

November 10, 2008 - Planning Board Meeting

Revised 12/9/08

CITY OF EAST PROVIDENCE

PLANNING BOARD

Minutes of November 10, 2008

Present were: Anthony Almeida, Burton Batty, Robert Cole, Octavio Cunha, Krista Moravec, Michael Robinson, Jeanne Boyle (staff), James Moran (staff), William J. Conley, City Solicitor.

1. SEATING OF ALTERNATE MEMBER

Mr. Cunha was seated for Mr. Almeida.

2. APPROVAL OF PLANNING BOARD MINUTES

A. Minutes of November 14, 2007

It was noted these minutes would be forthcoming.

B. Minutes of September 24, 2008

On a motion by Mr. Batty, seconded by Ms. Moravec, the Board unanimously approved the minutes of September 24, 2008.

3. APPROVAL OF PLANNING BOARD CORRESPONDENCE

On a motion by Mr. Batty, seconded by Ms. Moravec, the Board unanimously approved the correspondence listed below:

A. Memo dated 9/25/08 to the City Council, Re: Proposed Donation of Land, 0 ZZ State Line, Applicant: Patrick Conley, Map 911, Block 1, Parcel 3

On a motion by Ms. Moravec, seconded by Mr. Batty, the Board unanimously approved the correspondence.

B. Memo dated 9/29/08 to the City Council, Re: Proposed Amendments to Chapter 19 Zoning

4. NEW BUSINESS

A. Request by Omnipoint Communications – Assignment of Lease

Ms. Boyle explained that there is additional information that staff has requested from the applicant which was discussed with the Assistant City Solicitor, but have not received it at this time. Ms. Boyle asks that this request be deferred until the next meeting.

Chairman Robinson said he noticed that that there was a question as to whether or not they would produce the amount of the sub-lease. Ms. Boyle said that was part of it and that one of the questions that came up was whether the additional land area was going to be required to house the equipment. It does appear that additional land area will be required. More information from the applicant is required and we will need additional compensation to the City. If they are requesting that the additional City-owned land be conveyed to either the existing tower owner or the assignee under this sub-lease arrangement, then that would be a separate request which is not before the Board at this time. It would require action by the City Council. That is one of the questions that we have for the applicant and also the sub-lessee that is being proposed. It would need to be clarified before it can be heard by the Board tonight. We have not heard back from the applicant as yet.

Motion

On a motion by Mr. Batty, seconded by Ms. Moravec, the Board unanimously voted to defer this request to the next meeting when more information is provided.

B. Subdivision – 46 Dunbar Avenue Map 404, Block 28, Parcel 15

H. Paul Carlson, from Insite Engineering was sworn in by Chairman Robinson. Mr. Carlson said he represents the applicant, Josh Applegate, for the property located at 46 Dunbar Avenue. The parcel is located in an R-4 district on Map 404, Block 23, Parcel 18. The existing parcel is approximately 31,000 square feet. The applicant wants to subdivide that parcel. Parcel A is 5,000 square feet; and Parcel B, is 25,343 square feet. There is an existing single family dwelling on proposed parcel A (46 Dunbar Avenue). Frontage for Parcel B will be off of Amber Avenue. He noted they have been working with the Planning staff and the Zoning Officer and would be happy to answer any questions the Board has.

Chairman Robinson states that the applicant has requested waiver from sidewalks and curbing. He asks Mr. Carlson if the applicant will agree that those costs payments be submitted to the City's Curbing and Sidewalk program. The applicant agrees to this.

Staff Recommendation

Mr. Moran went through the staff recommendation. He asks that at the appropriate time that items 1 through 11 be entered into the Board's official record.

Mr. Moran gave an overview of the submission. The Certificate of Completeness was issued on September 16, 2008. The notice to abutters was mailed via certified mail on

October 23, 2008. The property is zoned Residential 4 which allows a lot minimum of 5,000 square feet. The property has two proposed lots; 50 feet of frontage on Dunbar Avenue. To the rear of 46 Dunbar is proposed Parcel B of 25,343 square feet with access through Amber Avenue. Mr. Moran indicated that the subdivision was delayed while they waited for Amber Avenue to be constructed. The bond holder came in when Beacon Construction went bankrupt and completed the roadway. Amber Avenue has been accepted by the Department of Public Works at this point in time.

Mr. Moran reported that the parcel is served with municipal water and sewer service. All comments by the Department of Public Works should be updated and noted on the Final Design Plan as part of the staff recommendation. There were some issues with the Fire Department that came up as it was reviewed. Sheet 1 shows the location of the house that was previously proposed. When the Fire Department reviewed that, they had concerns about the distance of the home from a public street and their ability to provide life safety services to that particular property. The Fire Department requested that the proposed dwelling be relocated closer to Dunbar Avenue (within 150 feet) and that a 19 foot easement be incorporated on Parcel A to provide access to proposed Parcel B.

The Planning Department had requested that new plans be submitted. However, the applicant requested that the Board review the previously submitted plans, without the modifications. Planning staff agreed to this request but asked that a "draft site plan", showing the Fire Department's requested changes, be submitted to Planning to allow the Board to better visualize the changes that were to be incorporated under the Planning Department's recommendation. The Planning Department included the draft site plan to allow the Planning Board to be able to understand the changes that were being proposed by the Fire Department and to indicate what we are going to request it as part of the preliminary plan recommendation.

Chairman Robinson asks if that draft site plan adequately meets the concerns of the Fire Department. Mr. Moran said at this point in time, it addresses the concerns that have been identified by the Fire Department. He noted the two biggest concerns by the Fire Department were having the house located less than 150 feet from a public street and hence the reason for the shift of the house toward Dunbar Avenue. It does increase the length of the driveway but accomplishes getting the house within 150 feet of the roadway and having a 19 foot easement incorporated on Parcel A to allow for unencumbered access to proposed Parcel B.

Another concern of the Fire Department was that in the event there was a fire they wanted to make sure that the safety factors would be increased and requested that the house have a sprinkler system. Mr. Carlson said he would discuss it with the applicant. It has not been confirmed yet that the applicant would agree to this condition.

The Planning Department is concurring with the recommendations of the Fire Department and recommending that these modifications be included in the Final Plan submission. Ms. Boyle said those were basically the minimum requirements of the Fire Department.

Mr. Moran stated that the Zoning Officer reviewed the development and determined that the lot will need a lot width variance for proposed Parcel B due to the fact that the flag shaped lot has a 20 foot wide access extension onto Amber Avenue. They will need to go before the Zoning Board.

Consistency with the Comprehensive Plan

Mr. Moran said that staff reviewed the application as to how it related to consistency with the Comprehensive Plan. The plan defines the dominant character of this land use (Low Density Residential) as single family and two family development densities of no more than 5.8 dwelling units per acre. A goal of the Comprehensive Plan is for all existing residential areas to be maintained at existing densities. Most of the properties in this neighborhood are single family residences that are with keeping with what is proposed by the applicant.

The Planning Department finds the development to be consistent with the Comprehensive Plan and is also consistent with the General Purposes of the East Providence Land development and Subdivision Review Regulations.

Recommendation

Waiver Request for curbing and sidewalks for 46 Dunbar Avenue.

The Department of Planning recommends that the waivers be approved, but in lieu of installation of sidewalks and curbing that the applicant reimburse the City the appropriate amount of funds to be used in the City's Curbing and Sidewalk Program. The amount of funds to be allocated should be estimated by the applicant and reviewed and approved by the Department of Public Works.

Subdivision Recommendation

Based on the finding that the proposed subdivision is consistent with the East Providence Comprehensive Plan, that it meets the General Purposes of Article 1 of the Regulations and that the required positive findings of Section 5-4 can be met, Planning recommends Conditional Approval of the requested Preliminary Plan submission subject to the following:

1. That all comments in the technical staff memoranda to the Planning Department and all other requested modifications identified in this recommendation memoranda be incorporated into the plans as submitted; and that any and all conditions of the Planning Board approval be reflected in the Final Plan submission;
2. That the Final Plans and supporting documentation be based upon this Preliminary Plan approval, and that the Final Plans meets all City regulations and ordinances, and all applicable State and/or Federal Regulations;

3. That the applicant, in lieu of installation of sidewalks and curbing along the frontage of the development at 46 Dunbar Avenue (proposed Parcel A), provide appropriate funds for deposit into the City's curbing and sidewalk installation program account. The amount of funds to be appropriated would be estimated by the applicant and reviewed by the Department of Public Works;
4. That the applicant obtains the necessary zoning variance as identified by the City's Zoning Officer in his technical review memorandum;
5. That the applicant re-locate the residential structure on Parcel B as shown on the submitted "Draft Site Plan";
6. That the applicant incorporate the 19 foot emergency access easement on Parcel A as shown on the "Draft Site Plan". An easement description and restrictions on the construction of structures and planting of trees should be submitted at Final Plan submittal for review and approval by the City;
7. That the applicant be required to install an emergency sprinkler system within the proposed structure on proposed Parcel B;
8. That the Title Block of the Final Plan be revised to indicate Final Plan status;
9. That all unpaid taxes on the property, as identified in the Tax Lien Certificate report submitted with the application be paid prior to the recording of Final Plans;
10. That upon project completion final "as-built" plans be submitted on Mylar, and electronic format in AutoCAD version 14. The as-built drawings shall include all roadway and utility information, including final inverts, rims, sewer lateral depths and locations (swing ties) to all permanent structures.

An additional recommendation by the Planning Department that is not included in the written recommendation, but was discussed after the recommendation had actually gone out is that there is a significant amount of junk and refuse on the back parcel. There are cars, wood, barrels filled with some sort of liquid and other refuse that need to be removed from the site. Staff recommends that this be cleaned up and that this also be included as a condition of approval before Final Approval on the subdivision can be made.

Mr. Moran suggests that compliance in this case, be contingent upon meeting the Building Code regulations.

Chairman Robinson asks Mr. Carlson if the applicant would have any problem with making that a condition of approval i.e. that the Building Inspector view the property and sign off on it. Mr. Carlson said he would speak to the applicant, Mr. Applegate or to his designee. He did say that it a reasonable request, but added that he would like to reserve

his client's right to refuse the Fire Department asking for the sprinkler system installation in the residential building on Parcel B.

Ms. Boyle said that the staff recommendation is predicated on what we heard from the Fire Department, but that it is the Board's decision to make.

Final Plan Review

Planning recommends that Final Plan review be delegated to the Administrative Officer as covered under Section 9-10 of the Land Development and Subdivision Review Regulations. Planning is of the opinion that Final Plan Review of the subdivision can be adequately reviewed under a ministerial Final Plan Review by staff.

Chairman Robinson asks if there are any comments or questions by the Board at this time.

Mr. Batty is concerned that there is no access from Amber Avenue. A fire truck would not be able to get in or out of there. The access from Dunbar at 46 Dunbar does not look like it meets the Building Code in that there are no front stairs. This will continue to be a single family home.

Mr. Batty said the parking is tight and will go along with the Fire Department and staff recommendation.

Mr. Cunha asks where Lot 18 comes into play with the back two lots. Mr. Carlson said that it is one lot which has 20 foot frontage on Amber and 50 feet of frontage on Dunbar. This is all one parcel with one single house located in the front.

Chairman Robinson asks at this time if anyone from the public would like to speak.

At this time William Conley entered the meeting.

Mr. Conley swears in:

Mrs. John Davis of 61 Centre Street. She said she and her husband have lived there for 46 years. Their property abuts 150 feet of the applicants'. She brought a petition by 14 residents and submitted it to the Board. They oppose the granting of this subdivision which provides for the construction of a house to be located behind and between the backyard of houses located on both Centre Street and Dunbar Avenue. She said it would be unsafe since the access by Fire trucks and other safety vehicles to a house is in a remote location which could be very unsafe. The access paths are very narrow and urges the Board not to approve this application. The petition was signed by 14 residents.

She also states there is a severe safety concern. We agree that a sprinkler system needs to be in at 46 Dunbar. For the Fire Department to have to bring water from the hydrant to this area way in the back is not a very safe way to do it and the community of Dunbar and Centre Street would be in jeopardy.

Mr. John Davis, 61 Centre Street states he is concerned about the access issues. If there was ever a fire at that house the fire trucks could not get in there or make the turn. He states that the Board should also postpone action until they get assurances from the applicant before they approve this project.

Chairman Robinson states that if the project is approved, it would be a requirement of approval that it contain the sprinkler system as the Planning staff has noted in their recommendation.

Mr. Manuel F. Pacheco, 25 Centre Street said his property is one of the abutters. He states he is not here to make a stand for or against, but wants to make a clarification. He said that 3 or 4 years ago the Amber Avenue development was approved. Right now there are two vacant homes partially constructed. He worried that there could be a third vacant house in the neighborhood. 46 Dunbar proposes a safety issue. He noted that a new home in that place would be an improvement over what is there now.

Mr. Batty said that since the owner does not occupy 46 Dunbar, could the Board put in a stipulation that that house be brought up to standard? Mr. Moran said that it could be incorporated into a decision. Ms. Boyle asks the Solicitor how long the building permit is valid for. It has been in the window a very long time. Mr. Batty said the permit would be valid for six months and if 46:30 there are minimum housing violations then we could refer them to the Building Inspector.

Mr. Carlson mentioned a time extension or getting a new building permit Mr. Carlson addressed the neighbors concerns about the fire trucks not being able to get through such a narrow road and also the sprinkler system which needs to be installed at 46 Dunbar. He said a lot of times the fire trucks cannot get right up to the driveway of a house etc. He will go back to his client with these concerns. 48:33 I will let the client know of the concerns about the Board and Planning Department, but also the neighbors. If it is undeveloped, then it will be left with debris. It's better to have it developed. We will get the level of safety up regarding the house. A good percentage of the houses in there do not have the luxury of having a fire truck pull up exactly in front of their houses.

Mr. Robinson asks if there are any issues with tying this stipulation into the proposed subdivision approval. Ms. Boyle said it is all part of the subdivision. Can we make it a condition of approval that the existing house be brought up to code? The answer is yes.

Mr. Batty asks if these houses are going to be occupied, or put up for sale. Mr. Carlson said he did not know. Ms. Boyle said if the Board were to stipulate that 46 Dunbar be brought up to code, you make that a condition of the subdivision. The subdivision is recorded and the lots can be conveyed. At what point does that become an enforceable subdivision condition.

City Solicitor Conley discussed the context of incorporating conditions into the decision.

Mr. Batty suggests that before the new house can be sold, 46 Dunbar should be fixed and brought up to minimum code and that the sprinkler system be in place in the Parcel B building.

Ms. Donna Burgess, 30 Dunbar Avenue is sworn in. She states she has been in the neighborhood for 18 years. She said she has spoken to the owner before about the back area regarding garbage and debris on the property. She asks how the Fire Department will be able to drag the hoses through all that debris. She would like to see the applicant clean up the property.

Mr. Carlson agreed that the applicant would have it cleaned up and agrees it should be a stipulation.

Someone from the audience asks where the easement will be located. Ms. Boyle said the easement will be on Parcel A. Also, Ms. Boyle said that the Dunbar Avenue easement will have to be kept clear.

For the record, Mr. Almeida has joined the Board's meeting. Mr. Cunha who has been present for the testimony will vote on this matter in place of Mr. Almeida.

Motion – Staff Recommendation and Accompanying attachments

On a motion by Ms. Moravec, seconded by Mr. Cole, the Board voted unanimously to accept the staff recommendation and 11 items listed within the report plus the attachments and the petition that was submitted by Mr. and Mrs. Davis and their neighbors into the Board's official record.

Motion – Waiver of Sidewalks and Curbing

On a motion by Ms. Moravec, seconded by Mr. Batty, the Board voted unanimously to waive the sidewalks and curbing and in lieu of payment, appropriate funds will be deposited into the City's Curbing and Sidewalk program

Roll Call Vote

Mr. Batty	Aye
Mr. Cole	Aye
Mr. Cunha	Aye
Ms. Moravec	Aye
Chairman Robinson	Aye

Motion – Conditional Approval of the Subdivision

Mr. Batty states he is not comfortable with the whole proposal without legal representation from the owner.

Mr. Batty recommends that we postpone this until the owner can answer the questions that were brought up at tonight's meeting. Chairman Robinson disagrees.

Mr. Conley states that the Certificate of Completeness was issued around September 6th. There is a 65 day time period for making a decision on the case. He asked that the applicant agree to allow a continuance and not consider the application approved as a result of the application approval extending beyond the 65 day decision deadline. The applicant's attorney William Maaia agreed to this stipulation.

Chairman Robinson said he does not have any problem with requiring the applicant who is absent to comply with the staff recommendation. We have spent an hour on this matter tonight, we have heard from the public who have given substantial testimony, and have received a petition from a number of abutting property owners. All questions have been asked and answered in his opinion. At this point it does not serve anyone to find out whether or not the applicant agrees with the staff's recommendation on this. The recommendation is what it is and the Board's decision whether to accept or reject that recommendation is what it is. I have no problem requiring the applicant to adhere to the requirements of the Fire Department. He said he would oppose Mr. Batty's motion. Mr. Batty states he wishes to revise his motion to add that the applicant be required to acknowledge that the City will not be bound by the 65 day time period for a decision. Chairman Robinson asked if there was a second to the motion. There was no second to the motion.

New Motion

Ms. Moravec makes a motion to conditionally approve the subdivision conditionally based upon the staff recommendation with the items noted within and Fire Department recommendation as follows:

1. That all comments in the technical staff memoranda to the Planning Department and other requested modifications identified in the Planning Department recommendation memoranda be incorporated into the plans as submitted; and that any and all conditions of the Planning Board approval be reflected in the Final Plan submission;
2. That the Final Plans and supporting documentation be based upon this Preliminary Plan approval, and that the Final Plans meet all City regulations and ordinances, and all applicable State and or/Federal Regulations;
3. That the applicant, in lieu of installation of sidewalks and curbing along the frontage of the development at 46 Dunbar Avenue (proposed Parcel A), provide appropriate funds for deposit into the City's curbing and sidewalk installation program account. The amount of funds to be appropriated would be estimated by the applicant and reviewed by the Department of Public Works;
4. That the applicant obtain the necessary zoning variance as identified by the City Zoning Officer in his technical review memorandum;

5. That the applicant re-locate the residential structure on Parcel B as shown on the submitted "Draft Site Plan";
6. That the applicant incorporate the 19 foot emergency access easement on Parcel A as shown on the "Draft Site Plan". An easement description and restrictions on the construction of structures and planting of trees should be submitted at Final Plan submittal for review and approval by the City;
7. That the applicant be required to install an emergency sprinkler system within the proposed structure on proposed Parcel B;
8. That the Title Block of the Final Plan be revised to indicate Final Plan status;
9. That all unpaid taxes on the property, as identified in the Tax Lien Certificate report submitted with the application, be paid prior to the recording of Final Plans;
10. That upon project completion final "as-built" plans be submitted on mylar, and electronic format in AutoCAD version 14. The as-built drawings shall include all roadway and utility information, including final inverts, rims, sewer lateral depths and locations (swing ties) to all permanent structures.
11. That the applicant be required to clear all debris and junk materials from proposed lot B and that the clearing of the lot be in accordance with all minimum property standards and that the minimum properties officers be allowed access to the property to assure compliance;
12. That the building at 46 Dunbar Avenue be brought to all building code and minimum code building standards which may require the applicant to obtain a new building permit or apply for a building permit extension and further, that the code compliance issues on the property for both proposed Parcels A and B be addressed prior to Final Subdivision Approval of the plans.

Ms. Boyle asks if the code compliance be tied to 46 Dunbar prior to final subdivision approval or to the Certificate of Occupancy for the new structure on Parcel B. 1:19:03
 Mr. Conley said it would be part of the Final Plan Approval.

Motion – Subdivision

On a motion by Ms. Moravec, seconded by Mr. Cole the Board voted to conditionally approve the subdivision subject to the 12 conditions identified.

Roll Call Vote

Mr. Batty	Aye
Mr. Cole	Aye
Mr. Cunha	Aye

Ms. Moravec Aye
Chairman Robinson Aye

Motion – Delegation of the Final Plan Approval to the Administrative Officer

On a motion by Mr. Batty, seconded by Mr. Moravec, the Board unanimously voted to delegate Final Plan Approval to the Administrative Officer.

5. CONTINUED BUSINESS

A. Staff Report

Lynn Avenue Subdivision –

Ms. Boyle reported that the Lynn Avenue Subdivision Appeal to the Supreme Court has been filed. The Law Department provided the Planning Department a copy of that appeal that was filed on behalf of Mr. West today. The Board has a copy in their packages and also a response that was prepared by the City’s Law Department. She noted this was a very important decision that was won by the City of East Providence and applauds the City Solicitor’s office and their victory. The fact that this is being taken to the Supreme Court is indicative as to what an important decision it was. The Supreme Court filing was essentially a rehash of the arguments that were made at the Superior Court level. Hopefully the City will prevail again at that level.

Mr. Conley states that this case generated so much interest in both the development community as well as other Planning Boards around the state. When you look at everyone’s Comprehensive Plan and Zoning Ordinances it is certainly capable of occurring again all across the state.

Comprehensive Plan Update -

Ms. Boyle noted that we are starting to update our Comprehensive Plan which needs to be updated by next Spring. We are looking to have preliminary outreach meetings and will keep the Board posted of these meetings. One of the first things we would like to highlight for the public in a presentation is what things that we have accomplished since the last update in 1992. We might want to put the information on line. The City of Providence put it on their webpage where the public could comment on The first meeting will be sometime in December at the Riverside Library on Bullocks Point Avenue. The Board will be informed.

6. COMMUNICATIONS

Motion – The Board voted unanimously to approve the communications A through C listed below:

- A. Chapter 19 Zoning Supplement #38 dated October 2008

B. Copy of Planning Department Memo Re: Zoning Board Cases of September 24, 2008

C. Copy of Planning Department memo Re: Zoning Board Cases of October 29, 2008

7. ANNOUNCEMENT

A. Next Meeting - **DECEMBER 8, 2008, 7:00 p.m.**, Room 306

8. ADJOURNMENT

The meeting adjourned at approximately 8:45 p.m.

Respectfully submitted,

Michael Robinson
Chairman

MR/JMB/sac