

Tuesday, August 1, 2017 – 6:00 P.M.
GAR Room- City Hall
Minutes

Members Present: David Wheeler, Bob Pelaggi, Gary Keith, Reggie Thomas

Acceptance of Minutes
Minutes (6-6-17)

Motion to accept minutes from 6-6-17 (Keith), second (Thomas) passed unanimously.
Endorsement of ANR Plans, Subdivision Plans and/or Lot Releases

The secretary said that the developer of the subdivision at 69 Peterson Ave. has requested return of his cash surety. She stated that the department has received the necessary inspection letters from both DPW water/sewer and engineering.

Motion to release surety (Pelaggi), second (Keith) passed unanimously.

Request for release of lots 11 & 12, 13 & 21 in the Woodland Park subdivision. The secretary said these are the remaining lots in phase II. Phase III is under construction; road is being cleared and graded and they expect to have the utilities in and begin paving in the fall.

Motion to release lots 11-13 and 21 (Keith), second (Thomas) passed unanimously.

Request for a lot release for 34 Rangeley Avenue. The secretary said that she received an email from the closing attorney stating that they were unable to find a lot release for this property on record and that the house is being sold. This house was built in the 70's and the occupants were the first and only owners.

Motion to release 34 Rangeley Ave. from covenant (Pelaggi), second (Thomas) passed unanimously

1. Site Plan Approval
Property: 970 Montello Street
Proposal: Church
Owner/Representative: Bay Associates Inc.

The board was told that the department received a call from the civil engineer stating that they were not continuing with the project and withdrawing. Shane O'Brien said that to date no official notice to withdraw has been received. After a short discussion, the board agreed to just continue the matter indefinitely.

Decision: Motion to approve with the hopes it does not prevail.
Motion: Keith
Second: Pelaggi
In favor: Wheeler, Keith & Thomas
Opposed: 0
Abstained: Pelaggi

2. Site Plan Approval
Property: Plots 42 & 43 West Chestnut Street
Proposal: Roadway
Owner/Representative: Meadow Wood LLC/Gallagher Engineering

Continued to September 5, 2017 at the request of the applicant.

3. Proposed Modification to Definitive Subdivision

Property: 350 Rockland Street

Lots: Two

Owner/Representative: Ed Jacobs, Jacobs Driscoll Engineering

Samuel Ward (property owner)

Attorney Wayne Mathews

Applicant's statement: Attorney Mathews said this applicant received an approval from the planning board for a four lot subdivision; one buildable lot and lots 3 & 4 are to be conveyed to the abutters. He said after receiving approval from the planning board they appeared before the traffic commission seeking to waive the requirement for sidewalks and curbing and were granted that waiver.

Comments: Rob May said there was a misunderstanding as to who has authority over subdivisions and other public way projects. He said that the planning board has authority over all subdivisions. He said that this applicant has been back and forth several times and feels that in this case it is in everyone's best interest to allow the waiver. He said he has since sent the chairperson of ordinance an amendment to the complete streets ordinance giving the planning board sole control.

Ed Jacobs asked if this would be for only subdivisions and was told that the proposed ordinance would have any other street project coming before the planning board.

No public comment.

Decision: Grant modification as requested.

Motion: Keith

Second: Pelaggi

In favor: Wheeler, Pelaggi & Keith

Opposed: 0

Abstained: Thomas

4. Definitive Subdivision

Property: 33 Mulberry St.

Lots: Two

Owner/Representative: Bill Self, Curley & Hansen

Mike Ambrose

Applicant's statement: Bill Self said that the property owner (Ambrose) would like to split his existing house lot into two equal lots. He said there is existing sidewalk and curb and they will make sure that the sidewalk over the driveway meets ADA standards. He said that at the suggestion of the city engineer they made some minor changes to the plans.

Comments: Bob Pelaggi asked what the changes were and was told some tweaks to the grading, added the inverts, and added recharge units for runoff.

No opposition from the public and Councillor Anne Beauregard spoke in favor.

Decision: Motion to approve as submitted.

Motion: Keith

Second: Thomas

In favor: 4

Opposed: 0

Applicant agreed that surety would be in the form of cash.

Motion to approve the following waiver requests:
Section IV
B.3. Width
F. Utilities (underground)
Section V
C. Curbs and Sidewalks
Other – Frontage Waiver Requested (Sec. 27-13)
Lot 1 67.35' requested
Lot 2 67.35' requested

Motion: Keith
Second: Pelaggi
In favor: 4
Opposed: 0

5. Definitive Subdivision
Property: 82 Kingman St.
Lots: Two
Owner/Representative: Bill Self, Curley & Hansen
John Andrade

Applicant's statement: Bill Self said this will be a two lot subdivision; the existing home will front on Kingman St. and that the new lot will have frontage on Draper Street. He said the plans have been revised to address the comments from the city engineer. He said there is sidewalk and curb on the Kingman St. side. He said they were going to ask the board for a waiver for sidewalk and curbing but after speaking with City Engineer added it to the plan and will not be asking for that waiver.

Planning Board member Craig Pina apologized for arriving late.

Bill Self said that they added units for rechange of the roof runoff and that the original plan had retaining walls and they were able to change the grade to eliminate the grading for the wall.

No public comment.

Decision: Approve the plan as revised.
Motion: Keith
Second: Thomas
In favor: Wheeler, Thomas, Keith & Pelaggi
Opposed: 0
Abstained: Pina

Motion to approve the following waiver requests:
Section IV
B.3. Width
F. Utilities (underground)
Section V
Other – Frontage Waiver Requested (Sec. 27-13)
Lot 1 116.60' requested
Lot 2 116.55' requested

Motion: Keith
Second: Thomas
In favor: Wheeler, Thomas, Keith & Pelaggi
Opposed: 0
Abstained: Pina

6. Definitive Subdivision
Property: 91 Oakland St.
Lots: Two
Owner/Representative: Bruce Malcolm, Land Surveys
Michael Haikal

Applicant's statement: Bruce Malcolm said they are proposing a two lot subdivision with the original home at 91 Oakland and a proposed two story colonial home on the new lot. He said they added a recharge system to the plan to address any runoff. He said there are no contours on the plan as the site is flat. He noted that water and sewer stubs are existing (as is gas) so there will be no work in the roadway.

No public comment.

Decision: Motion to approve as submitted.
Motion: Pina
Second: Keith
In favor: 5
Opposed: 0

Regarding waivers Bruce Malcolm said that there is no sidewalk on that side of road; he said they went to the traffic commission seeking a waiver but realize that that request needs to be granted by the planning board.

Motion to grant the following waivers:
Section IV
B.3. Width
F. Utilities (underground)
Section V
C. Curbs and Sidewalks
Other – Roadway construction Details

Motion: Keith
Second: Pelaggi
In favor: 5
Opposed: 0

Note: As there is no work proposed within the street surety is not required for this project.

7. Definitive Subdivision
Property: Plots 19 & 21 Melrose Ave.
Lots: Four
Owner/Representative: Bruce Malcolm, Land Surveys

Continued to September 5, 2017 at the request of the applicant in order to address the DPW comments.

8. Definitive Subdivision (Request to Amend Decision of Planning Board)
Property: Plots 30 & 30-1 Leach Avenue and 110 Market St.
Lots: Three
Owner/Representative: Manuel Buginga/Land Surveys Inc./Attorney John McCluckey

Note: The applicant had a stenographer present for this portion of the meeting.
Applicant's statement: Attorney John McCluskey said that the memo he was presenting to the board tonight is slightly modified from one sent Friday (it had attachments).

Attorney McCluskey said he got into this late....and the issue is over a right of way over property. He said there was testimony at a prior meeting from an abutter complaining about sewer that was installed on her property.

He said he has been reviewing titles and easements for 38 years.

He said that Craig Pina's motion was made and accepted; but if the ROW was waived it would clearly present a title problem. Along with the easement comes the right to pass and re-pass and install utilities etc. If he loses the pass and re-pass there is no right to maintain the utilities. He said they have added a note on the plan which they hope will satisfy the planning board. He said that this hearing was originally scheduled for June but their office did not notify abutters. His client has been in business for 30 years...he is a good business man. He said that his memorandum has a history of the property and went on to give a history of the property ownership.

Attorney McCluskey said he met with Rob May and Phil Nessralla to try to come up with a fix which he thought was the language on the plan. He said they were hoping for an agreement. He said his client was only replacing an existing line and the city approved the permit. He said that the prior owner probably put in a sewer connection without getting a permit. He said he was given a copy of Attorney Feoderoff's memo and feels it does not apply to this.

He said this property is an attractive nuisance to the South Jr. High property and the city is anxious for him to build houses. He said that he expected Councilor Eaniri to be here but that he is in favor. He said he feels that the city is just looking for reasons for him not to do it; they would like to modify the plan so that they are not giving up the easement; he said once the homes are built there will be no vehicle and pedestrian access. He said they are willing to have the line inspected if that is an issue.

Comments: Gary Keith said it seems that without the right to pass and re-pass he cannot hook up sewer to the new homes.

Bob Pelaggi said that this process puts the planning board in a position of making a legal determination and we should not be making that decision.

Craig Pina said that the board has the option to rescind its approval and leave it up to courts. There is still no easement showing on the plan.

Reggie Thomas asked if approval can be conditional upon inspection.

Bob Pelaggi said the issue is not the inspection. He said Attorney McCluskey has done a more than adequate job of explaining client's position. He asked why the plan does not show the existing access and utility easement.

Rob May said the original plan submitted had no deed reference....and said that Ch 187 sec 5 has nothing to do with this.

Manny Buginga said that the old dealership had a bathroom He said the documents maybe got lost...he said that the city would not have given him a permit to install a line if there was no line installed.

Gary Keith said he knows him and knows his reputation (Manny Buginga) and cannot believe that he would have ever done anything wrong. He asked if there was anything we (the board) could do to help him?

Craig Pina agreed that the board is not qualified to make a decision here.

Bob Pelaggi asked Attorney McCluskey if he would be willing to continue for a month to resolve the legal issues. Attorney McCluskey said they would not agree to a continuance.

The board agreed that the issue still remains as to if there is an existing easement.

Attorney McCluskey asked if there would be any opposition from the board to him going to court to get a judgment. All the members said they have no issue in principle with him receiving a court judgment.

Decision: Motion to approve in the hopes it does not prevail.

Motion: Pina

Second: Pelaggi

In favor: Keith

Opposed: Wheeler, Pelaggi, Thomas & Pina

Other Business

James Meeks asked to speak on Kingman Ave. He said he misread his notice about the time. He said Draper St. is less than five years old and did not believe that it could be broken into for utilities. The chairperson said that that the project had been reviewed by the DPW and said that was a DPW issue but that his concern was noted.

Shane O'Brien said that the Blue Print for Brockton hearing was this week at the Little Theater at BHS.

Correspondence

Updates from Board Members

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.