

PLANNING BOARD
Tuesday, February 5, 2019 – 6:00 P.M.
Basement Level - City Hall
Meeting Minutes

Members present: David Wheeler, Toni Goncalves, Bob Pelaggi, Reggie Thomas and Craig Pina.

Acceptance of Minutes 1-2-19

Motion to accept the minutes of 1-2-19 as submitted

Motion: Pina

Second: Pelaggi

In favor: 5

Opposed: 0

Endorsement of ANR Plans, Subdivision Plans and/or Lot Releases

The secretary stated that the developer has requested a partial release of cash surety for the work on Linwood St./Nadia's Way. She said the COB is currently holding the sum of \$38,328 and they are requesting release of \$32,308.80 leaving \$6,019.20; all inspection letters are received; we are just waiting for the as built. The remaining sum will be held until we receive the as built.

Action/Decision: Release the surety sum of \$38,328

Motion: Pelaggi

Second: Pina

In favor: Unanimous

Opposed: 0

ANR – Cumberland Farms/Wal-Mart Oak Street

The secretary said that during the site review hearing the board was notified that the property would be divided into two with a portion for Cumberland Farms and the remaining property to remain with Wal-Mart. They have submitted the plan to complete that process.

Action/Decision: Motion to approve ANR as submitted

Motion: Pelaggi

Second: Thomas

In favor: 5

Opposed: 0

1. Site Plan Approval

Property: 1020 West Chestnut Street

Proposal: Commercial Building

Applicant/Representative: New England Tortilla/JK Holmgren

Applicant's statement: Scott Faria said New England Tortilla is planning to move its existing plant from Everett to Brockton. He said the front of the building was built in the late 80's and at that time they also put in the back foundation. All the drainage has been installed on site.

He said that they have received an OOC from the conservation commission; added additional drainage to handle roof run off and added another storm sceptor CB. As per the OOC the maintenance to the existing stormwater system is to be done and inspected prior to the pre-construction meeting for the new construction.

Comments: Bob Pelaggi asked what the front building was used for and was told it is a company called Boston Fresh (they supply tomatoes to restaurants).

Rob May said that this new business helps to expand our existing base of food manufacturers.

Action/Decision: Motion to grant site plan approval with standard conditions

Motion: Pina

Second: Goncalves

In favor: 5

Opposed: 0

2. Definitive Subdivision

Property: Plot 2 Belgravia Ave.

Lots: 4

Owner/Representative: Curley & Hansen

The secretary said that the applicant has submitted a request for a continuance to the June 4th meeting. She said he has hired a new engineer; the applicant has agreed that he will re-notify abutters and re-advertise when the time comes.

3. Definitive Subdivision

Property: Melrose Avenue

Lots: Two

Owner/Representative: Curley & Hansen

Applicant's statement: Bill Self said that this applicant was before the board several months ago for a hearing; he also requested a continuance at that time to allow for his application for installation of sewer to be heard by the conservation commission. He said that he has since received his OOC. He said that he will need to record the easement plan for the sewer.

Comments: Craig Pina asked if there were any changes to the plan since the last meeting and he was told no. All his changes were made after meeting with the city engineer and prior to submitting this plan. He said his client is working along with Gary Lawcewicz for the installation of the sewer and the paving of the road.

The board felt that as two projects were happening at the same time along the street that this applicant should also be responsible for the paving of the street. Each approval letter will contain the requirement to pave the road. Bill Self said that the applicant's would work it out between themselves.

Action/Decision: Motion to grant approval of the definitive subdivision with standard conditions

Motion: Pina

Second: Pelaggi

In favor: 5
Opposed: 0

Waivers were requested to the following sections of the planning board rules & regulations:*

Section IV Design Standards

B Streets (Melrose Ave. is an existing street) Melrose Ave. will be paved.-See above.

(3) Width

(F) Utilities (underground) above ground utilities are existing

Section V: Required Improvements for an Approved Subdivision

C Curbs & sidewalks: no curbing or sidewalk exists

Other Frontage: 175' required, 60' requested for each lot.

*Note: The granting of these waivers does not negate the attached Ordinance requirements.

Action/Decision: Motion to grant above waivers

Motion: Thomas

Second: Pina

In favor: 5

Opposed: 0

There was a discussion on surety between the board and the applicant; it was decided that the terms of surety will be covenant at this time.

4. Definitive Subdivision

Property: 78 Kingman Avenue

Lots: Two

Owner/Representative: Attorney John Creedon

David Wheeler said that the applicant's step son attended Southeastern during his time as principal and he had interactions with the family.

Applicant's statement: Attorney Creedon said that at the request of the city engineer they have made some changes to the plan. It was explained that the curbing along Draper St. needed to be extended and they also added a deep sump manhole; they will also be installing sidewalk along that side of Draper and are asking for a waiver for sidewalks along Kingman as there are none.

Comments: Bob Pelaggi asked if the additional curbing and manhole would be catching all the water and was told yes (along Draper). The board was told that the applicant built the road under a prior subdivision application. Shane O'Brien said this is one of the last applications where an applicant went to the ZBA first; he said they received a variance for through lots and lot size.

Action/Decision: Motion to grant approval of the subdivision with standard conditions

Motion: Pina

Second: Thomas

In favor: 5

Opposed: 0

Waivers were requested to the following sections of the planning board rules & regulations:*

Section IV: Design Standards

B Streets (Kingman St. and Draper St. are existing streets)

(3) Lot size, frontage & width

(F) Utilities (underground) above ground utilities are existing on Draper St.

Section V: Required Improvements for an Approved Subdivision

C Curbs & sidewalks: waiver for Kingman St. only; Sidewalk and curbing is to be installed along Draper St. as on the approved plan.*

Frontage: 175' required, 116.62' requested; lot size 30,000' required, 11,406' requested; lot width waiver requested; 125' requested, 116.34' requested

Action/Decision: Motion to grant above waivers

Motion: Thomas

Second: Pina

In favor: 5

Opposed: 0

Surety will be by covenant.

5. Public Hearing - Proposed Zoning Change – Regulation and Zoning of Marijuana

Statement: Rob May said that in March 2018 a draft of this zoning change was submitted to council and the planning board subsequently had a hearing (5-1-18) and recommended the change favorably to the city council. Since that time the council has held several ordinance meetings and on 12-27-18 referred the document back to the planning board. He noted that the planning board is advisory to the council and their recommendation is not binding.

He said that the current version allows for cultivation, manufacturing, testing, research and or transporter as a principal permitted use in I-1 zones (he also noted that our zoning is cumulative); retail is not permitted. All establishments will have to apply for site plan approval.

Retail is a special permitted use in C-2 and C-3 zones and in a C-3 cannot be located on the ground floor; hours of operation can be no earlier than 8 am no later than 8 pm and must be ADA accessible. There can be no mobile facilities, no outdoor storage including garbage and there are requirements for buffers. There is also no co-location of tobacco products and marijuana. When asked if that was a state regulation he said he believes it was a COB requirement.

There will be a total of 8 licenses; 6 in C-c2 zones and two in C-3 zones. Two of the licenses will be granted to the existing establishments on West Chestnut and there is a requirement for extensive odor control. He said there is one area that he would recommend a change is that is in section 6b iii Odor Control and Ventilation; the professional engineer should be a *licensed air quality or environmental* PE/he explained that there are many difference kinds of professional engineers, i.e. civil, aeronautical, electrical and they may be not qualified to design this kind of system.

Bob Pelaggi asked what necessitated the second vote by the planning board. He said that the attorney for the council felt that the council needed to vote within six months of the planning board's recommendation; he said that the city solicitor does not feel that way but this way we are covering all bases.

The chairman said that instead of asking people to speak either in favor or opposition, he is opening the hearing up at this time to whoever wishes to speak. He said he is asking the board to hold questions and comments until the public has spoken.

Comments: Jeanne Holmes said she doesn't know if she is opposed and understands that this is an opportunity for the city; she said that the council did a good job of being diligent and we can learn from other cities. She said that 500' is short when talking about kids; she said she would like to see 750 feet buffer around schools; she said she would also like to see something more solid than you cannot create a nuisance and said she is nervous about the BOH overseeing that (state law) with its current level of staffing. She asked if anyone looked into appointments like in Salem.

David Wheeler asked if there is any funding available for additional staffing for the BOH and said it seems like a large job; Rob May said that part of the host agreement requires them to pay an impact fee and it is up to the council to vote on how that is distributed.

Richard Batacus said it seems that everyone is focused on retail and he is concerned about growing as there is a facility proposed in his area. He asked if there were any buffer restrictions for cultivation/manufacturing; it seems that there are many restrictions on retail. He said he is worried about aroma...it stinks. Rob May said that the council did not put any restrictive buffers on that. He did say that if the property is within 100' of a residential use it requires special permit from ZBA.

Councillor Anne Beauregard said everything has worked out well with the existing medical marijuana facility. She said she liked the suggestion of appointments also; she said the opening of these facilities will likely attract people from other communities; she also agreed that Brockton can learn from other community's mistakes. She said she was in favor of the 1,000' buffer and thinks 500' is tight but that 750' is a good compromise.

David Noble said he runs In Good Health; he said they have been opened for 3.5 years with no incidents; they are well managed and controlled. He said all these places are locked down if you are under 21 you cannot walk into a dispensary...there is no access; he also noted that Salem has lifted the requirement for appointments as it is no longer needed. Bob Pelaggi asked him if he saw any benefit or necessity for appointments and was told he did not. He said that by the time the COB sees its first dispensary 15 more will have opened.

Richard Batacus asked if there is any tax on the plants. Rob May said there is a graduated scale of license fees and growing facilities will pay more in property taxes.

Public portion closed.

Bob Pelaggi said that increasing the buffer zone may be a reasonable discussion for the board. Shane O'Brien called their attention to the buffer maps.

Reggie Thomas said that whether or not we feel that the buffer should be increased it falls upon the city council to adopt or ignore our recommendations.

Rob May said that the buffer zones were a hotly discussed topic in ordinance; state regulations say that the buffer shall be 500' for K-12; legislature said that it can be reduced, but it does not say it can be increased.

Bob Pelaggi asked if the buffer is increased if it shrunk the areas and was told that if the state law allowed for the expansion of buffers it would shrink the areas.

Rob May said that 90% of our schools are in residential zones; he was asked to give an example of a school that was not in a residential area and said the new charter school and the Gilmore.

Toni Goncalves said that you have to be 21 to enter a facility; liquor stores are all over and kids are in them buying soda and snacks. She said she does not think an increased buffer is necessary.

Rob May also stated that the licensing authority for all retail establishments is the city council.

David Wheeler asked if something could be labeled as a concern (buffer to schools), not a recommendation and Rob May said yes; and said this recommendation goes back to council for 3rd reading.

Action/Decision: Recommend favorably with the recommendation that the professional engineer be a licensed air quality or environmental engineer.

Motion: Pina

Second: Pelaggi

In favor: Pelaggi, Pina, Thomas & Goncalves

Opposed: Wheeler

6. Permission to Return to ZBA

Property: 388 Centre Street

ZBA Denial: 11/14/18

Applicant/Representative: Anjella Perkins

The board agreed to take this at the end of the meeting as the applicant was not present. As the hearings progressed it was evident that the applicant still was not present. Bruce Malcolm said although he was not here on her behalf, but was the person who drew the plan and asked for a continuance to the March meeting. There were no abutters present.

During the time of the hearing on marijuana the applicant showed up and asked to be heard. Although the board had agreed to continue the meeting they agreed to hear her application.

Applicant's statement: Anjella Perkins said that the property is currently a mixed use property with a hair salon on the bottom floor; she said they currently live on the 2nd floor; she said she wants to turn it into two family; she said that the ZBA denied her application

because she had three accessory structures and her plan was 18 year old and did not show true conditions. She has had a new plan and is willing to remove the shed.

Comments: Shane O'Brien said that the department in support of her returning to the ZBA.

Councillor Anne Beauregard was also in favor.

Action/Decision: Motion to return; new site plan submitted showing proposed removal of shed and some pavement; the board also felt that some additional pavement along the front could be removed to enhance the green space.

Motion: Thomas

Second: Pelaggi

In favor: 5

Opposed: 0

Other Business

Updates from Board Members

The chairman said everyone had watched the replay of the council meeting; he said that the planning department received the referral from the city clerk's office on 12-28-18; he said that the next meeting of the board was January 2nd to late for it to appear on the January agenda. Following our protocol, it was scheduled for the next available meeting as state law requires that the legal ad run in the paper for two consecutive weeks and that surrounding towns are notified in writing of the hearing. To have had a special meeting, a meeting place needs to be secured, the board polled to make sure that they are all available and legals run and the towns notified; at best this would have been two weeks before the regularly scheduled meeting. He said he received no communication from any councilor stating that there was any urgency.

He said he was personally offended by the council's statements...one stating we should be replaced...discussion of missed meetings...lack of quorum. He said as a point of information he had the secretary check and she went back two years...no missed meetings for lack of quorum...no missed meetings. He said the board takes its responsibility seriously.

Reggie Thomas said he also watched council meeting replay and was truly disappointed; he said we are public volunteers and we were publically lectured with nothing but misinformation.

Bob Pelaggi said he watched as one by one they spoke inaccurately...with misstatements and misinformation. He said we have not failed to make a quorum and found that whole thing offensive.

Jeanne Holmes said although they may not always agree that the board was a hard working group.

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

