could put it on the website, if you got a publication if you can. The Town doesn't use the Buffalo News as such, but sometimes what people might do, they have a section in the paper, is to call them, they may not print it, but you can say at least we tried, and that we have given all these types of notices.

Mrs. Hacker: What do we have to do to get it on the website? Is that a one day thing?

Mrs. Maghran: Yes. All you have to do is call Paula Litwin, and she will put it on immediately.

Mr. Stringfellow: But give the rest of us some other form of notice. I don't know but I have never done?

Mrs. Hacker: I'm saying in worse case scenario, if we had to do something in two hours or twenty-four hours.

Mr. Stringfellow: You put it on the web and think I'm going to know about it?

Mrs. Hacker: No, I'm saying putting on the web for the general public has access to it. There are people who go to the website every day to see what's going on.

Mr. Downey: So you're trying to notify the Board and then notify the public. And so the Board, they may call, throw it in the mail, fax it, you try to do the best that you can and then the public, like a notice up in the hallway there, a notice on the website, even maybe calling the Buffalo News, anything that you can to try to get it out to the public, helps you later on in case you're defending against someone saying you violated the open meeting law, you purposely tried to limit?

Mrs. Hacker: Mrs. Maghran, have we had new applicants for the Planning Board?

Mrs. Maghran: Not that I am aware of as this week. But there was a letter in the paper. I know a couple of letters came in for other Boards. We are still looking for??

Mr. Stringfellow: One member, two alternates.

Mrs. Maghran: I'll ask that the ad be run again.

Mrs. Hacker: Is there anything else for the Board?

Mr. Coppola: I'm wondering, because of what little paperwork that I got, but there are some other projects on the table. I'm wondering when those are going to be discussed; meaning the communications tower and the traffic study for the Boston Valley Square.

Mrs. Hacker: Do we have that information that we can get to him, Thelma?

Mr. Coppola: No, I have those studies. I'm wondering when this Board is going to start the discussions on it.

Mr. Brox: Nothing happens until they come back to us.

Mrs. Hacker: Until they approach us with their paperwork, and then you'll get it in your mailing.

Mr. Brox: We don't initiate anything. It's done by the applicant.

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Mrs. Hacker: They started the process, but they were required to finish and do other work. So if you have the last correspondence in regards to it?

Mr. Coppola: I have the drawing for the tower; I was here for my interview?

Mr. Brox: The tower's gone and done.

Mrs. Hacker: No its not?

Mr. Hoefler: I have a similar question. Ken Kloeber has been calling me, on Boston Valley Square. It seems to me that he might need to know where he stands in the process in order to get?

Mrs. Hacker: We're not going to call Ken Kloeber and walk him through it. He left here needing? I don't have it in front of me.

Mr. Hoefler: I believe he was in the SEQR process itself. The traffic, I think historical preservation was another item and perhaps drainage.

Mr. Coppola: My point is that we need to be more proactive and at least discuss these things. We don't need them to be here?

Mrs. Hacker: We certainly do.

Mr. Coppola: Why?

Mrs. Hacker: We are not going to discuss between ourselves what we want them to do without them here. First of all?

Mr. Coppola: Why not?

Mr. Brox: Because that's not the way it's done.

Mr. Coppola: Then you have your laundry list put together and then when they do show up.

Mrs. Hacker: That's not the way the Planning Board works, because then we would be telling them what we want them to do.

Mr. Coppola: Is that why it takes so long for things to get done?

Mr. Brox: That's right, the applicants don't follow through. The applicants have the code, the zoning ordinance, the site plan, the subdivision. Those are all printed and any applicant worth his salt will have his lawyer, his engineer, his architect, whatever, read the Code and design it accordingly, they never do.

Mrs. Hacker: We have a couple that do.

Mr. Coppola: We have a package for the tower and we're sitting on it, and nobody said anything about it.

Mrs. Hacker: What are we waiting for from the tower people, does anyone know?

Mr. Coppola: They were here, there was a snowstorm and you guys didn't have enough people to meet, so when are they coming back.

Mr. Hoefler: There were issues and I don't believe, I haven't seen it resubmitted.

Mrs. Maghran: Landscaping?the building behind the building.

Mr. Brox: There was a little issue of landscaping out by the road. I figured that was all taken care of last month when I wasn't here.

Mrs. Hacker: No, they never came back. Maybe they don't have a customer for that space. So it isn't unusual that we'll get projects started, and you'll get some paperwork, but then it never happens, it never goes to page 2.

Mr. Coppola: I'm asking because they were here the night I was here for my interview and with the snowstorm?

Mrs. Hacker: And they haven't come back.

Mr. Coppola: And they haven't come back, and I'm wondering, what's the deal?

Mrs. Hacker: The night they were here I believe was just a preliminary discussion, there was no?

Mrs. Maghran: They were told that night what they needed as far as landscaping?

Mr. Brox: And there was some discussion about the building in back?

Several discussions took place at the same time.

Mrs. Maghran: Nothing was voted on because we didn't have enough people here, but we did sit down with because he came all the way from Albany and as a courtesy this Board did discuss with him what was needed. And he's never responded back. But they left knowing, everybody sat down and talked to him.

Mr. Coppola: I'm just trying to get on the same page?

Mrs. Maghran: He really wasn't prepared when he came either, with what this Board needed, and they sent him back to the drawing board with a few items.

Mrs. Hacker: And if Thelma doesn't get it in time for our next scheduled meeting, it still won't be here. We won't even have to address again. It depends on their schedule; that's why we don't know if we're going to have enough for a meeting.

Mr. Coppola: So you won't sit and discuss anything that you have on the table just to discuss it and get ahead of the game?

Mr. Brox: We occasionally discuss, on an as needed basis, we don't just pick things out the air and talk about it.

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Mrs. Hacker: Tonight's discussion with Kids Country has been on our table and we're really trying to get a decision made. This is a new project and we're in no hurry to push new projects done or to help them get it through quicker. It's not this Board's job to help them, it's this Board's job to check that they've done what's required.

Mr. Brox: To review their application material.

Mr. Coppola: May I be excused? There's a working structure fire.

Mrs. Hacker: Is there anything else?

Mr. McGirr: I make a motion that we adjourn, seconded by Mr. Stringfellow and carried.

Respectfully submitted,

Thelma Faulring

Secretary to the Boards and Committees