



Planning Board

August 13, 2014 – 6:06 PM - **Minutes**

New Bedford Free Public Library, 613 Pleasant Street

MEMBERS PRESENT:

Colleen Dawicki, Chairperson

Janine DaSilva, Vice Chairperson

Kathryn Duff, Clerk

Peter Cruz

Arthur Glassman

ALSO IN ATTENDANCE:

Jill Maclean, City Planner

John Markey, City Solicitor

Chairperson Dawicki called the meeting to order at 6:06 p.m.

After review of the July meeting minutes, a motion was made (JD) and seconded (PC) to approve the minutes.

Motion passed unopposed.

Ms. Dawicki requested that a matter be taken out of order. A motion was made (JD) and seconded (KD) to take Case #27-14 out of order. Motion passed unopposed

PUBLIC HEARINGS:

CASE #27-14 – Proposed zoning change

Ms. Maclean informed the board that the reason there would be no further action on this matter is due to confusion by the property owner that they were incorrectly zoned. She explained that the subject property is already zoned Residential A but assessed Mixed Use Business because they once had an in-home occupation. Thereby the owner needs to address the assessors not zoning. Legal advertisement required it be on this evening's agenda.

CASE #28-14 – Site plan review

Att. Chris Saunders, 700 Pleasant Street, New Bedford addressed the board, presenting for Perfect Pizza and filling in for Att. Matt Thomas on behalf of North Mill Realty Inc.. The project is located on Rockdale Avenue at the site of the former Bank of America and is one of five units within a plaza, situated on the south end of the plaza near Mill Street. Att. Saunders noted that no business has gone into this location in the past two years, which is a perfect fit for the proposed business. The current location of the business is at Kempton and Jenny Lind Streets, a heavy residential neighborhood. The proposed location is surrounded by other businesses. This project removes the business from a residential neighborhood, but keeps it within the confines of New Bedford, having a positive impact on both neighborhoods.

Att. Saunders noted that most New Bedford buildings predate zoning, meaning the present parking requirements are not what they once were, creating a hard fit without relief. Att. Saunders noted the owner's community

service record and his desire to stay within New Bedford, keeping employment here and revitalizing a dormant storefront.

Att. Saunders noted that the Domino's Pizza chain is primarily an off-premise delivery business. He noted the project improves lighting for the overall parking area, with 5 spaces in the rear and 40 spaces in the front. He stated the applicant is looking to put up two new light poles in the existing parking deck.

Att. Saunders drew the board's attention to the extensive sign plans. Including a sign on the corner of Mill Street and Rockdale Avenue. He stated the pre-existing 20' Bank of America sign was taken down within the past two years. After discussions with the building commissioner, the applicant believes this to be a grandfathered non-conforming structure. He stated Att. Thomas has represented that the former sign was taken down during improvements along Rockdale Avenue/Mill Street.

Att. Saunders stated that his client is looking to put the pole back with a conforming sign, which is approved by corporate Dominos. He covered the additional signage contained in the submission, including two signs attached to the building, and one in the so-called pick up lane which was a former drive-thru for the bank. He explained how the pick-up lane would be used and traveled, which would not interfere with the 5 parking spaces.

He noted the interior seating plan and stated that hours of operation were slated to be 10:00 am to 2:00 am, with business deliveries taking place at approximately 8:00 am.

Att. Saunders explained that this business is not expected to need the specific parking demand is that lunchtime, which is predominantly take-out, is not the expected peak time for this establishment. The expected time where people will visit the establishment are dinner time hours/weekend hours. This represents an off-peak demand for Dominoes compared to the surrounding businesses, which will be closed at that time. He again reiterated that because of the heavy delivery demand, 75% of the customers for this business will not even be traveling to the site.

Att. Saunders estimates a maximum number of 20 employees, with 4-5 in the establishment and the rest making deliveries. Again, eliminating the usual demand for this type of business.

Att. Saunders raised the importance of eliminating a vacant storefront and felt this was a perfect fit to accomplish that. He invited questions from the board.

Ms. Dawicki thanked the applicant for such a thorough submission. She invited the board to address traffic and circulation first.

Mr. Cruz inquired as to any existing signage indicating Mill Street as a one way for an exiting consumer, such as a right turn only sign. The applicant indicated he was not aware of any and felt that would be city property, which is out of their control. He assured the board he would work with the traffic commission if necessary.

Mr. Cruz also suggested a "vehicle exiting" sign for pedestrians walking in the blind spot. Att. Saunders stated he would discuss the matters with the traffic commission.

Ms. Duff agreed with both the one-way and right turn only signs, and a yield sign for pedestrians crossing.

Mr. Cruz confirmed that the applicant could put a yield sign on their property. The applicant again assured the board they would work with the city and do their best to get a sign across the street.

Ms. Dawicki stated that could be an included condition. She then suggested the board address the parking situation, with the request for a reduction in parking from 45 to 25 spaces. She noted the applicant does not perceive this to be a problem due to the operating hours.

Mr. Glassman felt the business is primarily delivery, and he did not believe there would be any more customers visiting the establishment than there were when it was a bank.

In response to an inquiry by Ms. Duff, the applicant clarified that there are 25 spaces in the entire plaza. He believes that the applicant will comply with the true intent of the by-law, since their peak demand is at a time when the other businesses are closed and those spaces are available.

In response to Mr. Glassman, the applicant indicated the business will have twenty-four seats.

Mr. Cruz confirmed accessible spots were available and inquired if there was a step up. The applicant indicated there is not a step up to his recollection.

As there was no need to address storm water or landscaping, Ms. Dawicki then suggested the board address lighting.

In response to an inquiry by Ms. Duff with regard to lighting timers, Nelson Hockert-Lotz indicated that for security reasons the parking lot lights will turn off one hour after closing, with the business signs going off at closing time.

Ms. Dawicki then suggested the board address the signage, and reminded the board about correspondence from the planning office with regard to compliance after a site visit.

She noted the sign would be closer than six feet from the southern property boundary and may even be located within the city right of way. She noted that one ground sign exists already and only one ground sign is allowed per Section 3256, City of New Bedford Zoning Code.

Ms. Duff expressed her disappointment that the existing plaza sign was not used and improved upon. She did not want to see two signs in such a small plaza, as it sets a terrible precedent for tenants seeking their own signs.

Att. Saunders stated that the applicant is the only tenant in the plaza who can argue a right to put a sign. After extensive discussion, the applicant believes he has a right to a sign as a grandfathered non-conforming structure, and directed the board to the still present base of the previously existing sign.

Ms. Duff raised a concern that the applicant was suggesting that sign spot was grandfathered just to that particular tenant's spaces, and she stated she would need documentation of that.

She noted the applicant's suggestion through Att. Thomas that the taking down of the sign was voluntary during the time of the improvements. She asked if the applicant was suggesting an agreement with the city. The applicant stated he understood from Att. Thomas that the sign was asked to be taken down for the construction work in the area within the past two years. He again stated that with Building Inspector approval they can re-install a sign as a matter of right. He noted the sign Ms. Duff referred to is at the furthest point away from his client's establishment. He also noted the plaza consists of three lots and the sign would be a full city block apart from the other. He stated that strategically it is a corporate sign close to the business.

Mr. Glassman inquired of any height restriction. Ms. Maclean explained that the applicant is suggesting the sign would be grandfathered for that as well. She did clarify that the city did not take down the sign, and the project referred to was a stated project, not a city project.

Ms. Maclean inquired of Solicitor Markey that if the sign was placed not on the owner's property but in the city of state layout, would the grandfathering still exist if not properly permitted in the first place.

Solicitor Markey explained that before the board is the narrow question of whether there are reasonable conditions for the as of right use that the board is permitted to place upon any sign. He stated two legitimate issues have been raised. Namely, is there a grandfathered right; which is technically not for the planning board

to determine. He suggested concerns should be forwarded to Building Commissioner Romanowicz. The second issue is that you cannot put a sign on a neighbor's property unless your neighbor permits it. So, if the neighbor was the city and the sign was on city property and the new location is also going to be on city property, the applicant would need to establish he has the right to place it there. Again, that is not a planning board decision, but likely DPI or some other department. So, this board can set conditions and request proof. Also when a grandfathered use goes out of right, it could not be continued, so that ultimately we get compliance with current rules.

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

In response to Ms. Dawicki's invitation to speak or be recorded in favor, City Councilor Gary Winterson addressed the board in favor of the project. He stated he visited the interior and took a look at everything and felt it was great. He said he loved the location and idea of this business being moved. He felt it would be a fantastic transition and would beautify the area. He felt the applicant's track record and contributions to the city were overwhelming.

In response to Ms. Dawicki's invitation to speak or be recorded in favor, City Councilor Dana Rebeiro addressed the board and felt it was a perfect location and would assist people picking up pizza. She felt it would take it out of the homey area it is currently in. She felt the applicant was a big advocate in the city on many issues and was a respectful businessman and neighbor. She felt he would bring that to this new location and his new neighbors are lucky to have him.

In response to Ms. Dawicki's invitation to speak or be recorded in favor, City Councilor at Large and neighborhood resident Naomi Carney addressed the board and expressed her support of the project. She stated she felt it was a perfect fit and stop neighborhood complaints in its present location. She felt the applicant was a pillar of the community and did not want to see the city lose his business.

In response to Ms. Dawicki's invitation to speak or be recorded in favor, City Councilor Joseph Lopes addressed the board. He stated the Dominoes in his ward has never resulted in problems or complaints in over five years and is across from residential neighborhoods. He felt this would move would alleviate congestion problems in the Jenny Lind Street area and fills a vacant storefront.

In response to Ms. Dawicki's invitation to be recorded in favor was City Councilor at Large and city resident Linda Morad.

There was no response to Ms. Dawicki's invitation to speak or be recorded in opposition.

Ms. Dawicki suspended the public hearing for board discussion, and suggested the board revisit the sign issue.

Mr. Glassman inquired of the sign issue could go back to the Building Department or if the board had to act upon it.

Ms. Maclean clarified that her understanding from Solicitor Markey's comments was that the board should vote as a condition that the building commissioner confirm the grandfathering use of the sign and the city, either DPI or Engineering, confirm the location of the sign as to whose property it was on. She indicated that board would make those conditions of the site plan review. Ms. Maclean stated that as there was quite a bit of signage in the submissions any approvals be done individually by location and not letters, as there are two A's. She suggested the board would need clarification as the Rockdale Place sign would make six signs, assuming it is on the applicant property.

Ms. Dawicki inquired if the applicant intended to have the Rockdale Place sign include the Dominoes. The applicant indicated that it was not to be included.

Ms. Duff stated she would think it would include a Dominoes sign if the applicant could not get approval for the pylon sign. She also noted the inclusion of the exit signs, no right turn and yield.

Ms. Dawicki stated she was disinclined to approve the sign on the corner and inquired of Ms. Maclean if the board should approve the sign if the requirements were met related to grandfathering and whether or not the location is on city property or deny this sign unless the applicant can demonstrate that it is grandfathered. In other words approve the sign with the condition that DPI determines that it is grandfathered and is not on city property, or approve site plan with the exception of the sign unless the applicant can demonstrate that it is grandfathered and not on city property.

Solicitor Markey stated that giving a conditional approval implies the board is sitting as the judge, as if this board is the arbiter of the evidence on those two issues. He felt it best if the board expressed that it was very concerned and had Ms. Maclean send a letter stating that the board acknowledges that you have the power to make this determination and encourages you to look as strongly as possible to make sure all rules are followed. Att. Markey stated he felt the board would be better off approving it rather than saying it's conditional, thereby empowering the building commissioner to re-look at it. If someone has ownership and a grandfathered right, it is not the determination of the planning board that controls. He advised the board not muddle their motion. He suggested the board would be using their power by way of a very strong letter expressing their concerns and desires to those with the power to make the determination.

In response to a question from Mr. Glassman, Solicitor Markey stated the board can put typical conditions such as I don't want the sign to be lit at this time. But legal conditions, such as do you own the property, are stepping outside the role of the planning board. Conditions should be set on the sign itself, not on land ownership or grandfathering of rights.

Ms. Duff wanted to see the sign turned off one hour after closing. She stated she wanted to see the sign lower. She again expressed disappointment about the lack of effort to work with the existing sign. The applicant presumably can prove the old sign was the height of the sign they've now brought before us. She felt that relative to design and site plan, this one story plaza, a block away from a historic park, does not need a twenty-two foot high domino in the air.

Ms. Duff concurred that it is terrific business and does not want to see them leave the area, but long-term for the city she is trying to control the sign clutter.

At Ms. Dawicki's request, a motion was made (JD) and seconded (AG) to close the public hearing without opposition.

Ms. Maclean clarified the number of spaces required.

A motion was made (JD) and seconded (AG) to approve the special permit for parking reduction for Case #28-14 for the reduction of minimum off-street parking from 45 to 25 spaces at the property known as 821-829 Rockdale Avenue, New Bedford, MA, Plot 55, Lot 67, in a Mixed Use Business zoned district. Motion passed 5-0.

After further brief discussion and a review of conditions, a motion was made (JD) and seconded (AG) to approve site plan review for Case #28-14 for the proposed conversion of existing building to a fast food drive through at 821-829 Rockdale Avenue, New Bedford, Plot 55, Lot 67, in a Mixed Use Business zoned district with the following conditions:

- That the traffic commission review the possibility of a one-way sign and a right turn only sign on the property;

- That the building signs be turned off at closing time;
- That the parking lot sign be placed on a timer to turn off one hour after close;
- That the applicant work with the building department to determine the appropriate parking lot signage and make sure that it meets the standards that were grandfathered

Motion passed 5-0

OLD BUSINESS:

Bismark Meadows Subdivision Update

Ms. Maclean noted that the board had previously seized the remaining funds for this subdivision. She stated they had been before the Conservation Commission to have the enforcement order transferred to the City of New Bedford providing the right to do the work. She stated that the DPI had surveyed the detention basin and determined that while the width is accurate, the depth is not. They have asked a contractor to provide an estimate to complete the remaining work for the subdivision, which they expect to receive within the next few days. At that point, public infrastructure and the city will review to determine whether it is more cost effective to have a contractor do the work or the Department of Public Infrastructure. The enforcement order allows the city to complete the work by October 1, 2014. Therefore, the street will be into the street acceptance process with city council and accepted before the winter, providing public services for this winter.

Eastland Terrace Update

Ms. Maclean deferred to the owners' attorney to provide an update to the board.

Ms. Dawicki noted that this was the deadline established for the work to be completed.

Att. Joe Michaud addressed the board on behalf of the project developer. He reported the work is 95% done. A situation with the project contractor required a change. They are awaiting a bid on the Cronin Driveway correction portion of the project. Att. Michaud stated the \$6,000 had been paid to the city's tree fund, as well as a \$2,200 payment to the city for the electric post. He stated the remaining work has been done, and it is his understanding the "as built" plan has been completed and is being printed. Att. Michaud estimated a week to completion.

Mr. Glassman inquired as to the corner area and who was going to take over that. Att. Michaud stated they do not assume they will have any responsibility with regard to that issue.

Ms. Maclean noted for the board that the subdivision plans do not show the north lot as a common lot, but an area belonging to the house on the northeast corner, in essence on private property.

In response to Mr. Glassman, Ms. Maclean stated they still have to figure out who owns the one on the south side.

Mr. Cruz inquired if the homeowner had been notified that they own that property. Ms. Maclean was unsure if they had been notified, but stated they would be.

In response to an inquiry from Ms. Dawicki, Ms. Maclean explained that once receiving the street acceptance plans, engineering will review them and forward them to city council for placement on the agenda. She expected there would be plenty of time for completion prior to the winter months.

Ms. Maclean also informed the board that the owner had not requested a release of covenant of the remaining lots on the north side.

Ms. Dawicki encouraged audience members to speak with Att. Michaud with regard to any questions.

Endorsement of Mylar Copies of Approved Definitive Plan for Cardinal Place Subdivision

Ms. Maclean explained that when approving the subdivision, the board has to sign the final mylars. She stated that Prime Engineering was present with copies of the final covenant and the utility easements. She noted that solicitors will review the utility easements language, as well as the Form D covenant. She stated the only item remaining will be for the owner to submit the performance bond and schedule a pre-construction site inspection with the city engineer, Ms. Maclean and the conservation commission. She reported the site has already been staked out after a ConCom meeting, along with a staking of planned cutting areas. She informed the board they would need to sign the sheets tonight, and site work was expected to begin soon.

In response to a comment by Ms. Duff, Ms. Maclean reported that the owner has only cleaned up the site, as a result of previous years of illegal dumping.

Ms. Dawicki called a recess for the signing of the mylar copies, which would be followed by a short training session for board members.

An unopposed motion was made (JD) to recess at 7:19 pm.

A motion was made (KD) and seconded (JD) to reconvene at 7:35 pm.

Board Training conducted by John Markey, covering the following topics:

- 1) Sources of Law (Massachusetts General Law and New Bedford Ordinances);
- 2) Repetitive Petitions (MGL Ch. 40 Sec. 16); and 30 Site Plan Review (New Bedford Code Sec. 5400).

A motion was made (KD) and seconded (JD) to adjourn at 8:20 pm.