



Planning Board

September 18, 2013 – 6:00 PM - **Minutes**
City Hall, 133 William Street, Room 314

MEMBERS PRESENT:

Chairman Arthur Glassman
Colleen Dawicki
Peter Cruz
Kathryn Duff
Janine DaSilva

ALSO IN ATTENDANCE:

Jill Maclean, City Planner
Kreg Espinola, City Solicitor
Patrick Day, Staff Planner

Chairman Glassman called the meeting to order at 6:00 p.m. and called the roll.

Public Hearings:

Case #19-13 - Proposed zoning change

Mr. Glassman stated that the legal advertisement for this proposed zoning change was advertised incorrectly and therefore cannot be voted on as stated. It should have read rezoned from Planned Business to Industrial “A”. It will be re-advertised and heard at the October 9, 2013 Planning Board meeting.

Case # 20-13 – Proposed zoning change

Ms. Dawicki asked to clarify that if this request were approved, every parcel zoned Industrial B would then be allowed to engage in salvaging, dismantling and scrap metal, etc. Ms. Maclean explained it would be a by right use, so a permit would have to be pulled. She explained that some of the key language in the proposal is arbitrary in that it is unclear what “primarily reliant upon a waterfront location” means. The way that the City, working with City Solicitors, has interpreted it is that it could potentially open up any area zoned Industrial B for this type of use. Ms. Duff clarified that the proposal is not for new language in our existing zoning, stating the current allowance is for Industrial C, far from our harbor. Ms. Maclean correcting her statement said it is the Waterfront Industrial Area, not Industrial C. She noted that anything in royal blue on the map could potentially become salvage under this language. Ms. Duff expressed that nothing existed north of the bridge of the size needed to operate on an industrial scale. Mr. Glassman did feel the board could allow salvage to just pop up in the delineated map area. Ms. DaSilva agreed, as did Mr. Cruz.

A motion was made (JD) and seconded (CD) to open the public hearing.

There was no response to Mr. Glassman’s invitation to be heard in favor
There was no response to Mr. Glassman’s invitation to be recorded in favor.

Upon inquiry by Mr. Glassman if anyone wished to be speak in opposition, Attorney Tim Wenger, representing Whaler's Cove Limited Partnership, addressed the board wanting to submit a 9/18/13 letter of opposition regarding Case #20-13. The letter was read into the record.

A motion was made (JD) and seconded (KD) that the letter be received and placed on file.

Motion passed unopposed.

There was no other response to Mr. Glassman's invitation to be heard in opposition.
There was no response to Mr. Glassman's invitation to be recorded as opposed.

A motion was made (JD) and seconded (CD) to close the public hearing.

Due to an additional letter in opposition from an abutter, a motion was made (JD) and seconded (KD) to re-open the public hearing.

Ms. Maclean offered a letter from Mr. Daniel Cordeiro of 156 Davis Street, who wished to be recorded as opposed to the rezoning of this case.

A motion was made (JD) and seconded (CD) to close the public hearing.

A motion was made (JD) and seconded (PC) that the Planning Board recommend the proposed zoning change mentioned in Case #20-13 that "Businesses engaged in salvaging, dismantling and reprocessing of scrap and waste materials, including building materials, motor vehicles, machinery and equipment, paper, rags or any other discarded material, provided that such business be primarily reliant upon a waterfront location," be changed from an excluded/prohibited use in the Industrial "B" district to a permitted use in the Industrial "B" zoning district. The motion that we make an affirmative recommendation to the City Council.

Ms. Dawicki confirmed that the current motion is to recommend the change. So, a yes vote recommends.

Motion fails 5-0

Mr. Glassman announced that the Cardinal Place matter has been continued.

Case #25-13: - Proposed zoning change

There being no presenter, Ms. Maclean explained that this is a City Council motion to create an overlay district for the parcels mentioned. She asked Attorney Espinola to speak to the opinion that it's spot zoning.

Attorney Espinola expressed that the City Solicitors discussed whether or not this type of zoning would be considered spot zoning, and came to the conclusion that it very likely would. There is another waterfront area that is a proponent for a casino along the waterfront, as this does not consider the waterfront to the north, this zoning change could be considered to be at the detriment of another entity. In addition, the way this is zoned, it benefits only one entity. It's our understanding that the lots that were mentioned in the proposal are either under option or owned by one entity, and zoning cannot be for the benefit of a single entity; and certainly cannot zone for the benefit of a single entity against the detriment of another entity that's vying for a similar venture.

Ms. Duff clarified that if approved, the boards' position may be legally indefensible. Ms. Dawicki inquired if approval could make the city liable to defend itself again spot zoning charges. Mr. Espinola confirmed the expectation that the city would be brought into any such suit.

A motion was made (JD) and seconded (CD) to open the public hearing.

Upon invitation by Mr. Glassman to speak in favor, Attorney Chris Saunders representing KG Urban Enterprises addressed the board. He stated he believed the information just given the board was incorrect. He stated the proposal is not geared toward one entity. He suggested the original overlay district benefited only two or three property owners. He stated that in an overlay district you are not changing the underlying zoning. He stated the passing of the proposal would merely create a district. He further stated KG Urban Enterprises is an entity that, if given a gaming license, would pump in 500 million dollars to the local economy at a minimum. He stated the site is prime area for revitalization, but can only be redeveloped with an overlay district. A redevelopment will require 50 million dollars of environmental clean up to this brown field, and no local entity will expend that kind of money. He highlighted this as an excellent opportunity that is not spot zoning considering some 18 lots are involved. He requested an affirmative board in light of revitalization goals.

In response to Mr. Dawicki, Mr. Saunders stated there are overlay districts throughout the city since the late '90's. With multi-use developments that go across multiple zoning districts, it is necessary to come before the boards to have plans affirmed. He represented that current site owners N-Star and Sprague are in favor. If the zoning change is approved by city council, plans will be brought before the board.

Ms. Duff disagreed with Mr. Saunders and stated that at this stage this was not a public engagement process. She highlighted the importance and complexities of our protected deep water harbor port. She feels it is imperative that the importance of the subject and the scope of its effect, it compels that our community have input and be part of this dialogue.

Mr. Espinola explained that spot zoning arises where zoning change is designed solely for the economic benefit of the owner of the property and not in accordance with a well considered plan for the public welfare. He stated the board has not seen a well considered plan.

Mr. Saunders stated that he spent time with the waterfront neighbors that would be affected and made clear that they were not going to displace anyone. His clients are following a process and want the public to know about the proposals, but gaming legislation prohibits things that can be seen as lobbying. He stated his clients are happy to go to any meeting and talk to any group, and they have tried to be open. He again stated this is not spot zoning, as it benefits multiple property owners and it benefits the city.

In response to Ms. Mclean's request Attorney Saunders spoke with regard to Item 4710A, 6. He stated other public processes must be accomplished even if this is adopted, such as the designated port area being amended, the Harbor Master Plan, the Chapter 91 issues.

There was no response to Mr. Glassman's further invitation to be heard in favor.

Jeff Pontiff, 13 Hamilton Street, New Bedford, questioned the announcement not containing Map 42, Lot 271, and he wondered if that was by purpose or a typo.

Mr. Saunders explained he believed the exclusion was because one of the issues was not to disturb any existing businesses operating primarily for a seafood dependant use. That is Luzo Fuel, servicing primarily the fleet.

In response to Mr. Glassman's invitation to be heard in opposition, Paul Weckesser, owner of Mass Fabricating, W. Trading, Miss Leslie Fishing, Mashona Fishing, Mistress Fishing Corporations, the direct northern abutter, addressed the board. He stated in spite of Mr. Saunders statement that he made inquiries to neighbors, he never received a notice or a call and questioned his true outreach efforts. He believed it would be detrimental to his business. He stated he has come before several boards and is in the first phase of a 4.5 million dollar revitalization to his property. He believes it is spot zoning. He stated having relocated from Boston, he has

seen Boston buildings encroach to the gates of the fish pier and disrupted and forced out 150 business. He fears that will occur here and disrupt our 200 million dollar fishing fleet. He is concerned about the impact on his property value. He stated as an abutter he has received no notice and no response to his three attempts to reach out to KG Enterprises. He stated Mr. Saunders comments that someone has to come in with 50 million dollars is a falsehood, as N-Star has had to deposit remediation funds in escrow. He said his property is already shown on the KG website with a building on it. If they change it to light business versus industrial his property becomes worth less. He stated he has made substantial investments in his property. He stated he is opposed, as are the people he has spoken to.

There was no response to Mr. Glassman's further invitation to be heard in opposition.
There was no response to Mr. Glassman's invitation to be recorded as opposed.

A motion was made (JD) and seconded (KD) to close the public hearing.

Mr. Glassman questioned what would happen if the zoning were changed, but the casino didn't come.

Ms. Maclean stated that as an overlay, the underlying zoning remains constant, and anything that fits under the overlay district would be allowed to come in.

Ms. Dawicki inquired if there was a requirement to notify abutters.

Ms. Maclean stated that in past, city practice on larger zoning changes abutters are not typically required to be notified. The matter was legally noticed in the Standard Times two consecutive Wednesday prior to this meeting per requirements.

Ms. Duff stated that the complex plans to re-develop the harbor front are at the preliminary stages and this seems to bypass that process, and that our resource is incredibly valuable and calls for an aggressive comprehensive study that should engage the public as well. She also expressed issues with the wording of the proposal, such as permanent employment. She stated her extensive research of ports around the world has taught her you rarely get back industrial waterfront property, so she is very hesitant about risking that loss before doing the proper planning.

At Ms. Dawicki's request, Mr. Espinola reread the definition of spot zoning. He added that the test case for spot zoning was actually out of New Bedford. Ms. Dawicki question whether this was aligned with the city's master plan. Ms. Maclean stated that specific location was not addressed, and deferred to the Harbor Master Plan.

Mr. Glassman mentioned the uncertainty of what's going in there, absent a plan. He too is concerned about a risk to lose such valuable land. Ms. Dawicki confirmed that absent an existing plan, engagement of neighbors, she too feels it inappropriate at this stage.

A motion was made (JD) and seconded (KD) that the planning board send a positive recommendation to the Ordinance Committee approving the proposed Waterfront Economic Development Revitalization Overlay District to be located in the area surrounding Cannon Street Station/N-Star site consisting of Assessor's Map 37, Lots 105, 106, 290, 291, 292, 293, 312, 323; Map 42, Lots 84, 151, 160, 178, 272, 274, 278; Map 47, Lots 181, 199 and 241.

Motion fails 5-0.

Case #24-13 – Request for a Special Permit

reduction of the amount of required off-street parking and Site Plan Review for a project at Presidential Heights, 159 Fillmore Street (Plot 97, Lot 7), proposed by New Bedford Housing Authority, Office of Modernization.

Amelia Thrall of 248 Elm Street, Somerville, MA, project designer with Davis Square Architects and Catherine Martin of DeVellis Zrein, addressed the board concerning the renovations for accessibility at Presidential Heights. They are renovating existing units for residents with physical impairments, so this work includes site improvements. They have modified the parking for a net gain ten internal spaces, including an accessible space for each of the ten accessible units. We have a net loss of two units.

Ms. Martin, a registered landscape architect with DeVellis Zrein, representing the Presidential Heights project, addressed the board. The existing conditions plan is before you a stamped survey plan. She oriented the plan with north facing Van Buren Street here and Fillmore Street here. Currently they have one double loaded parking lot with 16 spaces and no handicap accessible spaces. The site is being renovated and brought up to handicap compliance, and because of that the applicant needs to reconfigure and add parking spaces to meet the handicap requirements. She presented a rendering showing the proposed reconfiguration. Just to orient you, this is the existing curb line of this parking lot, and essentially we'll be keeping these spaces and keeping the driveway coming in, but we will be upgrading the lot to include the handicap spaces, adding lighting, striping, new paving, new curbing and bringing it up to compliance with the grades as required by the state codes. With regard to an increased impervious surface. They worked with the City Engineer and received the clean letter. Currently drainage comes to an existing catch basin and the area will continue to do that. They have provided a secondary catch basin with a secondary infiltration system and an overflow, the City Engineer having reviewed it. Basically the extent of the improvement is the addition of the handicap spaces and reconfiguration of the lot so it works with the spaces.

Board questions were invited.

Ms. Duff inquired if any improvements were planned for the landscaped areas shown. Ms. Martin indicated that right now it's just loam and seed. It being a city project, the budget is very tight. They are hoping they will have some money as the project moves forward so they can add some landscape improvements.

Ms. Duff confirmed that no trees were being taken down. She confirmed the proposal represented a loss of two units, but inquired about any loss of exterior parking

Ms. Martin explained the current parking lot has sixteen spaces. The proposal now will be thirty spaces, ten of which are handicap parking. So basically we've reconfigured it to match the existing parking count plus the additional spaces required by the state code.

In response to a question from Ms. DaSilva, Ms. Martin confirmed that there would be 10 handicap spaces.

Mr. Cruz inquired as to accessible ramps where the accessible parking spots are. Ms. Martin indicated not ramps, but handicap accessible curb cuts with flush pavement and winged sides that bring you up to a handicap compliant sidewalk, in the lower parking lot as well.

Applicant confirmed tactile strips will be used if required by code.

Mr. Cruz inquired on the photo metrics lighting and type of luminaire, and whether they match the existing on site? Applicant stated they were using 15 foot poles. Eight poles. So they'll be at a residential scale that suits the site with a .9 foot candle average and has side shields so we're not bleeding off of the parking areas. She stated there was really nothing there currently, but will match general lighting.

Mr. Cruz then asked about erosion control and whether the applicant was proposing any erosion control for the construction of this parking lot and the demolition of the building, to which the applicant stated there is no affect to the building as the renovations are taking place within the unit interiors. Ms. Martin stated they would provide hay bales and silt fences on the low side of all grades for runoff, with silt sacks in all of the catch basins.

Ms. Duff confirmed that the site wide unit count would decrease from 200 to 198. Ms. Thrall indicated they were renovating 20 units, most units being side-by-side townhouses, to achieve installation of 10 accessible units. Because of the dimensional requirements of accessibility code they need a little more space for the bathrooms and kitchens, resulting in the net loss of 2 units.

Ms. Duff again indicated she would like to see some landscaping done in the green areas other than loam and seed.

Mr. Cruz asked if there was a reason the sidewalk doesn't make its way down to the street where the last accessible parking spots are. Ms. Martin stated it was because the greater than 5% grades precluded them from continuing with an accessible sidewalk all the way down that far.

Ms. Maclean requested the applicant restate of the parking numbers again; what would have been required and what you have.

Ms. Martin stated the existing is 39 spaces, and we're now providing 49 spaces, as the ten accessible additional spaces are required. The reduction in parking relates to the fact that we're revising the internal parking lot, but not a revising you would do for new construction. So, essentially the count that exists right now is staying the same, plus 10 additional handicap spaces.

She stated the upgrade is not per zoning code but per handicap code.

Ms. Thrall explained the application for special permit is because it's not new construction but just renovations.

Mr. Glassman explained that with 198 units 396 spaces were needed, and applicant is going to 49 spaces. He inquired of there was a parking situation with such a low number of spaces, to which applicant replied that they had street parking.

A motion was made (JD) and seconded (KD) to open the public hearing open.
Motion passed unopposed.

There was no response to Mr. Glassman's invitation to speak in favor.

There was no response to Mr. Glassman's invitation to be recorded in favor.

There was no response to Mr. Glassman's invitation to speak in opposition to the project.

There was no response to Mr. Glassman's invitation to be recorded as opposed.

A motion was made (JD) and seconded (KD) to close the public hearing.

Mr. Glassman stated the applicant was adding, not taking away from what they had without opposition.

They're adding spaces, making it accessible and improving it. They're not taking anything away, but are actually giving.

Ms. Duff stated she wanted to see additional landscaping with some low tolerant ornamental shrubs and some site trees.

Ms. Cruz wanted the addition of the silt sacks and the silt fence with straw bales.

A motion was made (JD) and seconded (KD) that the planning board approve site plan review for Case #24-13, for the amount of required off-street parking and Site Plan Review for a project at Presidential Heights, 159 Fillmore Street (Plot 97, Lot 7) with the conditions that the applicant include site trees, drought tolerant shrubs, straw bales and silt fencing on the property as they do the modifications. Understanding that this is an increase in parking not a decrease in parking.

Motion passed unopposed

Mr. Glassman announced that the Cardinal Street subdivision in Sassaquin was not being heard tonight.

Case 22-13: Site Plan Review

Ms. Maclean indicated that she spoke to Attorney Espinola earlier and wanted to put on record that in the past your architecture studio did previously work with Harry Jacobvitz back in 2004. You don't have any current contracts with the applicant nor do you anticipate any at this time, so it is not a conflict of interest for you to participate in this hearing. Ms. Duff acknowledged that was correct.

Attorney Chris Saunders, 700 Pleasant Street, on behalf of Bush Cleaners and Harry Jacobvitz, addressed the board. Also here is Ken Ferreira Engineering that submitted the application and did the plan. Mr. Saunders indicated he had extensive conversation with Dan Romanowicz as to whether they needed be here tonight. The site was formerly Bush Cleaners on County Street across from Kentucky Fried Chicken. That particular use was a grandfathered non-conforming use, with 9 parking spaces. Zoning called for at least 14 parking spaces for that prior use. Bush Cleaners vacated in December of last year, and pursuant to our zoning bylaw if a use is dormant for 2 years a property owner loses that grandfathered status. This being less than one year, Mr. Saunders did not believe they lost the grandfathered status. Dan Romanowicz has opined that a dry cleaning service business was a business or professional office, which I totally disagree that a dry cleaning service is an office. Mr. Saunders believes it falls under retail stores and services not elsewhere set forth, which is the proposed use. So, I'm coming before the board saying that we are a grandfathered non conforming use. Nonetheless the Building Commissioner opined that we've got to come before these public hearings, spend the money on engineering fees and such. What we have is a business that is vacant that is on a small lot, constricted as to parking because they lack the square footage to add more parking. The building is what the building is. It abuts Danny's Autobody. Currently on the corner of Kempton Street and County Street, there is no landscaping. They are proposing a small landscaping area on the corner. Applicant seeks relief from the 14 parking spaces required. Applicant proposes to re-stripe the parking area and add handicap parking. Applicant will use existing curb cuts. The lighting is going to be the existing lighting that's on the building. It's represents an improvement to the existing conditions that are there and will add a new business to a vacant structure, which will increase excise tax as well as property values. We're not changing anything with the existing drainage. He stated Mr. Jacobvitz is a long time New Bedford business owner and resident contributing to this city. Mr. Saunders then invited questions.

In response to Mr. Glassman's question, Mr. Saunders indicated the proposed business is a convenience/dollar store, and his opinion is the use falls under the same exact use that it's been for years. The Assessor agrees with us but the Building Commissioner doesn't. He clarified this will not be a Cumberland Farms, and Mr. Jacobvitz will still own the property, as it is a lease.

Ms. Maclean noted the proposed a sign as well. Applicant clarified it was an existing sign which will be re-faced. Ms. Maclean requested allow stack review and not require a second application. Applicant noted there was also a sign on the roof of the building that will be re-faced.

Ms. Dawicki inquired if the sidewalk around that parking lot was asphalt or cement. Mr. Kenneth Ferreira stated it was all being redone.

Mr. Cruz inquired as to the size of the proposed parking spaces. Mr. Ferreira stated the standard 9x20 size, with the additional 8 foot striped area for the handicap, as well as a van accessible sign .

Ms. DaSilva confirmed that liquor would not be sold.

Ms. Duff KD asked about screening for the adjacent Bethel AME Church to the north, as the building is very close to the property line. Mr. Ferreira indicated there is really no room there to screen. He stated there was a concrete retaining wall dropping off the property down onto the grass. Literally three sides of this building are within a half inch of the property lines. Based on this scale, there isn't room beyond that parking space. He stated there's a retaining wall with fencing and then it drops off beyond that. The whole property is sloping down.

Ms. Duff inquired as to what material is where it drops down. Specifying between the double line at the northern edge of the parking spaces and the property line of the Bethel AME Church was there just a void or dirt. Mr. Ferreira indicated he believed it was broken pavement.

Ms. Dawicki questioned whether there was enough room to move the parking spaces south to give more of a buffer there? Mr. Ferreira indicated there was not, stating they had examined different configurations for improvement and found none. He indicated the double doors directly north of the handicap spot will have to be used for loading and unloading any kind of goods.

Mr. Cruz noted it looks to me that you're going to be backing into that accessible striped area. Mr. Ferreira indicated the spot was useless unless used as employee parking. But loading would pull in from County Street, back up, and leave on Kempton.

Mr. Cruz indicated they shouldn't be encroaching into the aisle of the accessible spot. In answer to a question from Mr. Cruz, Mr. Ferreira indicated the width from the handicap striping is about fifteen feet. Mr. Cruz stated he is worried about those two spots with pedestrians coming in and out of and someone parking there with a van and someone backing into them. It doesn't seem like they're 9x20 spots.

Ms. Dawick questioned if trucks coming in to make deliveries would be backing in between the handicap space and the spaces on the north. Applicant indicated that was correct.

In answer to Mr. Glassman's question on trash, Mr. Ferreira stated there was no dumpster with the dry cleaning operation, and the proposed use will require lessors to put it on the sidewalk for downtown pickup.

Mr. Cruz confirmed that applicant would designate the two spots as employee parking, to which applicant agreed.

Mr. Cruz also indicated that if this building was outside the boundary for downtown trash pickup, the applicant would have to designate one of these spots as a dumpster area which would need screening. Mr. Ferreira indicated the applicant sought a reduction in parking because the requirement under the square footage of this retail operation is fourteen and they only have 9 spaces though they are not expanding the business in any way. With the dumpster condition their request would be for a further reduction to eight spaces and that last space would not be used for parking and it would be screened appropriately with vinyl fencing for a dumpster.

Ms. Duff again requested screening between the site and the church, and on the edge along the sidewalk.

A motion was made (JM) and seconded (KD) to open the public hearing.

There was no response to Mr. Glassman's invitation to be recorded in favor.
There was no response to Mr. Glassman's invitation to be recorded in favor.

Upon inquiry by Mr. Glassman's invitation to be heard in opposition, Reverend Irma Thibodaux, pastor of Bethel AME Church addressed the board. She agreed with Ms. Duff. She stated they do not have a wall that separates us. In the past, we've had a problem with whoever drives in those parking spaces facing our church, as some have crashed into the building. She stated there really is no place to put any greenery and with the Mill Street project there is now a huge utility box on the property as you drive in, making the property a little bit smaller than what it was. She wanted to propose the owner would put up some kind of barrier or fencing to protect our church and the safety of our parishioners, along with trash accumulation. She stated if the store is open 24/7 they would be dealing with people cutting through to get to the store, because there's an opening between the cleaners and our property that people will come from Mill Street and cut through. Where he's talking about the double doors, right in that corner is a cut through alley. She stated they are now hosting AA meetings and she doesn't want funny things to happen. She stated that Harry has been very nice to allow us to park there over the years. Going to a convenience store will open a lot of problems in terms of the church property if we can't propose some kind of changes to take place first.

Mr. Glassman confirmed that Ms. Thibodaux was looking for a fence barrier between the parking lot and her property.

Ms. Thibodaux also stated the drop down discussed is where the windows are to their basement, and snow plows dump the snow in there. She felt a high enough fence would stop the plow from dumping snow and in that area resulting in water damage control to her building.

Upon inquiry by Mr. Glassman's invitation to be heard in opposition, Crawford J. Daniels, the Chairman of the Trustee Board, addressed the board. He stated the two property entrances are a turn coming off of County Street, or coming down Kempton Street the other exit is on your left-hand side, and there's no sidewalk out there. If you put a dumpster in there, it's going to be a city dump. There's no way you can have a store of that size containing garbage for seven days a week and keep it clean.

There was no response to further inquiry by Mr. Glassman's invitation to be heard in opposition

In response to Mr. Glassman's invitation to be recorded as opposed were the following;

Reverend Delphina Harrison, working under Pastor Thibodaux, with an address of 295 Park Street, New Bedford, MA, 02740.

Annette Morton, steward at Bethel AME Church, of 28 Metropolitan Avenue, New Bedford, MA.

Yvonne Drayton of 32 Grove Street, New Bedford, a member of Bethel Church.

Gordolyn Watson, a member of Bethel AME Church. Address 43 Hill Street, New Bedford.

Tony Pires, trustee at Bethel AME Church. Address 341 Chancery Street, New Bedford.

Monica Sylvia a member at Bethel AME Church, of 197 A North Street, New Bedford.

Makeda Njoroge a member of Bethel AME Church, of 862 South First Street.

There was response to Mr. Glassman's invitation to be recorded as opposed.

Mr. Ferreira indicated after speaking with my client Mr. Jacobvitz, he's perfectly comfortable with putting up a fence. You can include that as a condition. Six foot, white vinyl would alleviate the problem of trash blowing into their yard and obviously the plow's not going to go over six feet

A motion was made (JD) and seconded (CD) to close the public hearing.

The board discussed their notes in an effort to draft a motion. They noted the area being a national registered district, they would want something other than white vinyl fencing.

Ms. Maclean suggested in light of comments about cars actually driving through, and for litter protection and site lines, maybe a wooden guard rail or something that would stop the cars, as the fence doesn't always work.

Mr. Cruz proposed having staff approve the dumpster screening should it be necessary.

Ms. Duff noted that if trash could be contained in large bins, they could pull that screening around the corner and create a screened area just to the west of those parking areas, as opposed to a full dumpster, right in that 4-5 foot area. She also inquired if on the reinstallation of curbs they could pull the curbs to make for a reasonable opening in the curb coming into this parking area, so parking is not bleeding out into the sidewalks and Kempton and County Streets. Decrease the curb cut size to align with the openings for the parking area.

Ms. Maclean indicated she could ask, though likely not included in the contract, as the work has been put out to bid.

Mr. Glassman being pro-business, stated he hates to see empty store fronts. Denying this would still require fixing the problem or we would have an empty store forever and ever. He suggested the guardrail suggested by Ms. Maclean. He felt this being a convenience store, a neighborhood store, would have a lot of people walking there or riding their bike, and he does not think parking is going to be a terrible issue. He would rather see the site clean with one less parking space, than have litter. His biggest concern is not to see a vacant store front.

Ms. Duff noted Mr. Jacobvitz's willingness to work with Bethel AME to put up the screening. She stated she would like to see a guardrail with a six foot high solid wood probably painted fence. So that it blocks both the light and it does give some protection for the neighbor.

Ms. Maclean added the only comment from the Department Public Infrastructure was regarding looking at the traffic lines. Kempton Street being a one way east, so you can only come out and go to the left. So there really aren't any issues on that side. The only concern was exiting onto County. And it was just brought up as a suggestion to possibly put up a no left turn sign so you can only take a right out and you don't end up backing up traffic at the traffic light at County and Kempton.

A motion was made (JD) and seconded (CD) to approve the Special Permit for a reduction in off-street parking from the fourteen required spots to nine spots, with the condition that the parking be further reduced to eight spots if needed for a dumpster on-site at 518 County Street (Plot 58, Lots 490 & 491).

Motion passes 5-0.

A motion was made (JD) and seconded (PC) to approve the Site Plan Review for a proposed convenience store located at 518 County Street (Plot 58, Lots 490 & 491) with the conditions that the applicant place a dumpster on the site if outside the business district; that the applicant erect a six foot wood fence with integrated guardrail on their side of the property; and that the applicant install a 'No Left Turn' sign on the County Street side of their property; and that two of the spots be designated for employee parking; and that applicant work with staff to reface the signs located on top of the building and the corner of County and Kempton.

Motion passes 5-0.

Case 21-13 - Proposed pylon sign

Edward Taylor, of Poyant Signs 125 Samuel Barnett Blvd, New Bedford, addressed the board requesting a replacement sign for Dussault & Zatir. He displayed a photo of the existing sign and replacement sign. The current sign at 17', is out of code but grandfathered in. Applicant is asking to do 15' feet, within code. The existing pole is beyond the six feet to the sidewalk, and we will bring the new pole back within six feet, no part of the sign overlapping the sidewalk.

Ms. Duff inquired as to the height to the bottom of that sign. Mr. Taylor stated it was a little over 8 feet. Ms. Duff indicated they were having trouble following, because the elevations that we have in our packet have that sign, to the top of the sign, measuring 17' 9.5" inches. And you said it's 15' to the top of that proposed sign.

Mr. Taylor apologized and offered revised copies.

A motion was made (JD) and seconded (PC) to accept revised copies of the filing.

In response to a question by Mr. Glassman, Mr. Taylor again confirmed the base of the sign is a little less than 8 feet from the ground, but no part of the sign will be on the sidewalk, or overlapping or overhanging the sidewalk.

Mr. Glassman consulted the attorney with regard to sign regulations that were put into effect December of 2003. These ordinances are a little outdated because since then we have digital and different types of LED signs that have come out. But in the section here of prohibitive signs, we do have a clause that allows time and weather, right up here in section 3222. But when you go down further, we don't let any messages on the bottom. I'm seeing the time, I'm seeing the weather, but I'm also seeing a message for your e-mail address or your website.

Mr. Taylor indicated there will be additional messages also. That was the intent.

Mr. Glassman stated that was the problem in light of the ordinance that doesn't allow that. Applicant inquired if CVS was approved after that.

Mr. Glassman clarified that speaking for the last 3 years, they haven't allowed any of these. Prior to that there were some such as Walgreens, CVS, and a number that did come up. Since 2003 we've had this on the books, and for the last 3 years that I've been on this board we have enforced it. We have counsel here today I don't know if you can enlighten us?

Attorney Espinola believed the position Mr. Glassman stated was accurate in terms of both the ordinance and the history of allowing digital signs.

With regard to a square footage concern, Mr. Taylor stated the proposed sign is 72 square feet. The existing sign is 66. Stating he'd be happy to shrink the header panel Dussault & Zatir to lift that up to the 15 feet and give us the proper clearance under the sign.

Mr. Day addressed the board with regard to his review of the sign ordinance. He stated he spoke with the two sign, ground sign applications, in particular with Danny Romanowicz, Supervisor of Inspectional Services here. We were in agreement that the subject signs would be governed by Chapter 3255 which does spell out maximum size requirements for the subject ground sign, which requires a distance grade of 10 feet from the bottom of the sign. Also the application packet that you received was not in conformance with code for several regulations; one of which is the maximum height from grade to top of sign 15 feet. There's also a requirement that a new sign cannot be located closer than 6 feet from the property line. This is showing it at, I believe it's being described at the zero lot line. That would have to be pushed back 6 feet. The maximum area of the sign face itself cannot exceed 25 square feet. I believe it was stated to be 75, which would be nearly three times the

maximum. So again, just to recap what Danny and I discussed, it didn't seem to conform for maximum area; it seemed to be over that. It seemed to be higher than the maximum height for a ground sign. And it also seemed to be closer than the minimum setback for a ground sign from a lot line, which is 6 feet.

Mr. Glassman inquired of Ms. Maclean whether the applicant could redesign this and come back again, or is he allowed to fix the existing sign that he has and be grandfathered in because it's already there.

Ms. Maclean stated she believed if they kept the sign exactly as is and were basically performing maintenance or re-facing it wouldn't need approval by the Planning Board. If they're going to change it, the Board could set all the maximums, make your determination on the website. Given the smaller square footage, they could do away with the time and temp, or you could approve both. You could indicate the max of what you would want to see on the sign and then have the staff review it so it didn't need another hearing.

Mr. Glassman indicated if they cut this down by two thirds, it would be a small sign compared to what he has.

Mr. Taylor stated when originally filed at the town hall, he was told by the inspectors that because the current sign is less than six feet from the pole to the sidewalk the pole had to be six feet. This is the first I've ever heard that the actual outside of the sign itself has to be back that distance. Ms. Maclean indicated they had spoken with the Building Commissioner who makes the final call on that. She again stated the applicant would have to replace the existing sign with what's there. You would have to reface it as is and wouldn't be able to put the time and all that.

Mr. Glassman confirmed that an exact reface would not need site plan review but can be signed off by staff internally without a hearing. He suggested the board approve what they can and allow the owner to decide whether he wants to go with that or restore.

Mr. Taylor asked if the customer elects to reface would they be allowed to be able to put a time and temp area on that existing face. Ms. Maclean indicated they would have to come back; that the only way they could do it without approval is if you're re-facing exactly what's there, no size change, no adding language or time and temp.

The board discussed the contents of the motion.

Mr. Taylor further indicated additional sign setback would prevent them from changing the pole, and at this juncture the only thing he could propose is to rehab the existing sign.

Ms. Maclean suggested the Board approve the max they will allow to save them the trouble of coming back since they are here tonight. At least approve the maximum and then if they want to do less, you can condition staff approval.

A motion was made (JD) and seconded (CD) that the Planning Board approve the proposed pylon sign at 1015 Kempton Street, Case #21-13 (Plot 55, Lot 33) on behalf of the owner, Dussault & Zatir Law Offices, with the conditions that the sign meet the ordinance regulations of a 10 foot clearance from the ground with a height no higher than 15 feet, with a 6 foot clearance from the property line, and that the sign have an area of 25 square feet, and that the applicant configure the sign as they wish with the exception that they can only put time and temperature, but no script.

Ms. Maclean requested adding that applicant work with staff as a 6th condition.

The motion was so amended.

Motion passes 5-0.

Case #23-13 - Proposed pylon sign

Attorney Benjamin Dowling representing Fernando Penagos, introduced photos to the board

A motion was made (JD) and seconded (PC) to accept and place on file.

Mr. Dowling indicated this matter was very similar to the previous application. I think there may be some differences and I'd like to discuss them with you. The proposal is characterized as a re-facing of the existing sign. The area of the sign, the location of the sign on the site, the height of the sign with relation to the bottom and top of the sign will not change. What will change is the channel lettering on the existing photo. The main portion of the sign will remain a pylon type sign illuminated with light bulbs. But the bottom of the sign will be an LED unit. The LED unit will not scroll or flash, use animated or intermittent lighting, or move in any way, shape or form. What the LED unit will allow the store owner to do is to change the message in that section of the sign without having to go out to the sign with a ladder and use a tool to replace this lettering. It will allow flexibility to change the color and the font of the lettering. And of course the message in that LED unit will change just as the message in the preexisting sign would change, but the method by which it changes will be different. Instead of using a ladder in the 21st century, we're going to use a computer. So, I think this sign is a little different from the previous sign. We're not proposing an expansion in any way, shape or form. This is a preexisting non conforming use. The sign to the best of our knowledge was constructed 20-40 years ago. And as you just went over, the current sign ordinance came into effect in 2003.

Mr. Glassman confirmed that this is basically what the board just went over for the last hour.

Ms. Maclean indicated Mr. Day had look at this one as well.

Mr. Glassman stated that just looking real quickly, height, messaging, LED's, are all the things in our ordinance that are not allowed.

Mr. Day addressed the board stating in this instance it's about the same distance. There is zero setback. It exceeds the maximum square footage for the sign face. It's 100 square foot, four times what the max is. And I would disagree that it does meet the definition for the lower cabinet proposed. The height of the sign also does not meet the maximum requirement.

Mr. Dowling inquired as to what section of the sign ordinance prohibits LED signs?

Mr. Glassman indicated it was basically 3227. Ms. DaSilva cited 3220, is prohibited signs as well as 21-28.

Mr. Day clarified that 3222 says any sign which incorporates moving, flashing intermittent lighting.

Mr. Dowling stated that it doesn't specifically say LED signs and as such is not specifically prohibited by the code.

Mr. Glassman and Ms. Duff noted that in 3227 it specifically says LED, LCD, digital signs, digital billboards.

Ms. Maclean noted that 3227 is off premise signs, but it would go back to what Patrick was saying. It's the bottom of the sign you're proposing that the Board would take issue with.

Mr. Dowling stated the point he was trying to make is under the prohibited signs section of the code, it does not specifically prohibit LED signs.

Ms. DaSilva stated it prohibits moving, flashing, animated and intermittent lighting.

Mr. Dowling stated they were not proposing that, though they would have the capability.

Ms. Maclean added that looking at the pictures which the applicant himself has provided, you will note all the illegal cigarette signs littering the site, along with the sandwich board sign and the cigar banner, all of which are illegal. So, it's already there that they kind of bend the law or break it as suits them. So I would just put that out there that it would be very difficult to enforce whether this becomes changing, flashing, etc.

Ms. DaSilva noted especially when the purpose is to change or flash. The applicant specifically said they want to be able to change the signs using a computer as opposed to a stick.

Mr. Dowling stated that it may seem to the board like we're coming here trying to bend the rules, but to me it's kind of like a gun. Guns aren't necessarily illegal. They can be used for illegal purposes, but there are regulations around firearms. And the fact is that the New Bedford sign code does not specifically prohibit LED signs. This is a preexisting, nonconforming sign

Ms. Maclean noted if you were to simply reface, you could keep it the same size and everything. The Board wouldn't most likely take issue with that. You're completely changing the sign, so therefore it needs to conform with the maximum size and height requirements in the ordinance.

Mr. Dowling stated he did not see it as a complete change. I see a 10x10 square and in the top portion we have the brand, which is the name of the store. In the bottom portion we're advertising specials. That's what we're proposing with the new sign.

Ms. DaSilva commented that re-facing means that you're going to keep it exactly the same and you're not.

Ms. Duff noted that in all due respect, it's a huge sign for not a huge building. We're trying to uphold planning and the development of good planning for our city, because we're trying to grow and have a vision for greatness for our city. And so we're looking at signage as being integrated into the fabric of our city in a sensitive, meaningful, architectural way. And so, you have a 10 foot by 10 foot sign. That is not a minor sign, and it's not in front of a high rise. It's in front of a one story building. I'm not so sure what the height of that eave on that building is, but it can't be more than 10 feet

Mr. Dowling stated that while sympathizing, he is merely asking to be treated fairly and to be treated according to the rules. The rules do not specifically outlaw LED signs. We knew we had a variance issue, the building permit was denied by the Building Commissioner, our plan was to come before you and hopefully get approval from you and then to deal with the variance issue in front of the Building Commissioner. In that process, my anticipation was to address the set back issues and the size issues. And admittedly I haven't fully researched this issue, but there is case law Barron Chevrolet vs. Town of Danvers that holds that the replacement of panels on non conforming signs does not constitute a change. Now admittedly, I haven't thoroughly researched the issue but what I'm asking is to be treated fairly. And if replacement of panels does not constitute a substantial change, I would submit to you that that's all we're doing with this sign. We're replacing the panels in this sign. That's what's happening.

Ms. Maclean inquired if applicant was replacing the footings, as the posts look substantially larger. Mr. Dowling stated they will use the exact same posts.

Ms. Maclean inquired of the brightness of the new sign, and Mr. Dowling stated he would get that information. Ms. Maclean stated she had asked for that previously, because there are residences around there. She asked if the new lighting will be much brighter than the existing.

Mr. Dowling stated that in his research of the lighting, this is the reason he had trouble getting the answer is because technology has changed. With the older signs they used lumens as the measurement for the amount of lighting coming off the signs. With LED signs they don't use lumens. They use a different measurement that I

am not familiar with. So, I didn't feel qualified to tell you how bright the new sign would be, but I can get you that information and I'm more than willing to.

Ms. Duff noted that there were changes in the lighting and an addition of a different display that has the capability of changing. She stated no one would object to changing the panel on your existing sign, the way it's backlit. We're not objecting to re-facing that. But this is a different sign. I mean the bottom is LED internally lit. So, now you have two different types of lighting going on near a residential area. You have to get to the point where you're comparing apples to apples relative to brightness. So you have to convert the LED number that you have to lumens or vice versa, so that you can compare apples to apples. But it looks like it's much brighter.

Ms. DaSilva agreed, noting there's lots of concerns. It's not apples to apples. You're not re-facing an existing sign and it's a large sign, so we have to factor that into consideration as well.

A motion was made (JD) and seconded (CD) to open the public hearing.

There was no response to Mr. Glassman's invitation to be heard in favor.

There was no response to Mr. Glassman's invitation to be recorded in favor.

There was no response to Mr. Glassman's invitation to be heard in opposition

There was no response to Mr. Glassman's invitation to be recorded as opposed.

A motion was made (JD) and seconded (CD) to close the public hearing.

Mr. Glassman stated he didn't know enough about this, but Jill has mentioned in certain areas as long as it isn't changing, LED's may be allowed in certain districts, certain areas, but he is not sure what all the criteria is.

Mr. Espinola stated he had not had an opportunity to review the cite that was quoted by Attorney Dowling, and I'd need an opportunity to look at that before I could give any real informed advice. He stated Ms. Duff makes a great point about changing panels versus changing lighting and the separate lighting. I do think it's a fairly close call in terms of changing panel light and whether or not that would constitute the change that would be prohibited under the ordinance. Where this sign was created 25 years ago, so I think it's a difficult question.

Mr. Glassman stated he had a size issue. If we're changing a sign and it's got to meet the criteria of the size, the dimensions are all off here. The height isn't right, the square footage isn't right.

Ms. Dawicki stated that as the applicant pointed out, we're obligated to treat him fairly and consistently, and the previous applicant had a very similar case in terms of the age of the sign. We found that it was a significant enough change that they'd have to come back to us with a conforming sign just by increasing the size of the base. So I think to apply the same standard, saying that the sign panel is changing from what it is now to a lit sign with messaging is a much more significant change than the previous decision we made. I think if we're applying the same standard we would have to say, much like we did in the previous case, if the applicant's sign can be changed to conform to our existing regulations then, again, we could have the staff approve it when it comes back to them so changed.

Ms. DaSilva felt there were a lot of changes going on with the sign as it is. It's not just a re-facing. I mean aside from the LED issue, there's a lot more things going on.

A motion was made (JD) and seconded (KD) that the Planning Board approve the proposed pylon sign, Case #23-13 located at 138 Belleville Road, with the sign conforming to regulations being 10 feet from the ground, no higher than 15 feet from the ground, with a square area of 25 square feet and with a six foot set back from the property line as stipulated with the sign limits; and that the applicant return and work with the Planning Board staff to develop a sign that meets all of those stipulations.

Motion passes 5-0.

Continued Public Hearing

Case # 11-13 - Preliminary Subdivision, Definitive Subdivision, and Site Plan Review

Mr. Glassman stated the applicant would like to continue the matter to October 9th and he sought a motion to continue.

A motion was made (JD) and seconded (PC) to continue Case # 11-13
Motion passed without opposition

New Business

Ms. Maclean stated the only new business is that she would remind and encourage the board members to attend the Roberts Rules of Order Workshop that's being hosted by UMass Dartmouth on October 2nd. She sent the Board a link to the CPTC, the Citizens Participation Training Workshops, a couple of which are in Taunton or Brockton. She again encouraged the board members to take advantage, stating fees are generally covered. The Roberts Rules workshop is free of charge.

There being no further new business and no old business, Mr. Glassman invited a motion.

A motion was made and seconded to adjourn.
Motion passed unopposed.

Meeting adjourned at 8:45 pm.