



# ***Planning Board***

March 11, 2015 – 6:04 PM - **Minutes**

New Bedford Free Main Public Library, 613 Pleasant Street

## **MEMBERS PRESENT:**

**Colleen Dawicki, Chairperson**

**Janine DaSilva, Vice-Chairperson**

**Peter Cruz**

**Arthur Glassman**

*Also in attendance: City Planner Jill Maclean*

Chairperson Dawicki called the meeting to order at 6:04 p.m...

Ms. Dawicki requested taking the agenda out of order.

A motion was made (JD) and seconded (AG) to take the agenda out of order. Motion passed unopposed.

## **PUBLIC HEARINGS**

### **CASE #38-14 – Site plan review**

Ms. Dawicki explained that again the board had received a request to continue from the applicant Preferred Realty.

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

Ms. Dawicki read into the record the e-mail correspondence dated 3/5/15 from the applicant Edward Redman.

A motion was made (JD) and seconded (AG) to continue the public hearing to the next Planning Board meeting scheduled April 8, 2015. Motion passed unopposed.

### **BISMARCK MEADOWS SUBDIVISION UPDATE**

Ms. Maclean reminded the board that they had seized Bismark Meadows a couple of years ago. She reported that the work is complete and the Conservation Commission has approved the certificate of compliance for the drainage basin and other related work. She stated at this point she is asking for the board's authority to record in the board's behalf the certificate of compliance issued to the planning board in light of their seizure.

Ms. Maclean added that the title exam has also been completed for Bismark Street. She explained the subdivision site, off of Acushnet Ave, involves traveling on Manilla Ave, a public way, then Bismark Street, a private way, onto Bismark Meadows Road which is slated to become public. She noted in order to do that, the city must also accept Bismark Street, and in order to do that, the city was required to undertake a complete title exam, which has been completed by an outside company and is being reviewed by city solicitors. Once approved, plans will be reviewed by the Engineering Department and sent to city council for public acceptance.

Mr. Glassman inquired if everything had physically been completed. Ms. Maclean reported that was correct.

Ms. Maclean stated this evening's motion before the board would be to authorize the city planner to record the certificate of compliance on behalf of the board.

In response to an inquiry by Ms. DaSilva, Ms. Maclean stated the Conservation Commission signs it as approved or in compliance, and it is the applicant's responsibility to record it.

There being no further questions from the board, a motion was made (JD) and seconded (AG) that the planning board authorize the City Planner to record the certificate of compliance on behalf of the planning board for the Bismark Meadows Subdivision.

Motion passed 4-0.

### **CASE #3-14 – Proposed Amendment**

Ms. Dawicki read the proposal into the record and noted the board had material within the packets regarding this proposal.

City Solicitor John Markey addressed the board on behalf of John Flor who runs the housing task force regarding the proposed adoption of Chapter 40U, which is a Massachusetts state statute adopted in a number of other communities to assist with the collection of fines assessed in cases where people have violated the ordinances that the city council has passed and the board has previously weighed in on. Attorney Markey explained this particular proposal is to deal with people who are non-compliant in responding to the Building Commissioner who would go out and find dangerous porches, back stairs and structures in violation, as well as not following trash ordinances, et cetera. Mr. Markey explained that currently, without the benefit of 40U, is issue a ticket. If not paid, the city has to wait the requisite period and take the violator into housing court, which becomes a very cumbersome process. If the violator still doesn't pay in housing court, it can sometimes result in having to go forward with small claims to collect, which takes a lot of resources and time to do that.

Att. Markey explained that 40U will allow is a more streamlined process. He stated a municipal hearings officer is able to make an initial determination, and if the person doesn't challenge it, but still doesn't pay, there's an ability to tack that onto bills associated with the property; i.e., the property tax bill. This would be in lieu of having to file a new small claims action.

He noted it has been used in several other cities and communities and because it has been successful in assisting with enforcement and cutting out the "red tape" associated with going to court with everything, the city solicitors office is recommending the board consider adopting the amendment. He then invited questions.

Ms. Dawicki asked if there was some reason New Bedford had not adopted this in the past.

Solicitor Markey stated it had never been proposed by any prior administration he was aware of. He stated he believed the statute was fairly new as an option for cities. He stated this proposal had not been presented and rejected by a past planning board.

Mr. Cruz noted it seemed pretty straightforward.

A motion was made (JD) and seconded (PC) to open the public hearing. Motion passed unopposed. There was no response to Ms. Dawicki's invitation to speak or be recorded in favor of the proposed Chapter 9 amendments.

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

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

Ms. Dawicki also stated it seems straightforward, and the language provided to the board seems to address any potential questions or concerns.

After consultation with Ms. Maclean about prior city council notes, a motion was made (JD) and seconded (AG) that the planning board make a recommendation to the city council in favor of the proposed amendment to Chapter 9, Code of Ordinances, amending Section 5120, enforcement, by adding violation procedure under the MGL Chapter 40U subject to Section 17-28.

Motion passed 4-0.

### **CASE #4-15 – Special Permit Review**

Councilor Steve Martins spoke on behalf of the Gonzales family. He noted Ms. Maclean was familiar with the proposal, He stated that within the application process for the site plan review they had some parking available. As many know, the applicant has invested a lot of money to revitalize the inside of the property. He stated it was formerly an old retail place. Councilor Martins stated that because of the substantial money invested into the new business, the inside is now absolutely beautiful. He stated the applicant has plans for the adjacent building on Holly Street, but presently just want some time to recoup their money before revisiting the plan. On behalf of the Gonzales family, Councilor Martins stated the family is a great addition to the neighborhood. He stated they took a chance in opening a small business and he hopes to keep them here in New Bedford. He stated they are part of the International Marketplace and have invested pretty much their life savings. He urged the board to consider that moving forward and grating the reduction in parking.

Ms. Dawicki inquired if the board would be hearing from the proponents this evening with regard to their application.

Councilor Martins indicated that he and the Mayor's Office have been in touch with the Planning Office trying to help the Gonzales family. He noted the family speaks limited English and he is present on behalf of them to move forward and represent them on the motion before the board.

In response to Ms. Dawicki's concern about the board's ability to have questions answered, Councilor Martins expressed he would do his best.

Ms. Maclean noted the board had heard the case back in 2012. She noted site plan review is good for one year, so technically it has expired. She stated the Gonzales have only a temporary certificate of occupancy. She stated the applicant's plans were fully engineered with drainage, a tremendous amount of landscaping across the lot. They were not able to get the items finished per the Site Plan Review. As such, in order to issue a temporary CO, they did fix the curb cut and apron, as well as patching about one quarter of the parking lot and painting several spaces with marking for ADA accessibility. She stated that while they should have come in for a reduction in parking in the first place, which would have been more manageable for a small business just starting, she agreed with Councilor Martins regarding the language barrier and expressed the possibility that something may have been lost in translation.

Ms. Maclean again noted the site plan is now expired, and if the board approves the reduction on parking, the motion could state that the board reduces the parking by x, and that this supersedes the previous site plan decision.

Mr. Glassman asked how many spaces the applicant was off. Ms. Maclean stated the mixed use property front on the corner of Holly and Acushnet Avenue, having residential above and the commercial restaurant on the first

floor which requires 15 spaces. They currently have 10 spaces.

Mr. Glassman inquired how many of the ten, if any, are designated and used for tenants. Ms. Maclean stated she believed the only designation was on the handicap accessible space. She also noted that one of the photos shows the building on the corner with somewhat of a small driveway and then the parking lot. She believes the tenants also have use of the drive area. She also noted the small shed/garage which she understands to be mostly reserved for the tenants, with the restaurant patrons using the parking lot.

In response to Mr. Glassman's inquiry, Ms. Maclean stated the zoning enforcement officer calculates spaces needed on the entire building, which in this case would require 15 spaces, but the driveway is not being counted.

Ms. Dawicki noted that the application for the special permit was incomplete and she expressed she would like to see it included. Ms. Maclean agreed and again referenced the language barrier and difficulty in communication.

Mr. Glassman confirmed there was also street parking in the area. Ms. Maclean agreed that parking is allowed on the street but cannot be considered in the requirement.

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, Councilor Martins asked to be recorded in favor.

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

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

Ms. Glassman stated that by his calculations the applicant is three spots shy. He stated that while off-street neighborhood parking cannot be counted, it is present in the neighborhood. He stated that in the downtown and other dense areas, the board frequently waives parking. He expressed the applicant really has no alternative and he does not want to see someone who has spent money in the building. Considering the language barrier he felt the applicant was probably unaware that they should've come before the board originally. He stated that he personally had no problem with it.

Ms. Dawicki expressed that the board knows how she feels about parking requirements in a neighborhood like this, which is that they should not exist. She did not think the board would rarely look kindly on an incomplete application where the proponent is not present to discuss it with the board. She felt people should be present to understand the implication of the board's considerations and know that they are held to a certain level of diligence in presentation to the board. She noted the reference to the extenuating circumstances and expressed appreciation for the ward councilor present and his interest in the neighborhood. She suggested in the future applicants could utilize services to help them get up to speed prior to appearing before the board. She did not see any public health and safety concerns.

Mr. Cruz noted the applicant had taken the initiative to strip the parking lot, which shows they made an effort, and he has no issue. He stated with regard to regulations, they applicant should put a handicap sign up. Ms. Maclean stated she was almost positive it was present but hidden by a snow bank.

Ms. Dawicki added that completed information be on file about the reduction.

A motion was made (JD) and seconded (AG) that the planning board in Case #4-15 approve special permit for the requested reduction of parking for off-street parking spaces at 57-59 Holly Street, Map Plot 93, Lot 4, for the reduction of parking from 15 to 10 and that the applicant come in and complete the application. In addition

that the planning staff confirm that an ADA sign is placed in the ADA spot.

**VOTING:**

A. Glassman – Yes

J. DaSilva - Yes

P. Cruz – Yes

C. Dawicki – Yes

Motion passed 4-0

**OLD BUSINESS:**

**WHALERS WOODS - Covenant Release request**

Ms. Maclean clarified the revised agenda has two Whalers subdivision to be addressed this evening. She stated Whaler's Wood is by Longbuilt Homes.

Ms. Maclean stated the subdivision is up on Church Street off of Tarklin Hill Place. This subdivision has been under development for some years, and they are currently looking to release remaining covenants. She informed the board the Department of Public infrastructure undertook a conservative cost estimate to complete all remaining work and contains the usual contingency. He noted her reasoning for characterizing the cost estimate as conservation was that when the DPI review was done, there was quite a bit of snow on the ground. Ms. Maclean and DPI asked to wait till April, but the applicant wanted to proceed at this time. She again noted the estimated cost reflects only what engineering was able to see in the field.

Mr. Glassman inquired if the applicant was going to write a check for this or take a bond.

Ms. Maclean stated the city could accept a performance bond or a letter of credit. She stayed of the board votes to release the covenants in exchange for the surety, with the condition that the solicitors office review and approve the language prior to acceptance. She invited the applicant to speak.

Lee Castigletti, in-house counsel for Longbuilt Homes, stated it would be a cash surety. He stated they had been using the lots subject to the covenants to serve as a surety for the completion of the remainder of the development. He stated it has been a long haul in the downturned real estate market, but they now have three of the ten remaining lots sold and are at the point where it's time to convert the covenant to a cash surety so that all the lots are available to sell.

There being no questions from the board and after consultation with Ms. Maclean regarding motion contents, a motion was made (JD) and seconded (AG) that the planning board approve the request to release all remaining covenants on Whalers Woods presenting a cash surety of five hundred and sixty-one thousand dollars (\$561,000.00).

Motion passed 4-0.

**WHALERS PLACE - Covenant Release request**

Ms. Maclean presented the backstory on DPI cost estimate to complete the project. She stated the subdivision is off of Durfee Street on Ambergris Lane and invited Matt Antonio to speak on the request.

Matthew Antonio addressed the board on behalf of Palm River Development Company, with offices at 358 G.A.R. Highway, Swansea. He stated by way of recap that the development was originally permitted and approved in 2004, with construction underway of 2005-2006 by a previous owner. He stated that four spec houses were built. He stated that as the economy turned in 2007-2008 the houses were not able to be sold and the developer lost the property to foreclosure. At that point in time, 2009-2010, he represented as a real estate

broker a client who purchased all ten lots and the four vacant and partially complete homes of the subdivision. He stated the new developer rehabilitated the four existing houses and put up new homes, with some success from 2010-2012, selling seven of the ten homes. In 2012-2013, the new developer became distracted with other ventures and did not pursue the three remaining lots and ultimately sold the three lots to Mr. Antonio in Fall 2014.

Mr. Antonio stated that he began work on Lot 10, on the corner of Durfee Street and Ambergris Lane. He noted he built a colonial style home on the foundation that was present. He stated that lot has been released and the house is complete and on the market.

He stated the two remaining lots in the performance covenant and not yet built upon are Lots 1 and 3. Lot 1 is on the opposite corner of Durfee and Ambergris Lane, and Lot 3 being just two houses in on the left-hand side.

He stated they started completing the work of infrastructure and roadway, such as sidewalks and curbing, et cetera, in the fall, but ran out of time once the cold weather arrived. Mr. Antonio stated their plan in spring is to build spec homes on the remaining two house lots and complete all infrastructure work in order to come back before the board with a fully completed road, at which time they will request a full release and street acceptance. He stated at this point in time they are looking to secure building permits for Lots 1 and 3 in order to start the homes.

Mr. Antonio stated the way the sidewalks and curbing transition on each of the house lots make it tight for cement trucks and excavating equipment to be in and out if those improvements were completed. He stated it makes sense to do the site work such as foundation and framing and other heavy construction work prior to putting a finished coat of asphalt down and tying in the sidewalks and curbing at lot entrances.

Mr. Antonio stated has had discussed with Ms. Maclean the concept of having a letter of credit issued in place of the performance covenant on the two remaining lots. He stated the planning board has allowed the issuances of building permits but not the issuance of a certificate of occupancy until the lots were released from the performance covenant. He stated the process, as the board is aware, is upon request the circulates to department heads for sign off and the planning department has historically signed off on the issuance of the building permit with a note that the certificate of occupancy will not be signed off on until the lot is released from the performance covenant.

Mr. Antonio stated he is amending his request this evening and is just asking for clarification that he will be able to obtain building permits on Lots 1 and 3. He again assured the board that he will be working this spring and summer to complete the road and infrastructure as the two remaining house lots are completed. He stated that once work on the infrastructure and roadway is complete and houses near completion where they will be seeking certificates of occupancy, he will then come back to the board for a full release at that point in time.

Ms. Maclean stated that Mr. Antonio was correct that in the past subdivisions were approved and covenants taken as surety, as work progressed and the developer wanted to work on certain lots, there would have been enough lots remaining under covenant to insure that it would cover the cost to complete the work. The situation with this is that only two lots remain under covenant. She stated it would be the board's discretion of they felt that was enough to cover the cost of completing the remaining work.

Mr. Glassman inquired whether the building of houses was allowed in the past where the occupancy permit was the bargaining chip.

Ms. Maclean agreed, but noted this board this board has asked for the surety if there were only a few lots left.

Mr. Glassman stated the board was not releasing the lots.

Ms. Maclean stated the board would be, as the applicant is asking the board release the covenants.

Mr. Glassman disagreed and stated the applicant is only asking that he be allowed to get a building permit to begin building the houses.

Mr. Antonio stated that was correct. He stated the performance covenant would stay in place. He stated he is asking that the planning staff be allowed to sign off on the issuance of a building permit with the condition that a certificate of occupancy will not be signed off until the release of the performance covenant.

Mr. Glassman stated the applicant is actually improving the potential lots in the event the city has to take them.

Ms. Dawicki clarified that this is what the city has to cash in to finish the work. She noted that with a 1/3 built house, the city would have to deal with a lot containing some degree of construction. She stated the city would then become a real estate agent.

Mr. Antonio stated the two concerns in looking at this situation are how to motivate the developer and protect the city. He stated he is certainly more motivated when he expends dollars improving upon the lot and building a foundation and house, every step of the way spending money and putting more money at risk. He stated this is incentive for him to complete the work and get the covenant released, knowing he can't do anything with the investment until then.

Ms. DaSilva stated she was under the impression the applicant was withdrawing his request to release the covenants.

Mr. Antonio stated that was correct, and stated he was making a formal request ask the board to give the building permit granting authority to your planning staff while withholding the issuance of a certificate of occupancy.

Ms. Maclean clarified that all the board has then is the certificate of occupancy as a surety.

Mr. Glassman stated that was all the board had now.

Ms. Maclean disagreed, stating that the board presently has covenants.

Mr. Glassman argued that the applicant was not asking us to release the lots, but merely seeks permission to put a house up to sell it, and then pay us off for the lot. He stated the applicant was not asking the board to release anything.

Mr. Antonio stated that his review of what has been done historically and what the by-laws dictate is that he need not even be before the board to make his request. He stated he is here because he did not realize that until the 11<sup>th</sup> hour. He stated he wanted to show up and talk through this.

Ms. Maclean noted that another item that needs to be clarified is that the paperwork does not indicate that Lot 4 was released. She requested the applicant provide some proof or evidence that that was done.

Mr. Antonio stated that he does not own it any longer and in fact never owned it. He stated he would however look into it and search the registry. He stated Lot 4 has a home upon it and has been sold by the previous owner, and may have since been resold.

Mr. Glassman noted for the record that each of the lots released in the previous Longbuilt case has a house on it.

Ms. Dawicki agreed, but noted Longbuilt was putting up a cash exchange. She stated she felt the lots were the

city's collateral, and her concern was how that might change with a building on it. She suggested a legal opinion on the matter of how that impacts the city's position. She stated she has not been a board member when and if this has been approved.

Mr. Glassman again noted that Whalers woods has houses on it, and if the city had to take the lots back, they contained some completed and partial houses.

Mr. Cruz noted there may be another avenue to get proper signatures to actually start building.

Ms. DaSilva stated she did not see any vote necessary this evening on this matter.  
Mr. Glassman agreed.

Mr. Antonio stated that by way of clarification, he will withdraw his request this evening, and work with Ms. Maclean and other department heads in order to be clear on his plan of action. He stated he was hopeful he would be before the board in three or four months.

At this time, Ms. DaSilva submitted her resignation from the planning board. She stated that as part of her job she expected to join the Historical Commission and noted that she cannot serve on two regulatory boards at the same time. She stated this would be her last planning board meeting.

The remaining board members expressed that Ms. DaSilva and her motion-making expertise will both be missed. Ms. Dawicki stated Ms. DaSilva's departure, however, would be a win for the Historic Commission Board.

Ms. Dawicki requested information on form based zoning.

Ms. Maclean stated that last year the planning division of the Department of Housing & Community Development asked the city council to authorize the planning office to use funding to hire a consultant to undertake form based zoning for three commercial districts, namely, the Acushnet Avenue area from Coggeshall to Nash, Goulart Square/Rivet Street from Dartmouth Street to Route 18, and County Street from Rivet to Cove Street, and the downtown as well. It was approved and put out for an RFP and when an acceptable amount came in, it was approved for hiring. She stated she believed the contract was just signed and the consultant would be starting work within the next couple of weeks. She stated there will be a very thorough public process in each separate area. She noted the board would also have the opportunity to participate as well.

Ms. Dawicki confirmed that the objective would be to re-write city code to be reviewed and approved by the board. Ms. Maclean stated that was correct, stating it would be sent to city council for ma zoning change and then be refereed out to the planning board and the city council ordinance committee, with City council having the final approval. She stated it is called form based because it is more about the form of the building than the use. She stated that currently all zoning is use based, and whether a use is or is not allowed. As an example of form based, Ms. Maclean noted that along Acushnet Avenue, after a building was demolished that was right u to the street or sidewalk edge, a CVS and Rite Aid was constructed set back with parking in the front and it disrupts the street scape. She stated this would no longer apply with setbacks and would address the parking with maximums rather than minimums. She the three districts each have their own look and fabric that the city seeks to preserve, and by addressing these separately the architecture is part of the consideration.

In response to an inquiry by Mr. Glassman, Ms. Maclean stated the consultant was Brovitz but could not recall the sub-consultants.

**EASTLAND TERRACE UPDATE:**

Ms. Maclean stated that everything is just about complete. She stated the last remaining item, the street acceptance plans, were submitted to the DPI within the last few weeks. She stated the previous revisions required were made and have now been resubmitted to come before city council. She stated the planning board would also need to have a public hearing to officially close out the subdivision.

There being no further business before the board, a motion was made (JD) and seconded (AG) to adjourn. Motion passed unopposed.

Ms. Dawicki announced that the next meeting is scheduled for Wednesday April 8, 2015.

Whereupon proceedings adjourned at 6:55 pm.