

**BROCKTON PLANNING BOARD MINUTES**  
**Tuesday October 1st, 2024 - 6:00 PM**

Chair Toni Goncalves opened up the meeting with a Roll Call...

Members present are

- Toni Goncalves - Planning Board Chair
- Iolando Spinola - Planning Board Vice-Chair
- James Sweeney - Planning Board Member
- Matthew Gallagher - Planning Board Member
- Marty Crowell - Planning Board
- Rob May - Director of Planning & Economic Development
- Evan Sears - Planner II
- Isaiah Thelwell - Administrative Assistant

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**Review and Acceptance of Minutes**

The Board reviewed the minutes of the last Planning Board meeting that took place on **09-05-24**

**A motion to approve** the minutes was properly made by James Sweeney, seconded by Marty Crowell. The motion was unanimously approved (5-0).

**Lot Release**

**Augusta Estates Lot 5,6,10,11 & 12**

Planner Evan Sears stated that the applicant is currently holding 8 lots and have completed enough work to request the release of 5 of those lots: Lots 5, 6, 10, 11, and 12. The Board will continue to hold 3 lots to ensure coverage for the remaining necessary work, which he believes is sufficient. Director Rob May added that he had received an email from Councillor Shirley Asack, who expressed her support for the project.

**A motion to release** was properly made by James Sweeney, seconded by Matthew Gallagher. The motion was unanimously approved (5-0).

**Release of Surety**

**340 Warren Avenue**

Planner Evan Sears mentioned that the Planning Board is currently holding a \$60,000 bond for surety on the property at 340 Warren Ave. Sears continued, noting that the property has been inspected and almost all work has been completed, except for some landscaping, which includes trees. He suggested that The Board could release the surety, holding back the necessary amount to cover the unfinished landscaping. While the exact amount needed is expected to come in by tomorrow, Director May estimated the figure to be either \$1,300 or \$13,000, acknowledging the

significant difference. May suggested a motion to release the surety, minus the required amount for landscaping, and to finalize the motion once the exact figure is available. Toni Goncalves agreed to proceed accordingly.

**A motion to release Surety, minus the amount for landscaping** was properly made by Matthew Gallagher, seconded by James Sweeney. The motion was unanimously approved (5-0).

### **Continuance Requests**

#### **2. Definitive Subdivision - Property: Field Street**

**A motion to approve** was properly made by Marty Crowell, seconded by James Sweeney. The motion was unanimously approved (5-0).

#### **2. Return to ZBA - Property: 244 & 252 Warren Ave**

**A motion to approve** was properly made by James Sweeney, seconded by Marty Crowell. The motion was unanimously approved (5-0).

#### **3. Definitive Subdivision Property: 90 Leyden Park**

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### **1. Form Based Code Zoning Draft Introduction and Overview**

Director Rob May explains that the MBTA Communities Act, developed by the Commonwealth in 2022, mandates communities served by the MBTA to facilitate multifamily housing within a certain proximity to transit stations. This initiative aims to prevent low-density development around accessible transit areas, setting a requirement for a district of at least 50 acres, allowing multifamily units at a density of 15 units per acre. Brockton must ensure 90% of this district falls within a quarter mile of MBTA stations, with compliance due by December 31st. The city, after technical assistance and two years of planning, determined that it was not in compliance with existing zoning, which prompted the development of new zoning regulations. A major component of this is the introduction of Form-Based Code, a zoning approach that emphasizes the physical form of buildings and their relationship to public spaces. Unlike conventional zoning, which separates uses and offers vague building guidelines, Form-Based Code promotes predictability in development outcomes and fosters walkable, vibrant communities.

May mentions that public input has driven the proposal, with dozens of community meetings shaping the form-based code districts. The new zoning will consist of two residential, three mixed-use, three commercial, and one civic district, each with specific regulations on building forms and uses. For example, mixed-use districts (MX1, MX2, MX3) will allow different building heights based on their location and potential for public amenities. May addressed potential concerns from both developers and residents. He explains that while there are increased regulations, developers gain more flexibility, such as higher building heights and additional uses allowed by right. Despite requiring upfront planning, the process ensures greater certainty for residents about development outcomes. May also emphasizes the community's significant

involvement in shaping the code, though public hearings will still be part of future project approvals.

Board member Marty Crowell appreciates the extensive community engagement and forward-thinking approach. She remarks on how the proactive planning contrasts with The City's past practices, noting her impression of the initiative's inclusivity and modern outlook. May concludes by expressing gratitude to his team and partners for their dedication, particularly highlighting their outreach efforts, even under challenging conditions, to engage diverse community groups.

### **3. Extension Request**

**Property: Petronelli Way (Ringside)**

**Parcel ID#: 109-054**

**Applicant: New Vision Enterprises**

**Representative: J.K Holmgren Engineering**

Scott Faria with J.K Holmgren Engineering presented the Extension Request for Petronelli Way. Per Faria, the original approval, granted in January 2023, is nearing expiration, and they wish to secure an extension to maintain their construction timeline.

**A motion to approve the extension request** was properly made by James Sweeney seconded by Matthew Gallagher. The motion was unanimously approved (5-0).

### **4. Return to ZBA**

**Property: 37 Lawn Street**

**Parcel ID#: 146-61-5**

**Applicant: Vincent Falconieri**

**Representative: J.K Holmgren Engineering**

Scott Faria with J.K Holmgren Engineering presents the Return to Zoning Board Appeal application for 37 Lawn Street. Faria discusses a request related to subdividing a property at 37 Lawn Street into two lots. He explains that they previously presented a plan to the Board of Appeals over a year ago, aiming to divide the property into Lots 12 and 13. The original proposal faced denial mainly due to procedural concerns; at the time, the lots were not officially divided, and the ZBA felt they could not grant a variance for lots they considered nonexistent. Faria explains that their approach has since evolved. Now, they are coming to the Planning Board with a definitive subdivision plan to create two unbuildable lots formally. Once approved, they plan to return to the Board of Appeals to request variances that would render the lots buildable. He also notes that Attorney McCluskey has recorded deeds at the Registry of Deeds, officially establishing Lots 12 and 13. The goal of this meeting is to secure the Planning Board's permission to reappear before the Board of Appeals, believing they have now addressed the procedural issues that led to the initial denial.

Chair Goncalves seeks clarification about the reasons for the original denial, and Faria reiterates that it was due to the nonexistence of officially divided lots at the time. Planner Sears clarifies the official reasons for the denial of the previous zoning board application. According to the Zoning Board of Appeals decision, the denial was based on two main points: a lack of evidence supporting the hardship criteria specified in Massachusetts General Law 40A, Section 10—related to topography, lot shape, or soil conditions—and insufficient proof that two individual lots existed, as prior deeds only described the property with a single set of metes and bounds. Goncalves then raises a question about whether the current division of the lot into two unbuildable lots alters the situation. Sears explains that while deeds were created to split the lots, this method is not sufficient because the situation requires a definitive subdivision plan. He emphasizes that without a proper definitive subdivision, the ZBA will still view the lots as a single entity.

Faria acknowledges the misunderstanding, noting that Attorney McCluskey believed the recording of the deeds would suffice. He requests a continuance to allow Attorney McCluskey, who was experiencing technical issues and couldn't speak during the meeting, to clarify the appropriate steps. Faria wants to ensure that legal decisions are made accurately and that the client's interests are best represented. Goncalves agrees to consider the continuance.

**A motion to continue** to the November 6th meeting was properly made by James Sweeney and seconded by Matthew Gallagher, and unanimously approved (5-0).

Attorney John McCluskey appears and presents his case to The Board regarding 37 Lawn Street. He explains that the process of dividing lots has traditionally been allowed by the ZBA, though recently there has been resistance, particularly from The ZBA Chair Ken Galligan, who argued against it. McCluskey details a series of meetings with the city solicitor and various boards, where it was agreed that the lots could be divided by deed, which they did. McCluskey stresses that this constitutes a substantial change in circumstances, which under the statute, should allow them to return to the Board of Appeals for approval. He criticizes the Planning Board for requiring a hardship to be shown, arguing that it is the job of the zoning board, not the planning board, to determine hardship. He highlights a past legal case where a court sided with his position and sent the matter back to the zoning board. McCluskey concludes by urging The Board to recognize the change in circumstances and allow him to return to the ZBA without unnecessary delays.

Chair Goncalves asks for clarification on the status of the aforementioned lawsuit, Sears explains that the case involved a property at 30 Intervale Street, which was initially denied by the Zoning Board of Appeals, then returned to the ZBA after being remanded by a court. He clarifies that the case did not involve the Planning Board's decision but rather the ZBA's original denial. McCluskey, the attorney involved, adds that the lawsuit was filed against the city, arguing that the Planning Board did not have the authority to impose hardship, a point that was questioned by the judge during a court session. McCluskey asserts that the Planning Board's refusal to allow the case to return to the ZBA was the core of the issue. He offers to provide copies of relevant legal documents to the board members.

Board member Crowell, suggests that the case could have been better handled and asks for clarity on whether the Zoning Board or the Planning Board determines hardship. After a brief discussion about the status of the property at 37 Lawn Street, Crowell motions to let the case return to the ZBA, highlighting the importance of removing red tape for developers and homeowners in Brockton.

**A motion to return** to the Zoning Board of Appeals meeting was properly made by Marty Crowell and seconded by James Sweeney, and unanimously approved (5-0).

**A motion to adjourn** was properly made by James Sweeney and seconded by Matthew Gallagher, and unanimously approved (4-0).