

## PLANNING BOARD MINUTES

Thursday, September 1, 2022 – 6:00pm

This meeting is being recorded in accordance with the government order suspending certain provisions of the Open Meeting Law General Law chapter 38 section 20. Real-time public participation and comment can be addressed to the planning board utilizing the zoom virtual meeting software for remote access; this application will allow users to view the meeting and send a comment or question to the chair via the question and answer function; submitted text comments will be read into the record. For those of you joining by phone press star nine. If you want to ask a question please raise your hand. A copy of this recording will be on the city's web pages. All votes will be done via roll call to ensure account accuracy. As your name is called please indicate that you are present; members present: Toni Goncalves, Larry Hassan, Jim Sweeney & Pourita Das. Also present were Director Rob May, Evan Sears (Planner 1), Rhode Germain (Admin) and Deputy Chief Ed Williams.

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### Items Requesting Continuances

The following items were scheduled but have requested continuances to next month's meeting:

#### Item #1

1. Permission to Return to ZBA  
Property: 1449 Main Street  
Applicant: Alicia Fernandes  
Representative: Attorney John Creedon

#### Item #5

5. Site Plan Approval  
Property: 148 North Montello  
Applicant: Woodward's Auto Spring Shop, Inc  
Representative: JK Holmgren

#### Item #6

6. Site Plan Approval  
Property: 1159 Main Street  
Applicant: Jeano's restaurant  
Representative: JK Holmgren

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As a reminder, the chair Toni Goncalves mentioned that due to the holiday and election the date of the September meeting was changed to Thursday, September 1st, 2022 instead of the usual first Tuesday of the month. She also mentioned that notifications were properly sent out, therefore she is in compliance to hold this meeting.

Per Director Rob May, we have four board members present and therefore have quorum.

### **Review and Acceptance of Minutes**

The Board reviewed the minutes of the last Planning Board meeting that took place on 8-2-22. A motion was made by Jim Sweeney, seconded by Larry Hassan and unanimously passed (4-0) to accept the minutes of 8-2-22 meeting as presented.

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

#### **ANR Applications**

##### **1. 30 River Street and 55 Emmett Street**

Per Evan Sears, these are 2 abutting properties and the ANR was filed to remove a piece of 55 Emmett Street (Parcel A), to add to 30 River Street.

**A motion to approve** was properly made by Jim Sweeney seconded by Larry Hassan and unanimously passed (4-0) to approve the ANR Application.

##### **2. Emelia Estates**

Per Evan Sears, the plan was approved at the ZBA, and now they are looking to change the lot lines to incorporate the entire wall onto one property.

**A motion to approve** was properly made by Jim Sweeney, seconded by Pourita Das and unanimously passed (4-0) to approve the ANR Application.

#### **Lot Releases**

##### **1. Extension Request - Knights way 678 East Street**

Per Evan Sears, this was approved back in 2020, but they are looking for an extension request to continue the work because their approval is going to expire.

**A motion to approve extension request** was properly made by Jim Sweeney, seconded by Larry Hassan and unanimously passed (4-0) to release the parcel.

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#### **Street Acceptances**

N/A

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#### **Proposed Zoning Change**

N/A

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**1. Permission to Return to ZBA**  
**Property: 48 North Pearl Street**  
**Applicant: Douglas A. King**  
**Representative: Attorney James Burke**

Per attorney Jim Burke, the project was turned down at the ZBA however, he has worked with developer Mr. King, councilor Farwell and other concerned citizens across the street to discuss how they can improve the project to have the consensus of all.

One major topic of discussion at the ZBA was the lack of access for fire trucks. As a result, they have designed a fire lane on the left side of the building and the Fire Chief thinks that it met the general requirements that he was concerned about.

There was also discussion regarding the size of the building, therefore they have reduced the density by 2 units. They have also shrunk the footprint of the building. There is greater space in terms of the setback rear, setback side and the creation of the fire lane. As a benefit of reducing the density, they have picked up 4 spaces which is more than required on the ordinances. He thinks they have made a very substantial modification in the plan which reduces density and benefits public safety and shows a developer who is willing to listen and trying to meet the needs of his neighbors.

Per the chair, the reasons for the denial was the lack of hardship, therefore she questioned how these changes address the lack of hardship.

According to attorney Jim Burke, the issue of hardship pertains to the ZBA, therefore in this forum, hardship is not relevant.

Per Rob May, the planning staff met with the attorney city solicitor and reminded them that the Planning Board is not the one that determines whether or not there is a hardship. The city solicitor also said that if the plan or application was rejected for lack of hardship, the applicant still needs to show there has been new information that shows a hardship. If the applicant is not showing there's a condition that can be considered a hardship, then it has to be taken into consideration when it comes to voting.

Per attorney Jim Burke, the issue of hardship relates to the specific facts that go before the Zoning Board for a determination therefore if they already addressed the hardship, how would they expand on the issues that pertains to hardship such as ledge, size and shape, structure.

Rob May explained that according to the city solicitor, anyone who is applying for a return to the ZBA when the ZBA already declared that there is no hardship, would need to identify the issues that the Zoning Board may consider as hardship in order to advance. He also stated that the city solicitor mentioned that anyone who was denied on the ground of hardship, the first level of it to the Superior Court as opposed to trying to return to the ZBA. Jim Burke disagreed and requested to continue to the next month's meeting so that he can have a chance to meet with the city solicitor to understand what the law is regarding the role of the Planning Board and the ZBA when it comes to the issue of hardship.

The chair Toni Goncalves also would like the Board members to meet with the city solicitor. Jim Sweeney agreed that clarification is needed.

### **Public Comments:**

#### **Winthrop Farwell**

Per councilor Winthrop Farwell, a written opinion from the city councilor would be really helpful. He also would like the opinion from the city council to be posted online so that it be open and available to everyone who wants to understand how the Planning Board is going to proceed with

respect to certain Zoning Board decisions and Planning Board actions when considering a return to the ZBA.

### **Tom Minichiello**

Per councilor Tom Minichiello, the decision prioritized the reasons for the denial. If there's no hardship, then a residential house should not be approved. They have not shown the hardship to justify a variance to violate the current uses under C-5. He also mentioned that the fire lane and parking lot was not the priority and thus, these are just substantial reasons being presented to the Planning Board which still do not meet the lack of hardship.

Per Rob May, the Board would be required to amend their Rules and Regulations which would be posted on the city's webpage and recorded with the Registry of Deed.

Ellen Pitts was given the floor to speak, however it looks like she was on mute. Therefore, Rob May asked that she can either come back to the October meeting or email her comments to [planning@cobma.us](mailto:planning@cobma.us) which will be read into the records.

**A motion to continue to the October meeting** was properly made by Jim Sweeney seconded by Larry Hassan and unanimously passed (4-0).

## **2. Permission to Return to ZBA**

**Property: 340 & 346 Warren Avenue**

**Applicant: John Andrade**

**Representative: Attorney James Burke**

Per Jim Burke there were two major issues that were of great concern at the ZBA and the first one was that the pathway for emergency vehicles was not functionally the best. They were also concerned about the parking authorization that he had from the city for the lot across the street due to a concern that it will impact the commercial businesses. The applicant addressed these concerns with a major construction change. Now he is looking for 22 units instead of 16. He created palladium parking which expands the number of parking substantially. Currently, there are 62 spaces from 50 from the last hearing. There would be 40 palladium spaces reserved for tenants and 8 additional spaces that will be reserved for the tenants. The remaining 13 will be available for tenants and guests.

Commercial tenants will use the place less. On the North side of the structure there's another parking lot which creates 12 spaces and the intent will be a mixed-use (commercial and residential). The employees of the commercial will be directed to use the Brockton spaces across the street. The additional spaces result in a more expensive project which requires the additional units.

Per Scott Faria, the original plan was denied by the ZBA and the biggest issue was the proposed 12 units at the top right hand corner of the property which made it difficult for fire trucks to enter from Warren Ave, go around the cars and get back out on Carter Street. They came up with a plan to move the building from the top right and put it back of the existing building at 340. In doing so, they now have a more direct route for the fire apparatus which they think is a major improvement. They have 14 spaces. Rest parking behind cottage street. They

received permission from the Parking Authority for 15 spaces for employees of the commercial as well as the overflow from residential parking.

According to the Chair, although the parking plan has improved, it doesn't deal with the hardship which was the original denial.

Per Jim Sweeney, they were denied based on parking, however, he feels that they made a substantial change.

The chair stated that the ZBA denial was due to no hardship even though they talked about the parking, it wasn't the reason for the denial. However, Jim Sweeney explained that on most of the ZBA denial it will be shown as no hardship.

Jim Burke also stated that the ZBA never mentioned hardship in the decision but said that the units would derogate from the intent of the zoning bylaws and negatively impact the orderly development of the neighborhood and parking.

Evans Sears confirmed that the decision said "no hardship dealing with the locust was found" and based on the city solicitor they have to go off of what is actually printed on these decisions so if the ZBA is putting no hardship in all decisions, then that's what they would have to go off of.

Per Jim Burke, this will create an impossible standard.

The Chair expressed that it would be helpful for the Board members to have a meeting with the city solicitor as well as with a representative or chair of the ZBA,

Rob May confirmed that this meeting will be arranged.

He also wanted to mention for the public record that the Planning Department worked for months with the applicant and supported this project. However, they still have this directive on hardship from the city solicitor that needs to be addressed. He expressed that a final memo would need to be drafted and posted online.

The Chair asked attorney Burke to consider continuing until they can clarify the situation to which Jim Burke agreed.

### **Public Comments:**

#### **Joseph F. Krowski - 30 Cottage Street**

Per Joseph F. Krowski, there's a lot of parking problems in this area and this is the first time he was hearing about a plan to direct a fire lane from Warren Ave to Carter Street. He doesn't see how the fire lane will work without traffic or security problems. He appreciates that there's been an investment in this property however the way the property is currently being maintained does not instill any confidence. As a party who is directly impacted, he believes to be entitled to a little more input to not suffer more from traffic and other problems in this area.

#### **Councilor Tavares**

Per councilor Tavares, this is a great opportunity for Ward 2. She believes that the City should embrace the project because it will be a great improvement for the City. She also mentioned having received a lot of complaints.

The Chair suggested that the applicant and attorney Jim Burke meet with the councilor Tavares to address the issues presented because it's not within the scope of the Planning Board to address the issues raised by Councilor Tavares.

### **Councilor Mendes**

Councilor Mendes expressed her support for the project and stated that she will be joining councilor Tavares and attorney Burke to try to resolve these issues.

**A motion to continue to the October meeting** was properly made by Jim Sweeney seconded by Larry Hassan and unanimously passed (4-0).

### **3. Site Plan Approval**

**Property: 0 Westgate (MAP 33, LOT 55)**

**Applicant: KARM Properties**

**Representative: Strongpoint**

Per Eric Dias, the project was already seen by the Planning Board when they were requesting a permission to return to the ZBA which was granted. They were successful at the ZBA as they needed only 2 things (a variance for setbacks to the D.W. fields parkway and a special permit to construct the hotel) and they were able to obtain these two things. They have also been to the Conservation Commission which approved the project and provided them with an order of conditions. The Conservation Commission reviewed all work within the buffer zones and hired a third party review consultant to review the drainage design. They made some changes such as removing the auxiliary parking lot. Per Eric Dias, The Shields MRI building already meets the parking requirements for what the Zoning bylaws require so getting rid of the auxiliary parking Lot will not impact them in any way. The auxiliary parking lot has drainage in it and it's completely self contained as it was built after the shields were built. It doesn't tie in anywhere, it all infiltrates back into the ground. They have a wetland body and 100 ft buffer zone.

Per Eric Dias, this is a proposed four-story Hotel with 78 rooms. They comply with the ZBA requirement for parking and also have a 10 ft buffer as required by the park commission. The vast majority of stormwater from the site including rooftop runoff will go right back into the ground. They also provided a full erosion control plan, lighting plan, landscaping plan that is geared at the buffer zone. The layout hasn't changed very much from the last time they were in front of the Planning Board requesting to return to the ZBA.

The chair Toni Goncalves remarked that the City engineer, Zoning and Conservation are content with all the changes.

Per Jim Sweeney, there should be no long term living or family living in the hotel.

Per Eric Dias, there's no plan for long term living and this will be written directly in the special permit with ZBA which will make it enforceable.

Per Jim Sweeney, that was the only major concern, otherwise, they loved the plan and loved the fact that the Park Department approved the new setback to the park.

The chair Toni asked for clarification regarding the long term living and questioned whether it was in reference to using it as a permanent address because these hotels can sometimes be used temporarily in case of a house fire, for example.

Per Eric Dias, the language was that the hotel can't be anybody's mailing address which would prevent the long term living but he doesn't believe the city would be against allowing someone to stay in the hotel for a short period of time if they were displaced because of a house fire.

Per Rob May, they have been working closely with Strongpoint Engineering on this project and have been very happy with the plan. According to Rob May, the Hilton's website shows a true modern and hip approach to hospitality and he is thrilled to welcome Hilton to the community.

Jim Sweeney asked how soon they were looking to build if approved, to which Eric Dias replied that they will start as soon as the approval period is over.

Pourita Das mentioned not seeing any light towards the north side of the back of the building. Eric Dias confirmed there were no photometrics on that however they can get some wall packs represented which would light up the walkway.

Pourita Das also questioned if the patio was brick or stone to which Eric Dias responded that he believes it will be a paver patio or even stamped concrete.

Pourita Das also wondered if the water was going to clog the area. However, per Eric Dias, the grading plan shows that the water was traveling towards Westgate Drive so he doesn't believe that it will clog the area.

(There were no comments from the public)

**A motion to approve with standard conditions and the following special conditions** was properly made by Larry Hassan seconded by Jim Sweeney and unanimously passed (4-0).  
Special condition: There needs to be proper lighting on the north side of the building.

#### **4. Preliminary Subdivision**

**Property: 20 Winter Street**

**Applicant: Pedro Elias**

**Representative: JK Holmgren**

Per Scott, applicant has a house split between two zoning districts: the front of the property where the existing single family house is located is in zone R-2 and the remaining property is located in the R-1C zone. The total Lot area is over 30,000 SF, however R-2 zone requires only 7,500 SF.

They are looking for a preliminary subdivision approval to go ahead to the ZBA where they will request to divide the property into 2 Lots to create Lot B to build a larger home. It will be in the R-1C zone with a minimum Lot size of 30,000 SF but they will be at about 16,000 SF. They would need to go to the ZBA due to the shape and typography. Per Scott, the neighbors primarily have single family homes on roughly 10,000 SF Lot.

Scott Faria was having a technical difficulty and couldn't proceed with the presentation therefore, the chair asked for a motion to continue to the next meeting.

Rob May reminded all attendees that they would have a chance to speak about this case at the next meeting since it will be continued.

**A motion to continue to the October meeting** was properly made by Larry Hassan seconded by Jim Sweeney and unanimously passed (4-0).

**A motion to adjourn the meeting** was properly made by Larry Hassan seconded by Jim Sweeney and unanimously passed (4-0).

**THE ITEMS LISTED ARE THOSE REASONABLY ANTICIPATED BY THE CHAIR, WHICH MAY BE DISCUSSED AT THE MEETING. NOT ALL ITEMS LISTED, IN FACT, MAY ALSO BE BROUGHT UP FOR DISCUSSION TO EXTENT PERMITTED BY LAW.**