



Planning Board

February 20, 2013 – 6:00 PM - **Minutes**
City Hall, 133 William Street, Room 314

****View Agenda****

Members Present:

Arthur Glassman, Chair
Kathryn Duff, Clerk
Peter Cruz
Colleen Dawicki

Members Absent:

Janine DaSilva, Vice Chair

Note: For the purposes of these minutes, a motion that is made and seconded, will be transcribed as shown in the following example-CD/PC, where the first two letters represent the member initials making the motion; and the second set of initials are those of the member seconding the same motion. Tally of the vote appears numerically as 4-0 or the actual vote. This meeting was filmed by New Bedford Cable Access.

Chairman Glassman called the meeting to order at 6:07 P.M., called the Roll, and introduced the Board Members and the Acting City Planner. Next, he asked for a motion to accept minutes for the meeting held on January 9, 2013. The minutes were accepted CD/PC. 3-0

Public Hearings:

Case # 3-13 Site Plan Review for a proposed freezer addition of (87' x 105') 9135 square feet, on land located at 14 Hervey Tichon Avenue, Assessors Plot 66 lots 135, 137, 145, 147, 148, 152, 170 and 171. The proponent is Nordic Fisheries, Inc., 14 Hervey Tichon Ave. Plans submitted by Alan Ewing Engineering, Inc. 261 New Boston Road, Fairhaven, MA 02719-5301.

Chairman Glassman asked the applicant to come forward to present the case. Mr. Alan Ewing, Alan Ewing Engineering, approached the podium to speak on behalf of the case for his client, Nordic Fisheries, Inc. He said that they had surveyed and prepared the Site Plan for their client as he referenced the print and pointed to the area outlined in yellow known as the working waterfront which is zoned, waterfront industrial. It's a 4.2 acre site and has been occupied since 1984. They've enlarged this site by adding on since; and now they want to add this addition here.

As Mr. Ewing referenced the print, he said that the Site Plan shows the river and they have 125 parking spaces. This addition is a (87'x105') addition freezer space. There will not be any new utility brought to this building; everything is going to be internal averaging to be an 800 amp service along with the refrigeration units that go underneath the floor. Mr. Ewing said that currently there is some existing landscaping on the property which consists of some arborvitaes along the property line. The Building Contractor, John Felino, from Cape Building Systems, had some pictures showing that. Mr. Ewing stated that their neighbors are pretty much in the same business.

Chairman Glassman asked the Board Members if they had any questions. Mr. Cruz asked about the smaller squares near the proposed freezer. Mr. Peter Anthony with Nordic Fisheries responded by saying that those are utility sheds that are used by their maintenance crew. Mr. Cruz asked what the distance is from the proposed building to those utility sheds. Mr. Ewing said it's approximately 26-28 ft. Mr. Cruz then asked if the utility shed had doors and if it does, what side are the doors on. Mr. Anthony said that each one of

those utility sheds have an 8x8 overhead door facing out to the parking lot. There is a secondary overhead out to the back of the addition thus having dual access to the building.

Ms. Dawicki asked about the lighting plan. Mr. Ewing said that he and Mr. Anthony walked the property as he pointed to the plan and said that all those little dots represent the wall pack units. Each one is a 400 watt unit and he believed to have 21 of those existing; and they're going to add 4 wall packs to the addition adding up to 10,000 watts.

Mr. Cruz wanted to discuss the letter written to the Planning Board by Mr. Ewing pertaining to waivers. Mr. Ewing stated that they are asking for a waiver of the utility plan because the refrigeration and electrical power will come from the existing freezer building. There will be no heat or water in the addition. Also, they are asking for a waiver of the landscaping plan because it's in a working waterfront area and it's surrounded by similar businesses. As he explained earlier, there is a row of arborvitaes along the property line but no other landscaping other than street trees. The other waiver requested is of the drainage calculations which DPI approved.

Mr. Cruz asked the applicant if there is anywhere on site that they would like to see landscaping. John from Cape Building Systems presented some pictures to the Board. Chairman Glassman requested a motion to accept and place on file. A motion was made to accept and place on file by PC/CD. He presented pictures showing the existing building and said that the addition will look the same. Mr. Ewing said that there's really no other area to do landscaping. Chairman Glassman asked Ms. Maclean if the landscape is consistent with all the other landscape in that area. She said yes for the working waterfront. Mr. Cruz asked about if there's a dumpster location. Mr. Ewing said that they have two dumpster locations and he pointed out those locations on the drawing.

Chairman Glassman requested a motion to open to public hearing. A motion was made to open to public hearing by CD/PC. The Chair asked if anyone would like to speak in favor of this project.

Mr. Jeff Stieb Executive Director, HDC, approached the podium and said he would like to start off by saying that he supports the expansion and growth in this industrial area. However, he is concerned with the site control or lease of ownership where this property sits; and he hasn't had a chance to confirm that the applicant has absolute site control. He continued to say that there isn't clarity on site control and this addition may be placed on a piece of land that they don't own and would like to see a diagram by third party to show that they have a lease. As a matter of process, he's trying to prevent someone else's rights from being stepped on. The Chair said that perhaps legal should take a look at this. Ms. Maclean said that City Solicitor's Office concurs that they should have to provide proof of ownership whether through the lease or their own.

Mr. Stieb said that their goal is to keep the harbor open but he was wondering if they can speak on snow plowing. The Chair asked who owns the street. It's a 54 ft. public way so it's the City's responsibility.

Attorney Mary Kelleher, representing Nordic Fisheries, approached the podium. She said as part of this process, she's responsible for obtaining Chapter 91 Waterways license under the department of Environmental Protection. Since this is City owned property, the DEP requires not just the tenants' application under the lease but also needs a signoff by the City as the owner of the property. Part of that process is Nordic Fisheries applying to HDC after coming to the Planning Board for them to sign onto the application. This project has been going on for sometime and the Waterways part of it can take up to 120 days so because the Board is opposing some conditions she would like to clarify them; but she also would ask that once those conditions are met that the Board sign off on the application so that the next step which will be going to HDC on March 14, 2013 isn't delayed. It could put them back a whole extra month according to Atty. Kelleher.

The Chair said that the HDC wants to know the legal ownership so that the Planning Board may approve the Site Plan Review with those conditions. Ms. Maclean said it's the City Planner that signs the Chapter 91 licenses and is recorded here at the City. It's not something that the Planning Board usually deals with and in

this instance their attorney is just presenting another aspect of the project. In typical circumstances, the Board doesn't oversee the Chapter 91 licenses or not even aware of them but the City Planner signs and then the Building Commissioner signs then it goes to HDC.

Attorney Kelleher wanted to clarify the conditions. The Chair said that we need proof of ownership. Ms. Maclean elaborated on that and said that we need a plan stamped by the engineer with the references and ownerships of all the parcels stated in the application that the applicant has provided with a locus as well because the Site Plan didn't provide the locus.

Ms. Dawicki asked about the terms of the lease. Most of the leases are 99 year leases according to Atty. Kelleher. Most of them were entered mid to late 80s. They were done for the purposes of encouraging growth on the tideland area because nobody was there. They wanted industrial development there so they offered these 99 year leases with varying terms, varying rent increases at different periods of time and with other terms and conditions contained with commercial leases. Nordic Fisheries pays property taxes to the City as well as rent to HDC.

The Chair asked if anyone else would like to speak in favor of or be recorded in favor of this project. No other favorable testimony heard. Then, the Chair asked if anyone would like to speak opposed or be recorded opposed. No oppositions heard.

The Chair requested a motion to close the public hearing. A motion was made by CD/PC to close the public hearing.

The Board Members spoke amongst themselves regarding the conditions. The other condition mentioned was by Ms. Maclean for the approval from Inspectional Services for the waiver request permit to the utility plan. Ms. Maclean spoke of the conditions to just make everything clear. Regarding the ownership, the condition would be that the applicant provides a stamped plan by the engineer with the references of the ownership of all the parcels stated in the application including the deed, book, and page, and a locus. The Chair mentioned the condition for the approval from Inspectional Services for the waiver to the utility plan. As for the Conservation Commission, they have a negative determination not within 100 ft.; their comments are on record according to Ms. Maclean. Ms. Duff inquired about the catch basins in the plan. Mr. Cruz said it'll be tied into the existing system which DPI reviewed and approved.

The Chair pointed out for the purposes of this case because Ms. Duff came in later; she may make comments but may not vote on this one. She said that all her comments pertained to the drainage system.

A motion was made by CD/PC to approve Site Plan Review for Case # 3-13 for a proposed freezer addition of (87'x105') totaling 9135 square feet, on land located at 14 Hervey Tichon Avenue, Assessors Plot 66 lots 135, 137, 145, 147, 148, 152, 170, and 171 with the following conditions: That a stamped engineered plan with the references regarding ownership of all the parcels stated in the application including the deed, book, page, and a locus, be provided

That approval by Inspectional Services for the requested utility plan waiver, approval contingent upon adopting recommendations by DPI and the Conservation Commission

Roll Call Vote:

Colleen Dawicki – yes

Peter Cruz – yes

Arthur Glassman – yes

Tally 3-0, motion passed

New Business:

Request for a partial release of Covenant in the Whalers Woods' Subdivision. Lee Castignetti Jr., "Trustee" wishes to have released Lot 215 Watson Way "within the subdivision".

Before the applicant approached, Ms. Maclean stated that there was a transcription error that occurred several years ago; and she handed out letters to the Board Members showing that.

She said that a previous estimate dated April 3, 2008 from DPI showed about \$ 600,000 (six hundred thousand) worth of remaining work is accurate still. They are not looking for releases of any more lots and so the lots that we still retain under the covenants cover more than the amount of work remaining.

Mr. Castignetti approached the podium and said that lot releases goes back to 2006-2007 and they were lots that were being substituted for the lots that have been under covenant. They were asking to release lots but had to keep enough lots under covenant to satisfy the amount of security necessary. They would then substitute other lots for that and that type of transaction happened a number of times. By the time this November 2009 request came in, it was stated clearly in that letter that we have 10 lots under covenant and that they wanted to substitute for 10 other lots. That was an internal mistake on their part according to Mr. Castignetti. There weren't 10 lots subject to the covenant; it's actually 14.

Mr. Castignetti said as far as the substitute covenant as presently on record they are not seeking to change that at all. They want to keep the 10 lots under covenant. It's the 4 lots that were overlooked that they are requesting to have released namely 214, 215, 244, and 264.

After a brief discussion, a motion was made by CD/KD to grant a partial release of Covenant in the Whalers Woods' Subdivision specifically releasing lots 214,215,244,264 retaining the 10 lots that are outlined in the letter dated February 14 from Long Built Homes. With all in favor, the motion passed.

Chairman Glassman wanted to discuss a few topics that they've discussed in the past namely spot zoning, lit signs, and developments. He suggested that over the next three meetings that they devote an hour to one subject at each meeting. He suggested that on the subject of signs that perhaps they should get the Building Commissioner to attend and have someone present from Legal for the other subjects.

Ms. Dawicki asked Ms. Maclean if she was aware of anything pressing coming up so they can prioritize. Ms. Maclean said the Planning Board has one case coming up at the next meeting and that she wasn't sure if they would be able to get someone from City Solicitor's or others to attend a meeting that late in the evening.

Ms. Maclean suggested that they wait until a Staff Planner and/or a City Planner is on board thus being fully staffed. Ms. Duff agrees with the Chair to discuss these topics but also concurs with Ms. Maclean to wait until the Planning Office is fully staffed. All agreed to wait.

Ms. Maclean also handed out copies of training sessions offered by the CPTC to the Board Members to review.

Old Business

Date of next meeting: March 13, 2013

A motion to adjourn was made by CD/KD at 6:58 P.M.