

September 13, 2004 - Regular Planning Board Meeting

CITY OF EAST PROVIDENCE

PLANNING BOARD

MINUTES OF SEPTEMBER 13, 2004

Present were: Messrs. Almeida, Batty, Cunha, Gerstein, Robinson, Sullivan, Jeanne Boyle (staff), James Moran (staff), and William J. Conley (City Solicitor)

I. SEATING OF ALTERNATE MEMBER

Mr. Cunha was seated in place of Mr. O'Brien who was absent.

II. APPROVAL OF PLANNING BOARD MINUTES

- A. Minutes of July 19, 2004
- B. Minutes of August 23, 2004

Mr. Cunha noted there was a typographical error in the July and August minutes. He stated he was not present at the July 19 meeting, but was present at the August 23rd meeting of the Board. It was noted this would be corrected in the minutes of July and August.

Motion

With the minutes amended, on a motion by Mr. Cunha, seconded by Mr. Sullivan, the Board voted unanimously to approve the minutes of July 19, 2004.

Motion

On a motion by Mr. Almeida, seconded by Mr. Sullivan, the Board voted unanimously to approve the August 23, 2004 minutes.

III. APPROVAL OF PLANNING BOARD CORRESPONDENCE

- A. Memorandum to the City Council, Re: "Capital Budget Program and Six Year Capital Improvement Program".

On a motion by Mr. Sullivan, seconded by Mr. Almeida, the Board unanimously voted to approve the correspondence above.

III. NEW BUSINESS

A. Appl. #2004-23 Admin. – 179 Greenwood/75 Newman Avenues, Applicant: Marshall Newman Avenue LLC, Map 403, Block 23, Parcel 1 and Map 503, Block 16, Parcel 6.

Ms. Boyle asked that the Board permit the applicant to give their presentation and follow up with a staff report.

Ms. Christine Engustian, Attorney for the applicant, 1 Grove Avenue, East Providence was sworn in. She explained she represents the applicant Marshall Newman Avenue LLC, which owns property located at 75 Newman Avenue on Map 503, Block 16, Parcel 6 located in a C-1 zoning district. She distributed a reduced copy of the plan to the Board.

Ms. Engustian explained that the applicant was before the Planning Board earlier this year for an administrative subdivision involving land then owned by Rumford Apartments. A small portion of this land was under a lease agreement to provide to provide parking spaces to service the building at 75 Newman Avenue. The applicant sought that Administrative subdivision in order to keep the situation created 19 years ago. In 1985 the East Providence Zoning Board of Review granted a variance from the required number of off street parking spaces to allow construction of an addition to the then existing office building at 75 Newman Avenue.

Ms. Engustian stated that the owner proposed 118 parking spaces and the Zoning Ordinance at that time required 138 spaces for the building and that under the granted variance the accepted number of 118 parking spaces included leased space from Rumford Apartments. This is leased space from HOD Corporation now HOD Associates.

The Planning Board approved a subdivision in April, 2004 associated with Rumford Apartments and allowed those spaces leased in 1985 to be permanently assigned to the building at 75 Newman Avenue and eliminated the risk of having those spaces taken from the applicant and thereby creating a deficiency in parking at the subject site. She said this Planning Board recognized the wisdom of placing those spaces in permanent ownership by the applicant. In April of 2004, the Planning Board granted the subdivision conditional upon Zoning approval of a dimensional variance. The subdivision that is presently before the Board addresses the second half to the 1985 parking situation allowed by the Zoning Board's variance. This involves HOD Associates and leased by the applicant since 1984. It covers approximately 55 parking spaces. HOD will now agree to sell this leased land of approximately 15,000 square feet to the applicant, Marshall Newman LLC. By the applicant owning this leased land, permanent parking spaces would comply with not only the number of spaces granted through the 1985 variance, but also with the present zoning requirements for off street parking.

Ms. Engustian stated that included in the Narrative that was attached to the applicant's application was the request for dimensional variances from the maximum including permeable surface coverage requirement for both the land acquired from HOD located in an I-3 zoning district and the land owned by the applicant is located in a C-1 zoning

district. She stated that the City's Zoning Officer assured her today that there is not a need to seek any variances as it relates to the Marshall Newman Avenue LLC parcel of this subdivision application. He is asking that we seek clarification from the Zoning Board of Review of a decision it rendered in 1985 regarding the Marshall parcel. She noted the applicant will be before the Zoning Board of Review on September 29, 2004. Ms. Engustian states that if the Board approves this subdivision, there will be no physical change to the subject site at 75 Newman Avenue. She assured the Board that the entrance to the parcel will remain the same. The number and location of the parking spaces will remain the same, and the existing building will remain in its present location.

Ms. Engustian said they do not expect any adverse effects on the neighborhood or the surrounding area if this subdivision is granted. She states that this subdivision resolves a situation allowed by the 1985 Zoning variance and that it having leased parking spaces without the guarantee that those spaces will be forever available for use at the building at 75 Newman Avenue. This subdivision will not complete full compliance with the City's Zoning Ordinance as it relates to off street parking at 75 Newman Avenue. Ms. Engustian refers to the memorandum from the Planning Department to the Planning Board dated September 9, 2004 which finds that the requested subdivision is consistent with the City's Comprehensive Plan and meets the Required Findings under Section 5-4 of the City's Land Development and Subdivision Review Regulations.

Ms. Engustian stated that the memorandum from the Public Works Department addresses the issue of utilities within the leased land. She states she has a letter dated September 13, 2004 from David Stanley of Stanley Engineering stating that to the best of his knowledge there are no private or public utilities within the portion of the property to be conveyed from HOD Associates to Marshall Newman LLC. Ms. Engustian requests that this letter be made part of the Board's record. Mr. Robinson stated yes.

Ms. Engustian asks that the Board approve the administrative subdivision and thanks the Planning Department staff and Planning Board's time on this matter.

Mr. Robinson asks if there is any problem complying with the City Engineer's recommendation that granite bounds be set at the property corners? Ms. Engustian stated no it was a condition that was set at the first subdivision for the Rumford Apartments. The applicant has done that.

Mr. Batty asked how long the building has been there? It was answered 20 years. He asked if it was going to detract from the old Rumford Chemical Works property? Mr. Ralph McGonigle stated there is no change.

At this time, Ms. Boyle asks Mr. Moran to present the staff memorandum. Mr. Moran comments that Ms. Engustian did an excellent job in covering all the facts of this subdivision.

Mr. Moran states that this is the second of a very similar subdivision that occurred in April in which the applicant is seeking to bring all the parking spaces into single

ownership under parcel 6. He states the application was referred to various departments and several comments were returned including one from Water Superintendent, Ken Booth which appears to be rectified with a letter from Stanley Engineering. The second is the placing of granite bounds which is also an item that will be one of the stipulations for approval. Mr. Moran noted that since the Zoning Officer was out last week staff was unable to receive a response from him, however we did have discussions with him today and the applicant will go before the Zoning Board at the end of September and seek clarification on the approval of 1985 which will bring several of these issues relating to the Zoning concerns into light and find a resolution.

Mr. Moran states that staff has indicated that this subdivision is consistent with the General Purposes of Article 1 of the Regulations and the Required Positive Findings of Section 5-4. The recommendation for approval would be subject to the stipulation that all comments of the technical staff memoranda to the Planning Department and any additional stipulations by the Planning Board be met or submitted. And secondarily maintain the language of Item 2 stating that the petitioner obtains the necessary Zoning variances if necessary and any other requirements or determinations established by the Zoning Board of Review prior to the submission of Final Plan to the Administrative Officer. Mr. Moran states that there are no changes to this proposed property. The applicant is trying to bring all the parking spaces together under one ownership.

Mr. Robinson asked if there were any comments by the Board. There were none.

First Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted to admit into the record all the attachments and reduced plan that was distributed to the Board.

Second Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted to approve the submitted application testimony presented to the Board, approve the Planning Staff Report and submitted memoranda from various City Departments. All the General Purposes of Section 1-2 of the City of East Providence Land Development and Subdivision Review Regulations have been addressed and Positive Findings were found. For all the standards of Section 5-4 Required Findings it is also apparent that the proposed subdivision is consistent with the East Providence Comprehensive Plan.

Ms. Boyle asked that Board strike the language in the application regarding “total impervious coverage”, but will keep the other general zoning language in the Planning report.

Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted to approve the subdivision but to strike the wording “total impervious coverage” from the application but keeping the basic language that all necessary variances be obtained.

Roll Call Vote

Mr. Almeida	Aye
Mr. Batty	Aye
Mr. Cunha	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

Ms. Engustian asked if the final plan approval would be delegated to the Administrative Officer. Ms. Boyle stated that on the administrative subdivisions, we have not done that because the only reason it is before the Board tonight is that it does have zoning variances and she does not have the authority to grant approval conditionally. But having this approval already granted, that obviates the need for delegation of final approval.

B. Drainage Easement – Burnside Avenue, Map 411, Block 16, Parcels 006.00.

Ms. Boyle explained that this occurs very commonly where the City has drainage structures in place. They were put into place many years ago and not necessarily with the benefit of an easement. In this situation, there is a property on Burnside Avenue where Mr. Michael West is intending to develop it. As part of his preparation for development, it was discovered that this drainage structure is in place and Public Works is seeking that there be an easement placed upon this. The Current property owner has agreed to this. Staff recommends that the Board recommend to the City Council that the City approve this proposed easement. Ms. Boyle said that because this is an acquisition of interest in property, it does require the Planning Board’s recommendation to the City Council prior to any action on their part.

Chairman Robinson asked if there were any questions of the Board? Mr. Batty asked if this will allow Mr. West to acquire the land? Ms. Boyle answered yes and it will protect the City’s interest in the future.

Mr. Sullivan asks if Mr. West will be able to build above this easement? Ms. Boyle answered no. This is a 10 foot easement.

Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted unanimously to accept the staff report with attachments and make it part of the Board’s official record.

Motion

On a motion by Mr. Batty, Mr. Sullivan, the Board voted to recommended passage of this proposal to the City Council.

Roll Call Vote

Mr. Almeida	Aye
Mr. Batty	Aye
Mr. Cunha	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

C. Abandonment – Avenue D – Advisory Opinion to the City Council

Ms. Boyle explained to the Board that a few years ago the City Council directed the City Manager at that time to take a look at properties that the City owned whether they were parcels or paper streets that the City had no use for. There were issues as to maintenance of these paper streets and small parcels and also the goal was to get these properties onto the tax roll and have them used more productively by private residents. Avenue D was one of several streets that the Public Works Department identified as not serving any purpose to the City. Staff went before the Council with a list of a number of streets asking for permission to proceed with a City initiated street abandonment. Most of the street abandonments that come before the Planning Board come before the City Council are initiated by property owners seeking to acquire the land.

Ms. Boyle states that one impediment to pursuing that approach was that the cost associated with the surveys and title searches. Street abandonment petitions are also required to be accompanied by a Class 1 survey and also by a title search showing that the City actually has the right to abandon it and that there are no encumbrances. Subsequently the city did select a few of these properties and we proceeded to have survey work done and the title work was also recently completed for this particular street. Avenue D is a dead-end unimproved paper street and under State law if the street is abandoned, it is immediately down the center with the property incorporated into each of the abutting lots without charge to the property owner. There have been questions in the past by the Council as to whether or not the City could receive compensation. Under state law the City is not entitled to compensation. All street abandonments do require the recommendation of the Planning Board to the City Council as to whether this is an appropriate land use action. This matter is also scheduled for a public hearing before the City Council at a later date.

Given that this street does not serve any public purpose and this is a street that the Public Works Department for a number of years sought to have abandoned, staff recommends that the Planning Board advise the City Council to go forward with the abandonment of this street.

Mr. Batty asked if the property owners taxes increase because they now own more land? Ms. Boyle states yes. Mr. Batty asks if they have a choice? Ms. Boyle defers this

question to the City Solicitor. Mr. Conley answers that the City has had occasions where there has been an abandonment where one property owner who is more interested in increasing the size of their lot has purchased from the other property owner the abandon portion of it so all went over to one lot. He said the property owners do not have a choice. Once the City abandons it, by operation of law, the property goes to the abutting property owners.

Chairman Robinson asked if there were anymore comments or questions of the Board. There were none.

Motion – Staff Memorandum

On a motion by Mr. Batty, seconded Mr. Sullivan, the Board unanimously voted 5-0 to accept the staff recommendation with attachments and make it part of the Board's official record.

Motion

On a motion by Mr. Batty, seconded by Mr. Sullivan, the Board voted to recommend to the Council approval of this proposal.

Roll Call Vote

Mr. Almeida	Aye
Mr. Batty	Aye
Mr. Cunha	Aye
Mr. Sullivan	Aye
Chairman Robinson	Aye

>V. CONTINUED BUSINESS

A. Staff Report

1. Rossccommons Apartment and Office Expansion Development.

Ms. Boyle updated the Board regarding the Rossccommons Development that was before the Board last month. They have proceeded to the Design Review Committee for a Public Hearing. The Committee recommended approval of the development to the full Waterfront Commission. Ms. Boyle also stated that on September 1 the Waterfront Commission held a public hearing and granted approval to the development. Construction will take place in October of 2004. Ms. Boyle thanked the members of the Board for their action and said that this is first Waterfront Development and there are no others pending , but when they do, they will be before the Planning Board. The Board commented on how thorough the Rossccommons plans and application were and that it was excellent submission.

2. Pawtucket Credit Union on Warren Avenue.

Mr. Robinson asked about the Pawtucket Credit Union that is going up near Brooks Pharmacy on Warren Avenue. Ms. Boyle states that this will not be before the Board because it falls below the threshold for a Land Development project, but that it went through the Site Plan Review process which is an administrative process. It has gone before the Design Board and there were some issues that arose at the Zoning Board hearing regarding the width of the fire lane. The applicant had to make some changes to the plan to try to accommodate that. They submitted a revised plan and it looks like they can meet the concerns. They did revise their plans. We received some comments from the neighbors about the dumpster, fencing and trees and the applicant is very responsive and has addressed those issues. It will go back before the Zoning Board then proceed to construction.

VI. COMMUNICATIONS

A. Copy of memorandum dated 8/21/04 to the Zoning Board of Review from the Department of Planning Re: "Requests for Variance or Special Use Permit to be heard on 8/25/04.

Motion

On a motion by Mr. Almeida, seconded by Mr. Batty, the Board approved the communications above.

VII. ANNOUNCEMENT

A. Mr. Robinson stated that the next meeting of the Board will be held on October 4, 7:30 p.m., room 306 instead of October 11 because of the holiday.

B. Ms. Boyle announced that the Massachusetts APA regional conference is being held in Springfield Massachusetts on September 30 and October 1, 2004. Ms. Boyle explained that the Waterfront project was one of the projects selected by the APA committee and that Diane Feather and VHB will be giving a presentation on September 30. She invited the Board to attend and informed the Board that registration would be taken out of the Planning Board budget.

Ms. Boyle said that the RI Chapter of the APA selected the Waterfront Zoning project as the outstanding project for planning implementation for the State of Rhode Island and we have received an award for that. At this APA regional conference it will be noted at the Chapter meeting and followed up with a brass plaque. Mr. Robinson states it is attributable to all the staff's hard work. Ms. Boyle stated it is also attributable to the Board and City Council's hard work. She said our success in the waterfront is noticed in other parts of the State.

Mr. Sullivan congratulated the Planning Department and Ms. Boyle congratulated the Planning Board.

VIII. ADJOURNMENT

On a motion by Mr. Cunha, seconded by Mr. Sullivan, the Board adjourned at 9:30 p.m.

Respectfully submitted,

Michael Robinson, Chairman

MR/JMB/sac