

# BOSTON PLANNING BOARD

March 8, 2016

PRESENT: David Stringfellow Chairman  
Mitch Martin  
Mary Ann Rood  
Elizabeth Schutt

ABSENT: David Bowen  
Jim Liegl  
Jennifer Lucachik Secretary  
Paul Ziarnowski Vice Chairman  
Jay Boardway Town Board Liaison

ALSO Michael Kobiolka Town Attorney  
PRESENT: Sarah desJardins Planning Consultant  
Thelma Faulring Secretary to the Boards and committees  
Michael Metzger Engineer – Boston State Road Mixed Use Project  
Bill Solak Boston State Road Mixed use Project  
Patrick Emerling Boston State Road Mixed Use Project

Chairman Stringfellow called the meeting to order at 7:30 PM. and appointed Elizabeth Schutt to serve as regular voting member for this evening's meeting, in the absence of four members.

## MINUTES

Mr. Stringfellow asked if there were any additions or corrections to the draft minutes of February 23, 2016. Being none Mrs. Rood made a motion to accept the minutes, seconded by Mr. Miller and carried.

## GENERAL CORRESPONDENCE

Secretary Faulring reported:

- Code Enforcement Officer Ferguson's January and February end-of-month report

At point correspondence:

- Planning Consultant desJardins review of Town code Section 123-178 C
- Planning Consultant desJardins review of site plan approval process

## DISCUSSION – TOWN CODE SECTION 123-178 C

Mr. Stringfellow: This is an item that was brought to my attention by the Town Attorney which essentially says if a proposed project has come to the Planning Board and/or the Town Board and has been either accepted or rejected they cannot simply keep coming back with the same thing again and again. He brought that up in respect to the submission by Roy Emerling LLC, which is a piece of property that was brought up to us about two years ago with a request for rezoning. I have looked at it and to me is significantly different from what they were proposing then; but it is up to the Planning Board as to whether we consider that the same thing being sent back and therefore is not going to be considered or whether it's new enough that we think we can go ahead and look at it as it were a new project..

The members compared the old project with the new submittal.

Different How?

- No longer goes to Abbott Road
- Rezoning requested now is C-1 to C-2 rather than C-1 to R-3
- More Apartments in new proposal
- Two more hotels
- A lot more parking spaces

Planning Board comments:

- Obviously not the same plan
- Does Town Code speak to variation
- Seems like same project just rearranged
- With more stuff in it on slightly less space
- Main difference is zoning request

- C-2 zone does not allow any residential
- Code Enforcement Officer says it does; in C-2 it has setback requirements, bulk requirements etc., for residential uses, it's vague
- Even if the zoning is different, it's the project that is very similar; if you can't apply for a similar project, changing the zoning is irrelevant
- Reference to Code Section 123-81 – 'Required Yards'.

Mr. Metzger: Can I have an opportunity to enter this discussion?

Mr. Stringfellow: . I would rather not at this time.

Further Planning Board comments

- Discussion of differences in Code Books
- Reference to Code Section 123-78 – 'Permitted uses and structures.'
- Reference to Code Section 123-71 A (1)– Permitted uses and structures
- Reference to Code Section 123-81 – Required yards.
- Reference to last paragraph 123-79 NOTE

Mr. Martin: This is not really pertinent to what the issue is before us.

Mr. Stringfellow: Yes, the question before us is 'is the new submittal significantly different from the old one?'

Mr. Metzger: I may be able to shed some light on this and save some aggravation.

Mr. Stringfellow: Go ahead.

Mr. Metzger: The point I want to make first and foremost is there is a lot of discussion relative whether this plan is similar or not to the old plan. Even before we get to that point on the tonight 123-178 c it specifically states 'that nay project that has been denied by the Town Board cannot be reheard.' This project was not denied by the Town Board, there was a recommendation by the Planning Board, who is recommending body to the Town Board, there was a recommendation for denial, the Town board was considering it, they tabled it, that's as far as it went officially. The Town Board never denied so there really is not...

Mr. Martin: How many times was it tabled?

Mr. Metzger: To my knowledge, once. There was, from what I saw there was a tabling where it was referred to the Town Attorney for review, and I saw no further action on it whatsoever by the Town Board. But, whether it was once, twice, ten times it was never denied by the Town Board which is specific to what.

Discussion followed regarding the number of time a 'table' can occur with no action before.

Mr. Metzger: The only evidence of tabling in one time. So there was no official denial by the Town Board, therefore this issue is still on the table; and what we're proposing effectively is a change to the plan.

Mr. Kobiolka: There is a period of time; you can't just let a proposal sit out there for say, six years.

Mr. Metzger: That's not our choice the Town Board tabled it and as far as we were concerned we were waiting for some action; the Town Board has taken no action on it whatsoever, therefore we've submitted a plan, we've amended a plan.

Mrs. desJardins: Are you basically saying that you're starting over either way?

Mr. Metzger: You can consider it amended or revised application.

Mr. Martin: I think the Town Board should take action on the original plan.

Mr. Kobiolka: Thelma, do have the minutes from the Town Board meeting that this gentleman said they tabled it?

Secretary Faulring: I don't have the minutes from that meeting, no.

Mr. Kobiolka: Do you know the date that...

Secretary Faulring: April 2, 2014. The letter was dated April 3, 2014. the meeting was April 2<sup>nd</sup> (Mr. Kobiolka was shown the file letter from Town Clerk Mulé)

Mrs. desJardins: March of 2014 you forwarded a negative recommendation to the Town Board?

Secretary Faulring: Yes, the Planning Board did.

Mr. Metzger: I guess back to Sarah's question we're effectively amending our application with this new plan

Mr. Kobiolka: And we're looking at 123-178 c says 'shall be final and disapproval or denial of a proposed amendment shall void the petition.' I think you'd have to have an approval on the table, being tabled it's not an approval.

Mr. Metzger: It says "no new petition for an amendment which has been denied by the Town Board shall be considered by it..." and then it goes on there. There's no disapproval, there's no denial. We're asking for the plan itself to be changed and I would...

Mr. Kobiolka: Well you can't do that it's already been disapproved by the Planning Board, you'd have to start the process over.

Mr. Metzger: The Planning Board recommended a denial on it to the Town Board, the official action comes from the Town Board which has not taken a formal action on it other than to table it. What we're doing is presenting a new plan, an amended plan to the Town Board, they have subsequently referred to the Planning Board for review. So we're looking for a new recommendation from the Planning Board based on the revised plan. Obviously, the Board's not prepared to do anything with it tonight but we would ask to be placed on the next Planning Board agenda.

Mr. Kobiolka: Are you prepared to go ahead with the full EAF and formal application?

Mr. Metzger: Yes.

Mr. Kobiolka: Because we can't have our Town Engineer, obviously approve it or disapprove it because he doesn't have any information in front of him, other than sketches and intended purposes and intended uses. We don't know anything about the soil, the traffic flow, a lot of pieces are missing here. If I recall the applicant came in and said 'we'd just like you take a look at it and then it got to the point where the Planning Board made a recommendation to the Town Board to disapprove it. I think we have to cut out these preliminary reviews because this causes confusion and it puts the applicant in a bad position. #1 he doesn't have a completed application #2 he hadn't had to spend a lot of money to have a completed application.

Mr. Metzger: My client is fully planning on moving ahead with the project so whatever application materials the Town needs by all means we can prepare full EAF and get that over to the Town.

Discussion followed;

- 'denial' and 'disapproval'
- Tabled once, table twice means it's denied
- Town Board should take action on previous submittal before Planning Board takes action new plan
- Planning Board letter of March 25, 2014 recommendation of denial

Mr. Martin: It's the same project?

Mr. Metzger: It's the same project, just an amended plan.

Mr. Stringfellow: The Planning Board has already made a recommendation on it and it's in the hands of the Town Board

Discussion followed;

- Town Board should take action on previous submittal before Planning Board takes action new plan
- Planning Board letter of March 25, 2014 recommendation of denial
- Withdraw old and submit new

Mr. Stringfellow: I think that we are getting nowhere, I will simply make a motion that we not consider this project any further until the Town Board has made a decision on what was submitted to them two years ago.. We looked at the project at that time, we submitted a recommendation at that time and they have done nothing since. I feel the ball is in their court.

Mr. Martin: Allegedly. We would have to back and look to see if it came up again.

Mr. Stringfellow: I think that has been done.

Mr. Martin: Was it?

Mr. Stringfellow: No it never came up again.

Mr. Martin: So somebody did check it?

Secretary Faulring: Yes, I did. I checked all the Town board agendas from April 2014 through the end of 2015 and that was never on the agenda again.

Mr. Martin: Okay.

Mrs. desJardins: Why did they table it?

Mr. Kobiolka: I'm speculating, it may be in the minutes or may not be in the minutes, but I think because it flew u the face of our 10-Year Town Plan, by having residential as opposed to commercial and that's a commercial strip right of the 219; having an apartment is certainly not a plus and the Town is not really looking for that.

Mrs. desJardins: Did they ever hold a public hearing?

Mr. Kobiolka: No.

Mr. Kobiolka: Mr. Chairman, did you just make a motion?

Mr. Stringfellow: Yes, I move that we simply not consider this until the Town Board has taken action on what was submitted to them previously.

Mr. Martin: Second. All were in favor of the motion.

Mr. Metzger; For the benefit of the Planning Board our next step I suspect that we will submit a letter tomorrow with the original application asking them to move forward with the application that's before you now.'

Mrs. desJardins: Assuming the Town Board does something with that original plan, so it goes away; if they bring this back will you entertain it, will you look at it?

Mr. Stringfellow: If the Town Board denies the first one then we will have to reconsider what I thought we were going to consider tonight which is is this significantly different or not.

**PLANNING BOARD SCHEDULE FOR NEW APPLICATIONS**

Mr. Stringfellow: I had submitted some what I consider to be reasonable proposals and everyone was to look at it and be prepared tonight with anything they want add, change, delete whatever.

Discussion followed:

- Less involvement of Code Enforcement Officer
- What is Town Board involvement
- Planning Consultant review
  - To deal with applicant or their engineer, for completeness of application, before referring to Planning Board
  - Some of proposed requirements for concept are requiring the applicant to spend quite a bit of money right up front
  - For Conceptual have the applicant come here with proposed project; and Planning Board is in favor of project and layout, then go back to drawing board and submit plans
- Can that be done without changing the Code?
  - There seems to be enough leeway in there with the information that the Planning Board help define the proposal
  - The Board could certainly add to those requirements
- Suggestion here is to reduce some of those requirements
  - Take some of those on the concept list and put them over on the Final Site Plan
  - Keep engineering costs down for the applicant
- Be more lenient on Conceptual requirements
  - we actually enforce without getting into trouble
- Previous “Welcome to Town of Boston’ package has never been adopted in Town Code
  - Code Enforcement Officer has stopped handing that package out to applicants for that reason
- We now appear to be at the same point

Mrs. Rood: I make a motion that the Planning board ask Mrs. desJardins to develop a comprehensive application for the planning Board to review for further consideration

Mr. Stringfellow: Second that.

All were in favor of the motion.

**LIAISON – COUNCILMAN BOARDWAY**

Mr. Stringfellow: The Town liaison is not present. Did he leave anything with anyone to bring?

Secretary Faulring: Not with me.

**TOWN ATTORNEY KOBIOŁKA**

Mr. Stringfellow: We talked after the last meeting about what to do about the fact that our Code just says when a lot is divided into 5 parts it has to be approved subdivision and it doesn't give any time limit or anything else or any way to determine when you start saying it was divided. Mr. Kobiolka was going to research that, have you got any answers?

Mr. Kobiolka: I researched it but I don't have any answers. David set the question to the supreme: suppose Asa Warren when he came into Town 200 years ago bought say the west hill, can you only divide 5 lots and after that anyone else has to apply for a subdivision, it can't possibly mean that; and I know the State works on a 5-year plan and I think the purpose of a 5-year plan is more for sanitary condition, you may or may not have sewers.

I haven't gotten to the reason that's there; when we get to the reason why it's there we could adjust our Code. What does Hamburg have 5 years?

Mrs. desJardins: Hamburg goes back to 1987 or 88. So you would have to go back to what is looked like in 1988. Orchard Park is 1958 or something like that. I don't know how they came up with those dates.

Mr. Martin: So if you go back to 1986 that's the starting point so is it 5 years from 1986?

Mrs. desJardins: No. First of all in the town of Hamburg every single split is a subdivision. Orchard Park it's actually two. So those Towns don't actually have the problem you do; in Orchard Park if you're creating two or more lots. I don't know if you can apply what they do to what you do here.

Further discussion included:

- Minor and major subdivisions
  - Major is at 5, minor at 3
- Need to set a date to begin
- Every split should be reviewed by Planning Board so that each lot meets Code requirements
  - Code Enforcement officer checks for Code requirements and if not met sends to ZBA for variance
  - This review is for division of property only, when sold for single-family dwelling

- Boston Code should be consistent with other Towns

Discussion followed regarding the subdivision of property. Questions still need answers

Mr. Stringfellow made a motion to table further discussion to give the Town Attorney more time to do research.

Mrs. Schutt: I'll second.

All infavor of the motion.

Mr. Kobiolka: Towns can only be formed by a direct act of the legislature. Boston was incorporated on April 4, 1817; this fact coming to light while doing research for the Fireman's Benefit Fund. Our Town came from Eden and was known as Niagara County. The Town will be celebrating its 200<sup>th</sup> Anniversary, the Bicentennial next year. A 200<sup>th</sup> Anniversary Celebration committee is being formed; new members will be welcomed on the committee

Mr. Stringfellow: One more question with having alternate members serve at one meeting and the next meeting the same subject comes up again, if all the regular members are here who were not here at the previous meeting is serving; is that okay is that the way it's supposed to be done?

Mr. Kobiolka: there's really no other way to do it. You're asking a person to step in the shoes of the fulltime member; the only thing that the Board could do is the Chairman could appoint, take turns this quarter it's her turn and the next quarter it's his turn, it would be that person's responsibility to bring the member up to speed so that that member knows what transpired last time. Which is really supposed to be the purpose of the minutes, the minutes should explain what happened last time. In a jury system they have alternates;, they all hear the same thing. I don't see any way around it just as long as the new member coming in feels comfortable, up to speed and able to take a sound position on a vote.

Mr. Stringfellow: Is there anything else for this evening?

**ADJOURNMENT BY MOTION**

Being no further business Mrs. Schutt made a motion to adjourn, seconded by Mrs. Rood and carried

Respectfully submitted,

Thelma Faulring  
Secretary to the Boards and Committees