

February 19, 2004 - Regular Planning Board Meeting

CITY OF EAST PROVIDENCE

PLANNING BOARD

MINUTES OF FEBRUARY 19, 2004

The meeting commenced at 7:30 p.m.

Present were: Almeida, Batty, Cunha, O'Brien, Robinson, Sullivan, Gerstein, Jeanne Boyle (staff), Diane Feather (staff) Zac Gordon (staff), Tim Chapman, Assistant City Solicitor.

I. SEATING OF ALTERNATE MEMBER

II. APPROVAL OF PLANNING BOARD MINUTES

- A. Minutes of October 14, 2003 (to be submitted);
- B. Minutes of November 12, 2003 (to be submitted);

It was noted by Chairman Robinson that the minutes of October 14, 2003 and November 12, 2003 are to be submitted.

- C. Minutes of December 8, 2003
- D. Minutes of January 12, 2004

On a motion by Mr. Almeida, seconded by Mr. Sullivan, the minutes of December 8, 2003 and January 12, 2004 were approved and made part of the Board's official record.

III. APPROVAL OF PLANNING BOARD CORRESPONDENCE

IV. NEW BUSINESS

A. Election of Officers

This item was tabled at the last meeting. Mr. Almeida nominated Mr. Robinson as Chairman.

On a motion by Mr. Almeida, seconded by Mr. Sullivan, the Board voted unanimously to nominate Michael Robinson as Chairman of the Planning Board.

Roll Call Vote

Mr. Almeida Aye

Mr. Batty Aye
Mr. O'Brien Aye
Mr. Sullivan Aye

Acting Chair Robinson abstained from voting.

Ms. Boyle noted that the Vice Chairman position is also open for nomination.

On a motion by Mr. Sullivan, seconded by Mr. O'Brien, the Board voted to nominate Mr. Batty as Vice Chairman.

Roll Call Vote

Mr. Almeida Aye
Mr. O'Brien Aye
Mr. Sullivan Aye
Mr. Robinson Aye

Mr. Batty abstained from voting.

B. 2003-27 Minor Subdivision, Fort Street and Quarry Streets, Map 107, Block 5, Parcels 7 & 16. Applicant: Maria DeMelo

Mr. Ezequil, 113 Ellery Street, East Providence was sworn in by Mr. Chapman. Mr. Paul Bettencourt, Attorney for the petitioner stated he is here on behalf of Maria DeMelo, the applicant for this subdivision. He states that there are two lots on an R-6 zone and that they are 5,000 square foot lots. The existing house where Ms. DeMelo lives exceeds lot coverage by 8 1/2 percent.

Mr. Robinson asks what the square footage is of the properties that are adjacent to the subject parcel? Ms. Boyle states she believes they are comparable to the one being proposed .

At this time, Zac Gordon presented the staff report. Mr. Gordon explained that if not for the coverage issue this would be an administrative subdivision, but there is the exceeding of the maximum dimensional coverage allowed i. e., 33 percent proposed and 30 percent allowed. He noted the application was reviewed by staff, Public Works and the Fire Department. There were no comments received other than the Zoning Officer stating that a variance will be required from the Zoning Board for the lot coverage. Mr. Gordon said it is consistent with the City's Comprehensive Plan which calls for 15 dwelling units per acre or less and that would be approximately 3,000 square feet per unit. This subdivision is 5,000 square lot..

GENERAL PURPOSES & REQUIRED FINDINGS

In accordance with Section 5-4 of the Regulations: *“Prior to approval of any application for subdivision and/or land development project, the Administrative Officer or Planning Board, as applicable, shall address each of the general purposes stated in Article 1 and shall make positive findings of fact on all of the applicable standards listed below, as part of the proposed project’s record. If a positive finding for any of these standards cannot be made, the Administrative Officer and/or Planning Board shall have grounds for denial of the project”.*

Article 1

Section 1-2. General Purposes. The general purposes of these Regulations is to establish procedural and substantive provisions for the subdivision and development of land that will, consistent with the provisions of the East Providence Comprehensive Plan and the East Providence Zoning Ordinance, accomplish the following:

- (a) Protect the public health, safety and welfare of the community;
- (b) Provide for the orderly, thorough and expeditious review and approval of land developments and subdivisions;
- (c) Promote high quality and appropriate design and construction of subdivisions and land development projects;
- (d) Protect existing natural and built environments and mitigate all significant negative impacts of any proposed development on the existing environment;
- (e) Promote design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;
- (f) Encourage design and improvement standards to reflect the intent of the East Providence Comprehensive Plan with regard to the physical character of the various neighborhoods, districts, and special and critical areas of the City;
- (g) Promote thorough technical review of all proposed developments and subdivisions by appropriate officials;
- (h) Encourage dedications of public land and impact mitigation to be based on clear documentation of needs and to be fairly applied and administered, and;

- (i) Provide for the establishment and consistent application of procedures for local record keeping on all matters of land development and subdivision review, approval and construction.

Based upon its review, Planning staff has found that the proposed subdivision is consistent with these General Purposes.

Section 5-4. Required Findings.

- a) Subdivision and land development project proposals shall be consistent with the East Providence Comprehensive Plan, including its goals, objectives, policy statements and Land Use 2010 Plan, and/or shall satisfactorily address the issues where there may be inconsistencies;

Based upon the plans presented to the Planning Board, Planning staff finds that the proposed subdivision is consistent with the East Providence Comprehensive Plan, including its goals, objectives, policy statements and Land use 2010 Plan.

- b) All lots in a subdivision and all land development projects shall conform to the standards and provisions of the East Providence Zoning Ordinance, Chapter 19, provided however, that lots not being created for the purpose of present or future development need not meet the area and other dimensional requirements of Section 19-145 of the Zoning Ordinance provided that:

- (1) A notation is shown on the recorded plat that the lot being created is not a buildable lot; and/or;

- (2) A conservation or preservation restriction pursuant to Title 34, Chapter 39 of the Rhode Island General Laws, as amended, is granted to the City of East Providence prohibiting any such present or future development.

All proposed lots conform to the minimum dimensional and use requirements for the R-6 Zoning District (except lot coverage for Parcel 7, for which a variance is being requested from the Zoning Board of Review).

- c) There will be no significant environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;

Based upon the plans submitted, Planning staff has determined that it does not appear there will be any significant environmental impacts arising from the proposed subdivision.

- d) Subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. Lots with such physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved and recorded plans;

Planning staff has determined that, as designed, the proposed subdivision appears that it will permit building in accordance with applicable City regulations and building standards.

- e) All subdivisions shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement. Lots cannot be isolated by topographic, natural or other features which prevent adequate physical access from the street.

Both lots to be created will have access to existing public streets (Fort Street & Quarry Street)

- f) Each subdivision and land development project shall provide for safe circulation of pedestrian and vehicular traffic, for adequate surface water runoff, for suitable building sites, and shall provide for preservation of natural, historical or cultural features that contribute to the attractiveness of the community to the extent feasible, and;

Based upon its review of the proposed subdivision, Planning staff has determined that this subdivision shall provide for the safe circulation of pedestrian and vehicular, traffic, adequate surface-water runoff, suitable building sites and the preservation of natural, historical, and cultural features.

- g) The design and location of streets, building lots, utilities, drainage improvements and other improvements in each subdivision and land development shall minimize flooding and soil erosion.

Based on the proposed subdivision layout, Planning Department staff has determined that there will be no significant flooding and/or soil erosion arising from this proposed subdivision.

RECOMMENDATION

SUBDIVISION

Based upon the analysis provided above, Planning Department staff has concluded that the proposed subdivision is consistent with the General Purposes found in Article 1 and the

applicable standards of Section 5-4 of the Land Development and Subdivision Review Regulations. Therefore, staff recommends Preliminary Approval of the proposed Minor Subdivision application, subject to the following conditions:

1. that the title block be revised to indicate Final Plan status;
2. that the Final Plans be based upon the approved Preliminary Plans, and further that the Final Plan and supporting documentation meet the requirements of the East Providence Land Development and Subdivision Review Regulations;
3. that the plans be revised to clearly state that sidewalk and curbing will be installed along the frontage for both proposed lots;
4. that the applicant obtain the necessary dimension relief from the Zoning Board of Appeals;
5. that the existing concrete apron and concrete wall on parcel 7 be removed and replaced with grass.

DELEGATION OF FINAL APPROVAL

Mr. Gordon noted that staff is recommending Final Plan Approval be delegated to the Administrative Officer, subject to compliance with all required conditions of this approval.

Attachments:

- Plan Set, Application Form and Supporting Documentation
- Abutters List
- Memo from J. Boyle to S. Coutu, dated 10/27/03
- Memo from J. Boyle to J. Castro, dated 10/27/03
- Memo from J. Boyle to A. Ereio, dated 10/27/03
- Memo from J. Castro to J. Boyle, dated 10/29/03
- Memo from A. Ereio to J. Boyle, dated 10/30/03
- Memo from E. Pimentel to S. Coutu, dated 10/31/03
- Memo from S. Coutu to J. Boyle, dated 11/05/03
- Memo from Z. Gordon to J. Boyle, dated 11/12/03
- Memo from J. Boyle to G. Dias, dated 11/13/03
- Memo from J. Boyle to G. Dias, dated 1/05/04 (with handwritten response, dated 1/6/04)
- Letter from J. Boyle to M. Demelo, dated 11/17/03
- Certificate of Completeness
- Notice of Information Meeting

Mr. Batty said that his concern is that the water will be re-routed to other abutting properties if the retaining wall is taken out. The applicant states he will put in a drain so that the water will be re-routed.

Mr. Sullivan asks where the water presently goes? Someone stated it is a concrete slab and that the water runs off onto the surrounding properties and this will continue unless a conduit is put in from the backyard to the sidewalk.

Mr. Robinson asks staff if they have any concerns about water runoff. Ms. Boyle said that if anything this will improve the situation. She noted that one of the reasons they have restrictions on how much space can be occupied by a paved area is because of drainage concerns. What the applicant is proposing is going to improve the situation and probably mitigate any runoff that is occurring right now onto the abutting properties, in that the grass will replace the concrete therefore absorbing the water.

Mr. Robinson asked the applicant if they understand that they must install curbing and sidewalks. They stated yes and also that they will get zoning relief.

Public Comments – There were none.

First Motion

On a motion by Mr. Almeida, seconded by Mr. Sullivan, the Board voted to admit the staff report and recommendations and attachments into the Board's official record.

Second Motion – Preliminary Plan Approval

Based upon the submitted application testimony presented to the Board by the Planning staff and various City Departments. All of the General Purposes of Section 1-2 of the East Providence Land Development and Subdivision Review Regulations as addressed and part of the findings were found for all of the standards of Section 5-4 regarding Findings, it is also apparent that the proposed subdivision is consistent with the East Providence Comprehensive Plan.

On a motion by Mr. Almeida, seconded by Mr. Sullivan. The Board voted to grant preliminary plan approval of the proposed minor subdivision subject to the conditions set forth.

Roll Call Vote

Mr. Almeida	Aye
Mr. Batty	Aye
Mr. O'Brien	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

Motion – Delegation of Final Plan Approval to the Administrative Officer

On a motion by Mr. Almeida, seconded by Mr. Sullivan, the Board voted unanimously 5-0 to delegate Final Plan Approval to the Administrative Officer.

Chairman Robinson states that there has been a request by Attorney Sleprow to move Item A under "Continued Business" up on the agenda.

On a motion By Mr. Almeida, seconded by Mr. O'Brien, the Board voted unanimously to move Item A to the next agenda item.

C. Land Donation by Providence & Worcester pertaining to the Warren Avenue extension

Ms. Boyle said she apologizes to the Board for not receiving the staff memorandum in their package regarding the, but because this was not heard by the City Council until Tuesday night it would have been presumptuous to send you a memo at that time. The Board did receive in their packets a description of what is being proposed.

Ms. Boyle explained that as part of the whole waterfront redevelopment, one of the essential components is the construction of the Warren Avenue extension which is basically extending Warren Avenue to the waterfront and continuing a roadway as far as the Providence and Worcester Railroad. She states that this is a project that the City has been pushing for many years, it is within the Department of Transportation Improvement Program and is at the 30 percent design stage. It is slated for construction in 2005. As part of that, there is a property at the foot of Warren Avenue next to the Washington Bridge which is going to be necessary in order for that construction to proceed. The Providence and Worcester Railroad acquired that property several years ago in anticipation of this project happening.

Ms. Boyle noted she has had conversations recently with the engineers at the RI Department of Transportation who said now is the time for the City to take ownership of that property so that they can proceed with the remainder of the design and keep this on schedule for construction. When I discussed this with the members of the Providence and Worcester Railroad including the president, they said we will deed it to you tomorrow. What has happened is that they did submit a copy of the deed to us as well as the survey, a Phase I Environmental Assessment was also done on the property approximately five years ago when P&W acquired the property and it did not reveal any environmental contamination. This was referred to the City Council on Tuesday night and they have referred it to the Planning Board for an advisory opinion as to whether we should accept this offer of donation of land from Providence & Worcester.

Ms. Boyle stated she recommends to the Board that they advise the City Council to accept this donation. It is critical that this happened quickly in order to allow the construction of the Warren Avenue Extension to proceed.

Chairman Robinson asks if there are any questions of the Board. There are none.

Chairman Robinson asks the public for comment. There are none.

Motion

On a motion by Mr. Sullivan, seconded by Mr. O'Brien, the Board unanimously voted to recommend to the City Council that they accept the proposed land donation from the Providence & Worcester Railroad for the land at Warren Avenue.

Roll Call Vote

Mr. Almeida	Aye
Mr. Batty	Aye
Mr. O'Brien	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

Ms. Boyle asks that Diane Feather give a brief presentation on what we are proposing as far as waterfront zoning. We also have Bill Ashworth from VHB here tonight to answer any questions the Board May have.

D. Proposed Amendments to Chapter 19, Zoning and the Zoning Map – Waterfront Special Development Districts – Review and Recommendation to the City Council (enclosures)

Ms. Boyle noted that Ms. Feather would present the staff recommendation to the Board. Ms. Feather described the process of zoning amendments to the Board, noting that the Board's review and recommendation is advisory to the City Council, which holds the public hearing and is the decision-making body on rezoning. (The City Council public hearing is scheduled for March 2, 2004.) She noted that the proposed zoning amendments are for implementation of the "East Providence Waterfront Special Development District Plan", which was adopted by the City Council, after a recommendation from the Planning Board, on December 2, 2004.

Ms. Feather noted that the proposed amendments include adoption of a new article, Article 9, in Chapter 19, Zoning and changes to the official zoning map. She noted that staff had worked with a consultant, Vanasse Hangen Brustlin Inc. (VHB), who drafted the proposed regulations. She noted that with the change in the Planning Board meeting date, the members of the VHB team who drafted the regulations could not be present at the meeting this evening. She noted that Mr. William Ashworth, who managed the VHB team, was present at the meeting. Ms. Feather noted that the entire VHB team would be present at the March 2nd City Council meeting to make presentation.

Ms. Feather noted that property owners whose property is proposed for rezoning received direct notice via certified mail which advised them of the City Council public hearing. Ms. Feather noted that most of these property owners have been aware that the proposed rezoning was in the works because of the numerous public meetings, workshops and hearings that have been hold over the post few years on waterfront-related projects.

Ms. Feather referred the Board to the staff memorandum dated February 13, 2004 which was included in the Board's packet. Ms. Feather noted that the memorandum contains a discussion related to consideration of each of the applicable general purposes of Chapter 19, Zoning. She asked that the Board place this memorandum into the record of the meeting. Upon a motion made by Mr. Almeida, seconded by Mr. Sullivan, the Board voted 5 – 0 to include the memorandum into the record of the meeting.

Ms. Feather provided an overview of the proposed amendments utilizing presentation boards prepared by VHB. Ms. Feather also distributed a handout that had been prepared by the consultant, which was a reduced version of the presentation boards.

Mr. Robinson questioned who would set the provisions for affordable housing. Ms. Feather noted that any residential development of over 5 units would be required to provide at least 10 percent of the units as affordable. Mr. Robinson asked whether the affordable housing provision might be objectionable to developers and whether this was being done elsewhere, and whether it was for rental housing? Ms. Feather noted that it involves both rental and ownership housing. Ms. Feather noted that this type of ordinance is not uncommon outside of Rhode Island. She noted that Montgomery County, Maryland has had such an ordinance in place for thirty years and has produced over 10,000 units of affordable housing. She noted that some communities provide a density bonus to developers providing affordable housing, however, since the proposed East Providence ordinance imposes no specific maximum density (it is based on performance zoning), there is within this approach a built-in incentive. Ms. Feather noted that the "new city" proposed for the waterfront should be open to citizens of all income levels, and she noted that a broad-based development would likely be more sustainable over time.

Ms. Boyle noted any community that does not have at least 10 percent of its housing units as affordable is subject to the comprehensive permitting process, whereby developers proposing a residential development with 20 percent affordable housing can bypass normal permitting procedures and override a lot of current zoning. Ms. Boyle noted that many communities in Rhode Island have had developments coming in under these provisions and have had issues with this approach. She noted that the General Assembly just instituted a one (1) year moratorium on these permits, and they are looking to re-tool the enabling legislation. Also, she noted that a community which put an affordable housing plan in place showing how the 10 percent minimum could be met, could avoid this comprehensive permitting approach. She noted that East Providence is just slightly over 10 percent of its total units being affordable, and that having this inclusionary requirement in place is part of the city's plan to meet affordable housing goals. Ms. Boyle noted that implementation of the Waterfront Plan could result in the thousands of market rate units being constructed, so to keep above the ten percent we are asking for these inclusionary housing regulations, and also noted that above and beyond that it's also the right thing to do. She said the units could be \$400,000 on up and we do want mixed income developments. Ms. Boyle stated that the developers do realize that being "affordable" does not necessarily mean low income, and realize that it is something that is actually workable. Ms. Feather noted that some of the regulations elsewhere are

called “mixed income” or “moderate income” affordable housing. She also noted that the people of East Providence deserve to have access to their waterfront.

Ms. Feather noted that the proposed amendments are subject to modification and/or correction, and that any alterations to the proposed amendments would be presented during the course of the public hearing.

Mr. Batty asked staff if there was any opposition to the proposed amendments, and asked about business growth and whether these amendments might force someone out of business. Ms. Boyle stated that she would not characterize the conversations she’s had with existing property owners as opposition. She said some property owners, primarily those who would become nonconforming under the proposed amendments, and the questions have largely been how this would affect their ability to conduct business over the next few years. In terms of actual opposition, she said we hadn’t received any at this point. However she said the notices had just gone out and that the first of the public display ad notices would be in tomorrow’s Providence Journal. She said she would anticipate that over the next couple of weeks that we would hear from more people. Ms. Boyle noted that from those people Planning has talked with, she gathers the concerns voiced to date had been satisfactorily addressed. She noted that whether they will appear at the City Council meeting remains to be seen. Ms. Feather noted that she had a conversation with a property owner earlier in the day who currently has nonconforming automotive repair use in a current C-2 district that would continue to be nonconforming under the proposed Phillipsdale Sub-District, and she advised him that if he discontinued the use, he would lose the legally nonconforming rights, which is the case under the current zoning ordinance.

Mr. Cunha asked how commercial businesses like Burger King and McDonald’s fit in? Ms. Boyle noted that they would fit in as long as they alter their appearance from their stereotypical design standard to the specific East Providence regulations and be more in keeping with the waterfront vision. She noted that there are examples of where corporate chains have altered their appearance to successfully fit in with their surroundings. Ms. Feather noted that they would not be allowed to have a drive-through.

Mr. Gerstein asked who would be in charge of the real estate, is it going to be an outside person or someone on the Commission? Ms. Boyle noted that these regulations will govern privately owned real estate. If the Commission acquired property, the Commission would govern what happened to that property.

Mr. Batty asked about the Taunton Avenue properties and Valley Street properties, and asked if we had a specific cut-off point. Ms. Boyle noted that there is a difference between the properties within the waterfront districts and the properties being rezoned, in that some properties included in a waterfront district for planning purposes are not being rezoned for a change in use. She noted that the only properties being rezoned on Taunton Avenue are the site of the former “Hollywood” or Bomes Theatre and the Ranaldi property (the vacant red tenement and vacant lot). Ms. Feather noted that these properties have been a concern of the Downtown Business Association, a 501 (c)(3) non-profit

association of business and property owners on Taunton Avenue, which believes that these properties have a negative impact on revitalization efforts. She noted that a goal of the Waterfront Plan is to make sure that the existing commercial corridors are not left behind with the development of the new waterfront and that these commercial corridors continue to be revitalized.

Ms. Boyle noted that Taunton Avenue and Warren Avenue serve as gateways to the waterfront, and she noted that by and large the existing land use that's in place there we don't see any problems with.

Mr. Batty asked about Dexter Road and questioned whether industrial land uses would be permitted there. Ms. Boyle stated yes, industrial land uses are permitted on Dexter Road, but mini-storage uses are not permitted anywhere in the waterfront districts. She noted that the new storage facility on Dexter Road would become nonconforming and could continue on that basis for as long as they wanted to, but expansion of that nonconforming use in that area would be prohibited under these regulations. Ms. Boyle noted that these types of uses provide very little economic benefit to the City in terms of tax base or jobs, and valuable waterfront district land should be utilized for high-end uses that benefit our economy. Mr. Batty said he could see that point, they don't have to be there, they could be anywhere. Ms. Feather noted that the rezoning would prohibit heavy industrial uses there, but not light industrial land uses.

Mr. Batty said a lot of Pawtucket Avenue is zoned Commercial – 2, which is very restrictive, and asked if there are any plans to change this. He said he feels that most of Pawtucket Avenue has been built up as C-3. Ms. Boyle said that as far as the Waterfront Plan and districts, the only two Pawtucket Avenue properties included are the former Fram properties. Ms. Boyle noted that if the Newport Avenue connector goes in there are at least ten acres on the larger Fram property that could be subdivided. There is development potential and with the eventual connection of Waterfront Drive, all of these properties will be linked.

Michael Embury, of Middletown, and working for Northeast Engineers & Consultants, currently working for GeoNova LLC on the Ocean State Steel project. Mr. Embury noted that in terms of ownership affordability, that when you see the high-end units that affordable is in the \$225,000 range and that the regulations make sense and are not as detrimental as some folks first thought.

Ms. Feather informed the Board that VHB team was exceptional to work with on this project.

Mr. Robinson noted that this was quite a project.

Ms. Boyle noted that we have tried not to operate in a vacuum and that we have tested the proposed regulations against some of the pending development concepts and that they work. She stated that she believes that the regulations will foster the type of development that we envision for the waterfront. Ms. Boyle noted that we appreciate the

comments we've received from the development and engineer communities. Ms. Boyle noted that the proposed regulations are the first of their kind in the State of Rhode Island, being "performance-based" regulations. She said we are excited about this because we are trend-setting for the Ocean State Steel project, and that we believe that the design community will utilize these regulations and make this a desirable place to live.

Mr. Batty said he was born and brought up in East Providence and in the building business for 40 years and it's tough to teach an old dog new tricks. He said this undertaking would be tremendous for the City if it can come to fruition, or when it comes to fruition and we have a start with the Ocean State Steel project. Mr. Embury noted that he worked in the East Providence Planning Department in 1980 and that he remembers working on Ocean State Steel and the waterfront and writing grants and they couldn't get anybody interested, but times have changed.

Mr. Almeida asked about the latest on the underground wiring. Ms. Boyle stated that there is some slight mention of this in the Waterfront Plan, and that there has been a lot of back and forth. The Planning Board's letter to the Energy Facilities Siting Board that asks that they mandate that the wires be placed underground was submitted. She noted that the State Planning Council (SPC) and the PUC considered the matter. She noted that she sits on the SPC but unfortunately they were not persuaded and she was on the losing end of a vote. There have been a couple of extensions granted and it has not gone back to the Energy Facilities Siting Board and since that time she and Acting City Manager William Conley and the City's attorney on this matter, Mark Russo, have been meeting with Narragansett Electric talking about alternative locations for an above-ground connection that would be less-detrimental to the waterfront, including hanging them on the Washington Bridge, which is what the City would like to see. She said that right now it's all up in the air, and that one thing that the City will explore regardless is the relocation of the Phillipsdale Tap Line, which goes up and down our waterfront and right through the Ocean State Steel property. She said this line was a real hindrance to development and we are looking for ways to finance relocation through the Waterfront which has the power to do tax increment financing and special assessment districts. She said she would keep the Board posted.

Mr. Almeida said this has nothing to do with the waterfront, but asked if the traffic light was going in on Warren Avenue? Ms. Boyle said yes, probably in the spring and noted that she gets periodic updates from Ralph McGonigle on the light.

RECOMMENDATION

Upon a motion made by Mr. Batty, seconded by Mr. Sullivan, the Board voted unanimously (5-0) to recommend that the City Council **APPROVE** the proposed amendments to Chapter 19, Zoning and the Official Zoning Map.

Chairman Robinson said this was a terrific piece of work and congratulated staff.

V. CONTINUED BUSINESS

A. Appl. #2003-14 Minor – Intersection of Dover and Cushman Avenues, Applicant/Owner: Gianlorenzo & Sons Construction Co.

Chairman Robinson states that this matter has been before the Board previously.

Steven Gianlorenzo, 25 Tripps Lane, East Providence, was sworn in by Mr. Chapman.

Martin P. Sleprow, attorney for the applicant, states that this matter was before the Board and briefly summarized what happened at the last meeting regarding this subdivision. He said a presentation was made at that time by him and City staff and there were some questions in regard to the planning aspects of the two lots. He explained that there were two single-family lots which is one lot now consisting of 15,000 square feet being divided into two single-family lots of 7,500 each at the corner of Dover and Cushman Avenues. At the time, Mr. Solomon, an abutter spoke out and raised an objection that he felt that the this subdivision should not be passed because there is a restriction on the property which states that no more than one house can be built upon on this 15,000 square foot piece of land. At that point, the City Solicitor asked that their title attorney and myself submit a report to him and to the Planning Board in regard to the restriction. Mr. Sleprow states that he has submitted a report dated February 11, 2004 and briefly outlined it. He said that there is no question that there was a restriction put on the deed from Albert Kent on April 22, 1952. That restriction said there shall not be erected on said land more than one house.

Mr. Sleprow further explained that there are two statutes that have come up. Pilgrim Title Co. wrote a report on behalf of the abutter in which they stated that there is a Rhode Island Statute that if a restriction was put into effect after May 11, 1953, after a certain period of time it does not have any more validity. Clearly we were put in on April 22, 1952 about nine or ten months before, we can't gain any help from that. We do not dispute what Pilgrim Title said. Mr. Sleprow states that in his opinion, they do not address the real issue, but what they said is true that that Ancient Restriction Statute does not apply to us. Mr. Robinson asks Mr. Sleprow if that is Sec. 34-4-21 the Limitation of Restrictive Covenants? Mr. Sleprow answered yes. Mr. Robinson states he did not see a copy of the Marketable Record Title Act in the package and is curious as to what the impact of that is?

Mr. Sleprow answered that he is not sure if he gave the Board a copy of the Act, but has one here for distribution. He states that is not the Marketable Title Report, it is called the Ancient Restrictions Report. That simply says that after 1953 a restriction expires after a certain number of years, but it cannot help us because we were one year before that. He states that the most important thing was that Marketable Title Acts was passed in Rhode Island on January 1, 1996. Basically that was an attempt to continue public policy of that Ancient Restriction Statute. It was an attempt to say that if you went back to the root title and for 40 years you did not mention the restrictions, those restrictions die. The question is what is the root of title? According to Statute the root of title is

any instrument that conveys title. In this case it was a will of W. Everett Bowen who died in May of 1971.

Mr. Robinson said that it wouldn't have been the recording of the deed in April of 1952. Mr. Sleprow answered that is correct. He states that in 1971 when Everett Bowen died it was proved through probate that on June 14, 1971 on which is was conveyed through the route of title. From 40 years from that point, there has been no mention of the restrictions. Mr. Sleprow said that according to Rhode Island Law, those restrictions will lapse in 40 years. Although the law was difficult to read, I put in common law title. Michael Melion is their counsel who is well respected in the state and he could not have been clearer in what I said to you and in what I have showed to you on the attachments where he states that use restrictions noted on his memo to the examiners from Michael Melion after this past. On page 2 he said "*use restrictions are among the matters affecting title to land which can be extinguished by the marketable record title*". It says a mere general reference to restrictions of record is not sufficient to reserve restrictions; they must be referred to specifically. Mr. Sleprow states that in his case they are not referred to at all. He clearly says as part of the Marketable Title that I believe the solicitor and I may differ on some issues, but I do not believe that we differ that marketable title is facing Rhode Island 40 years from June 14, 1971. That restriction will come to an end. That is the thrust of the legal argument. Then we say we want to make it clear that we are proceeding.

Mr. Sleprow states it is important to us that the subdivision be passed because it is our intention to build on one of the lots which is perfectly legal to leave the other either owned by Mr. Gianlorenzo for future development, after 2011, or someone will come along and purchase the land with the intention to build on the lot on 2011. He states that he would like to impress to the Board that the restriction does not say that you cannot subdivide; it says that you cannot build more than one house. He noted that not one of the staff restrictions in their November memo states that we must enforce the private restrictions, that there is no need because there is a perfectly legitimate subdivision at which one of the lots cannot be built upon. There is nothing in the Subdivision Ordinance that states anywhere that part of the Planning Board's charge is to uphold private restrictions provided all the eight General Purposes and seven Required Findings can be met and we can meet them.

Mr. Robinson asked Mr. Sleprow that suppose he is wrong about the restrictions to expiring on 2011, what purpose would there be to subdivide the lot? Mr. Sleprow states that that lot would never be built upon. Mr. Sleprow states that he cannot believe that he be wrong on that. I could be wrong in my opinion that the Board should pass this, but Michael Melion of the Commonwealth agrees. I have a letter to submit from John Soccichi another real estate lawyer and he went through Stuart Title in regard to the same thing and came to the same conclusion. Mr. Sleprow states he will submit this letter. He states he will represent to you and does not have this in writing, but that he called Chuck Allert who is General Counsel for Chicago Title regarding this area and he said exactly the same thing. There is no question that use restrictions are affected by the Root of Title and that they will expire in 40 years.

Mr. Robinson asked him for a copy of the Marketable Title Act. Mr. Slepko submitted it to him.

Mr. Sullivan asked if it was Mr. Gianlorenzo's intent to build a second house on that property 10 or 11 years in the future? Mr. Slepko answered yes.

Mr. Sullivan asked what if the purchaser actually buys that house? Mr. Chapman states that he could sell the house right now, but it would be subject to that specific restriction. He could quit claim that property to anyone that he wants, but it is still subject to that restriction. When that restriction expires there is a 40-year Root of Title. Mr. Chapman said he could get the date as to when it expires, but it is his understanding that that was not what was originally brought before the Board. He said what was originally brought before the Board was to subdivide the property and build another house. If you subdivide the property as the original petition indicated, then you are altering the land, which I think is in violation of the restriction. The Marketable Record Title Act, in my opinion, can be used to declare restrictions terminated, but the restrictions have not been distinguished yet – that the Marketable Record Title Act does not apply until the restrictions are extinguished. As far as the argument as to whether or not it is directed at any issues in the subdivision Regulations, in my opinion you could look at maybe two of them that you could state that they are not compatible with the Subdivision Regulations on A and D. Whether or not you would be successful, I'm am not sure. Mr. Chapman also stated that you have a situation that a petition was brought to the Board to subdivide the land and that the restriction applies to that piece of property and it will expire at some point. I can find out when it expires, but that restriction still applies to this particular property and the petition.

Mr. Sullivan states they want to build a house on it, they cannot subdivide it yet because the forty years is not up. Mr. Slepko states that the restriction does not talk about subdivision. They have a perfect right to subdivide. Mr. Chapman states that when you subdivide the land you alter the land which goes right to the heart of the restriction and the subdivision regulations.

At this time, Mr. Chapman reads the actual restriction. It states: *“There shall not be erected on said land more than one house and such dwelling shall be designed to accommodate not more than two families, but this restriction shall not prevent or preclude direction of a private garage.”* Mr. Slepko states he agrees and that they just want a buildable lot and an empty lot.

Ms. Boyle interprets the restriction as saying that when it refers to “said land” it is referring to the 15,000 square feet in its entirety. She states that by approving this subdivision, “said land” will become altered into two properties which are conveyable. In reference to Mr. Sullivan's question, if the Board were to approve the subdivision with one house on it, that house could be conveyed under the 7500 square foot lot and the remainder lot would sit here to 2011, but the land has been split in that “said Land” that is being referred to in that restriction no longer exists.

Mr. Sleprow asks where does the Board get the right to take our land? Mr. Chapman states that the Board did not create the restriction. Mr. Sleprow states there is nothing in the Board's charter having to do with enforcement of private restrictions about building homes, and why would the Board in effect condemn this land that we cannot build a house on? He states there is nothing in the Subdivision Ordinance where the Board has to be concerned about a private restriction. If it was a zoning problem, that is a different issue. Mr. Chapman answered that the Board has to deal with restrictions when they receive applications, otherwise we would not require Title Reports to show all these different things; that they have the spirit of the law it is to make sure that property is not subdivided that goes against the restriction. Mr. Chapman states by granting the subdivision, the restriction would be altered. He said in all due respect, if hadn't been for Mr. Solomon informing the Board at the last meeting of this restriction, they would have approved it and this case would have ended up in court and you know as well as I do Mr. Sleprow that that restriction would have been enforceable and they would have remanded it back to us. Mr. Sleprow stated this is a perfectly marketable title.

Mr. Chapman states that the application was originally brought before the Board to subdivide the property and make two houses instead of what is required in that restriction of one house. So the Board would not if they said no take away anything that could be guaranteed or at least brought before the Board in the year 2011 if that is the date. Mr. Sleprow states that is 100 percent correct, when we first brought this before the Board we were focusing on the planning. He states that there is still no reason for the Planning Board to deny the petitioner in building one house and keeping the other lot vacant.

Mr. Chapman states that subdivision regulation A refers to the Planning Board's responsibility to the spirit of the law and D refers to physical constraint. Therefore, the Board has grounds to deny. Mr. Sleprow states there is no physical constraint. Further, that the Board has no grounds to take away the property rights to build one house, effectively they are taking away our property rights. There is no reason in the ordinance that allows the Board to take away our property right to build one house.

Mr. Robinson asks Mr. Chapman his legal opinion with respect to whether or not subdivision of the land constitutes a violation right now of this deed restriction. Mr. Chapman states it is his opinion that the Board can choose to say yes and grant it with a condition that you do it in 2011, or you say no, that it is in violation of the subdivision regulations A and D and you can come back in the year 2011 and do another application if that is the specific time period. I have not done the math as to when the Marketable Title Act ends. But I have also said before that the Marketable Title Act in my opinion will not terminate restrictions until it actually takes effect and that is when that restriction ends. That restriction has not ended yet. Mr. Robinson asked if subdividing this property violate A and D of the regulations in your opinion? Mr. Chapman states he is looking at A and D, but there may be other specific sections that it does violate.

Mr. Robinson states he wants to be clear that there is a legal opinion that this does or does not violate. If we subdivided it now subject to a restriction that it could not be built

upon until 2011, are we on safe legal ground? Mr. Chapman answered that this is why we have appeals – you could appeal this to the Zoning Board, but in my opinion there is a valid restriction on the property that allows one house to be there and not a subdivision of the property and creation of a second lot. The application before the Board, is an application for a subdivision of the property with two lots on the property.

Mr. Robinson states that application before the Board notes that this is an application for a subdivision of the property with construction of one other lot which means there would be two lots on that property. He said that as a technical matter the Board would be justified at this point in denying the application because of the fact that it references construction. If they were to come back later, we would have the same problem on our hands. If they said they just want to subdivide, we would be fighting the same legal issue. But at this point, the Board could deny it on that basis. Mr. Slepko asks the Board at this time to amend the application to build a single on a single lot.

Mr. Sullivan said that somewhere in this paper it must explain what exactly on “said land” is. Mr. Slepko states that it means the 15,000 square feet of land. Mr. Sullivan states that you break this restriction if you subdivide this 15,000 sq. ft. Mr. Slepko states that the applicant and he agrees that we cannot building another house until 2011. It doesn’t say you cannot make it into 15 lots, it just simply says you cannot build more than one house on “said land”. Mr. Slepko states that the land they are referring to in 1952 is the 15,000 square feet. Mr. Sullivan states that if you subdivide the 15,000 square feet, you are breaking the “said land”.

Public Comments

Mr. Michael Solomon, 39 Bullocks Point Avenue is sworn in.

Mr. Solomon A. Solomon, 60 Cushman Avenue, East Providence is sworn in.

Michael Solomon gave some background information to the Board members who were not present at the last meeting regarding this matter. He stated that his dad lives across the street from the subject lot. We have been neighbors of Mrs. Bowen for 45 years. We know the restriction was in place and she always indicated to us about the restriction. It was always our concern that someone would buy this property. In the immediate area there are no 7500 square feet lots. Out of the lots there, 80 percent are larger than that 7500. One of our objections is that we do not believe that what Mr. Gianlorenzo is proposing fits into the scheme of the neighborhood. We also knew of Mrs. Bowen’s deed restriction which is in force today.

Mr. Solomon said he reviewed a copy of the application and it does not indicate the restrictions. If it was not for me and my father attending the last meeting and noting the deed restriction, the Board would not have had all the information needed to make an informed decision on this subdivision. We are not trying to take any rights away from Mr. Gianlorenzo. He can build a house on the 15,000 square foot lot. The house across the street is on a 15,000 square foot lot. For him to want the lot subdivided for something that may happen in 2011, that decision will be made in Superior Court if and when it

comes to that. Mr. Solomon states that the title attorney he has spoken with states that the restriction is there and it is there to protect the people that live on the plat. He said his father also has the same restriction in his deed and will submit a copy of his deed. In closing, Mr. Solomon asks for the Board's consideration in terms of the decision because of how important it is to them and the neighborhood.

Mr. Solomon A. Solomon states that Ms. Bowen would always say to him that she only wanted one house on that lot.

Mr. Robinson asked if the Board had any comments.

Mr. Batty states his concern is the legal one. He does not want to end up in court by making a decision tonight that I do not feel comfortable with. Right now my understanding is that I must stay with what the deed states.

In answer to Mr. Batty's question, Mr. Sleprow said that as the staff report indicated, all the planning aspects cannot be built on at this particular time. He said up until two years ago that one house could have been a two-family which would not have been affected by this restriction. It was only recently that the R-3 did not allow two-family. How can that be relevant if her concern was that there should not have been two-families up until a little while ago would not have been an issue at all. What we are saying is that the restriction does not disallow a subdivision. There is nothing in the subdivision where it states that you must put a house on a piece of land that is being subdivided. There are no rules that take the building of a house. We have a right to subdivide. Why should the City take away our right?

Mr. Solomon stated in the staff's decision was made based on information that did not include any mention of this restriction.

Mr. Robinson states he feels that this subdivision would violate the deed restriction and the fact that we have an opinion of the City Solicitor on it only bolsters my problem with that argument. I also have a problem where I do not see any prejudice with the applicant in coming back in 2011 when by their own admission the deed restriction would expire. I will be voting to deny the application.

Mr. Hanner asks that the Board enter the correspondence below into the record as follows:

The Title Reports provided by Martin P. Sleprow and Attorney Michael Solomon, a memorandum dated 2/12/04 from Assistant City Solicitor, Tim Chapman as well as the 2/14/04 staff memorandum. Mr. Sleprow requested that the marketable record title act be entered into the record.

Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted unanimously 5-0 to admit the staff recommendation, the opinion from Assistant City Solicitor Chapman, the legal memorandum from Attorney Sleprow and the attached documents attached thereto, the Marketable Record Title Act, and also Section 34-4-21 of the R.I. General Laws.

Mr. Robinson asks if there is any more discussion from the Planning Board?

Mr. Batty moves to deny the petition, with Mr. O'Brien as a second, based upon the submitted application testimony presented to the Board and the Planning Staff report, and memoranda from various City departments. All the General Purposes of Section 1-2 of the City of East Providence Land Development and Subdivision Regulations have been addressed

Mr. Batty stated he does not find that we have accomplished a complete following. It also seems apparent to me that it does not meet the subdivision regulations of the City of East Providence as far as the title or land division. It is a complex legal opinion and I am going by legal counsel.

Motion was seconded by Mr. O'Brien to deny the application for a variety of reasons including the staff recommendation and memoranda submitted by Counsel for the application and the City Solicitor.

Roll Call Vote

Mr. Almeida	Nay
Mr. Batty	Aye
Mr. O'Brien	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

Mr. Robinson says his rationale is that this denial would be without prejudice to the right to re-file it at an appropriate time. I cannot speak for the Board on that, but that would be my reading of the applicable law.

At this time the Board went back to the regular agenda.

B. Staff Report

VI. COMMUNICATIONS

Board voted unanimously to accept the following communications and make them part of the Board's official record:

A. Memo dated January 23, 2003 to the Zoning Board of Review from the Planning Department Re: Requests for Variance and Special Use Permit to be heard on January 28, 2003 ;

B. Waterfront Development District “Goals and Purpose” statement with attachments distributed at meeting.

VII. ANNOUNCEMENT

Next Meeting – Monday, March 8, 2004, 7:30 p.m., Room 306

VIII. ADJOURNMENT

Post: City Hall Lobby

submitted,

Respectfully

Michael Robinson
Acting Chairman

MR/JMB/sac