

## Planning Board Minutes September 14, 2004

BOSTON PLANNING BOARD      SEPTEMBER 14, 2004

PRESENT:      Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

Michael Pohl, Secretary

Margaret Andrzejewski

David Bernas

Richard Hody

Jeff Mendola

EXCUSED:      J. David Early

ALSO    Kelly Vacco      Town Attorney

PRESENT:      Dennis Kramer    Code Enforcement Officer

Brien Hopkins    Councilman -Town Board Liaison

Karl Simmeth, Jr.      Councilman ? Town Board Liaison to CAC

Joseph DeMarco      Applicant ? 5647 Herman Hill Road

Chairman Hacker called the meeting to order at 7:30 P.M.

MINUTES

Chairman Hacker asked if there were any corrections or additions to the minutes of August 24, 2004. Being none, Mr. Mendola made a motion to accept the minutes, seconded by Mr. Hody. All in favor.

#### CORRESPONDENCE

Secretary Pohl reported the following correspondence:

- Letter dated August 25, 2004 from the Planning Board to the Boston Town Board advising of acceptance of preliminary subdivision plat plan submitted by Dana Darling. Public Hearing scheduled for September 28, 2004 at 7:45 P.M.
- Letter dated August 25, 2004 from the Planning Board to the Boston Town Board advising of approval of site plan for duplex at 8899 Boston State Road, submitted by Kim Bingman.
- Letter dated August 27, 2004 from Erie County Department of Public Works, Division of Highways, to Gary (Garrett) Hacker regarding proposed Creekfield Subdivision.
- Noted received Town Board minutes of August 11, 2004 and September 1, 2004.

Other correspondence to be read at point in agenda.

Chairman Hacker made a change to the agenda:

- Added Herman Hill discussion
- Code Enforcement Officer Kramer
- Chapter 97 discussion following adjournment of regular meeting

#### COUNCILMAN BRIEN HOPKINS ? LIAISON

Councilman Hopkins had no report this evening.

Councilman Simmeth said he would wait until after the DeMarco discussion.

#### 5647 HERMAN HILL ROAD ? JOSEPH DEMARCO ? DISCUSSION ONLY

Mr. DeMarco described project:

- 60? x 40? metal building

· Will be detached from, and behind existing building, ? originally was attached.

Mrs. Hacker: Is he going forward with the variance?

Mr. Kramer: Yes, the public hearing is scheduled for October 7, 2004.

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5647 Herman Hill Road, con?t.

Mr. Brox: A variance is for the expansion of an existing building, this is a whole new building; go for a zoning change.

Mr. Kramer: Mr. Brox, we had talked about an addition, which was going to be attached to the existing building. At that point, a variance would be in order, wouldn?t it?

Mr. Brox: This is a permitted use in the C-2 district. Right now it might be legal non-conforming. An expansion of the size proposed is way over 25% and should be a C-2 District. It just doesn?t make sense to piecemeal one time after another, either do it right or don?t do it. A variance on something that big would be a travesty. Let the Town Board handle it as a zoning change and let the public have their shot at it.

A very lengthy discussion followed.

Mrs. Vacco to Mr. DeMarco: In the end it?s up to you. If you want to apply for a variance, you may do so. If you would like to apply to have your property rezoned, that?s your prerogative as well. I would be hard pressed to give you an opinion either way, and have you depend on that opinion in making your decision. I think that there are obstacles in both directions. The variance ? you have a self-inflicted hardship, so to speak. Having it rezoned, would bring a number of people to a public hearing and it would allow the Town to speak on the issue. If there isn?t negative feedback that would bode well with the Town Board members, a lot of negative would be taken into consideration. So you need to weigh both alternatives. Either way you can?t do what you want to do currently on your property, because it is not permitted in the zone that you are in, or it needs to be rezoned. Either way, what you want to do is not allowed in the zoning that you?re located in.

Mr. DeMarco: At a variance, don?t they bend a little bit on the situation that is already there? I?ve got four sheds there?

Mrs. Vacco: Just as there is a criteria for rezoning, there?s a criteria for a variance.

Mr. DeMarco: It seems that either way I go, I want to put a building up, it doesn't sound like it's going to work.

Mrs. Vacco: I'm not saying that either. I'm just trying to be honest with you, because there are two separate and distinct avenues for you to take; and you might get the section of Town Code that speaks to a use variance and what you would have to prove to get that, and then weigh it, and decide if you want to take your chances with the residents of the Town of Boston and the Town Board or the Zoning Board of Appeals.

Mrs. Hacker: In Mr. Brox's letter, read at the last meeting, it was his opinion that we don't do anything with this until it has gone to the Town Board and has been rezoned.

Mr. Brox: If Mr. DeMarco reads the information under the Zoning Board of Appeals and he feels that his expansion fits the criteria, he has every opportunity to make his case to the Zoning Board of Appeals. He will have to state his reasons why he wants to do things, but it has to fit the requirements under the Appeals for a variance, especially under 171 B, is there a physical reason why he has to do this type of building, in its location. He's got an avenue to the Zoning Board of Appeals, if they don't feel it's appropriate then his other avenue is a rezoning. My own feeling is that he would have a better shot at rezoning, but that's up to the Town Board.

#### COUNCILMAN SIMMETH

Mr. Simmeth: First, I would like to congratulate Mr. Brox on his appointment to the Board of Managers at Erie County Medical Center.

Mr. Simmeth: And, as you may know, I am the Liaison to the Conservation Advisory Council, and I know that tonight you are going to review the site plan review. Lynn Zachmann, a CAC member, has given me some paperwork concerning trees in Town, subdivisions. People buying lots, tearing down

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Councilman Simmeth, con't

perfectly good trees. There are some recommendations, some trees ordinances; maybe with the direction of Mr. Brox, I would ask that you take look at it and get back to me, especially with subdivisions

CODE ENFORCEMENT OFFICER KRAMER

Mr. Kramer: CVS is under way.

Mrs. Hacker: Why was worked stopped for two days.

Mr. Kramer: They hit some contaminated soil around the tanks when they pulled them out.

Discussion followed regarding disposal of contaminated soil, and products.

Chairman Hacker: Anything else?

Being no further business, Mr. Stringfellow made a motion to adjourn. Seconded by Mr. Pohl. All in favor.

Respectfully submitted,

Michael J. Pohl

Secretary

MJP:tjf