

CITY OF AUBURN PLANNING BOARD
TUESDAY, FEBRUARY 5, 2013 6:30 PM, MEMORIAL CITY HALL

Present: Sam Giangreco, Anne McCarthy, Tim Baroody, Crystal Cosentino

Absent: Christopher DeProspero, Shelli Graney, Frank Reginelli

Staff: Stephen Selvek, Planning and Community Development Program Manager; Andy Fusco, Corporation Counsel; Greg Gilfus, Officer-APD Traffic Coordinator

Agenda Items: 1-19 Rear Prospect Street and Franklin Street Road

Chair calls the meeting to order. The Pledge of Allegiance is recited. Roll is called. Chair asks staff to clarify the agenda.

Stephen Selvek explains that there are two things on the agenda. First are the minutes from the last meeting and second is in regards to the subdivision review that we have discussed over the past few meetings.

Agenda Item 1: Approval of January 2, 2013 minutes.

Chair asks for a motion to approve the minutes of January 2, 2013 meeting. So moved by Anne McCarthy, seconded by Tim Baroody. All members vote approval. Motion carried.

Agenda Item 2: Final Major Subdivision Review of existing parcels located at 1-19 Rear Prospect Street and Franklin St. Rd., East Side Heights, to create residential building lots for the construction of patio homes. Applicant PMV Vitale Realty, LLC.

Chair asks staff for comments on the final plan.

Stephen Selvek- The applicant is here tonight. If we have any questions for the applicant as we go through and discuss the plans, we can bring the applicant up for questions. I am going to quickly touch base on where we have been, the information we have received since the last meeting, and then open it up for board discussion. The meeting tonight is the fifth time that East Side Heights Subdivision has been before the board.

The subdivision was in front of the board:

November 1, 2011: Public hearing for preliminary plan approval

February 7, 2012: Initial SEQRA review and board declared negative declaration

December 4, 2012: Preliminary approval with public to be heard

January 3, 2012: Preliminary approval and public hearing for final subdivision approval.

The required public hearings have been held for preliminary approval and final approval, therefore, there is not be a public hearing tonight.

Last month, the board heard concerns raised by staff and the public.

Concerns include:

- Responsibility of shared laterals- The semi-detached single family homes have to be supplied both water and sewer on an individual and separate basis, they cannot have combined water and sewer and other utilities for that matter. We requested that the covenants include language of the responsibility of the shared laterals and the burden resting on the property owner sharing that lateral.
- Cul de sac diameter- Plans distributed to board members tonight shows the change that was required. The initial construction of the cul de sac was 94 feet in diameter however; the requirement for single family semi-detached homes is 96 feet in diameter. Changes are shown in plans.
- Requirement of performance bond- Added to the draft subdivision approval resolution
- Review committee for the development of homes- There was concern of the aesthetics of the homes, specifically the architecture, and questions about the placement of garages. The covenants begin to address some of these issues. There has been discussion about adding screening plantings along Franklin Street or the rear of Prospect Street so that the development has additional visual buffering.
- There was a question of the potential of the properties becoming investment properties. The quality of life seemed more of a concern rather than the homes being investor owned. The covenants, as they have been presented, do address issues regardless of who owns the house. These range from prohibiting outdoor storage of trailers to identifying nuisance properties.
- There was concern of the maintenance of the properties long term, specifically roofs, common walls and the exterior of the homes. The covenants have started to set design and construction standards that have to be maintained.
- The potential to limit the development to seniors; and retirees- the applicant is looking at a wider market than solely retirees or seniors. They feel that these homes would be applicable to seniors or retirees but would also be for a young couple. There is not a requirement of this board to narrow the market and a restriction of this nature would potentially create an infeasible project.
- There was also a question of the density of the proposed development. The density of this particular development is like that of the neighborhood. The neighborhood as a whole – Prospect/ Brister/Bowen/ Boyle Streets- is roughly two (2) units per acre. The proposed development is three (3) units per acre. To look at this categorically two to three units is lumped into a category and is considered suburban development. While these lots are narrower and appear to be smaller because the houses are closer together, these lots are significantly deeper than most other lots that are traditionally designed. The Brister/Bowen/Boyle Street neighborhoods are just beneath three units per acre so the proposed homes of three units per acre are not radically different.

There have been some comments as to the review of the covenants. Corporation Counsel reviewed the covenants and one of the items left out of the original covenants was in regards to the treatment of the storm water pond. In the second set of covenants they started addressing the issues specifically in the covenants rather than a homeowners association.

Andy Fusco, Corporation Counsel- Received a new copy of the covenants this evening but did not have the opportunity to review them before tonight's meeting. Corporation Counsel's office cannot recommend approval of this project with the restrictive covenants as written. The specific concerns regarding the covenants include:

- Paragraph 20. Handling of the Detention Pond.

The maintenance of the pond is spelled out in the restrictive covenants until 75% of the lots are sold. There is a provision that the homeowners take responsibility and maintenance of the detention pond, located next to lot number 14 on the map. It does not say which homeowners take responsibility. It does not say to what extent of maintenance? It does not talk about the frequency of maintenance being done? It does not assign specific assignments to certain people to do certain things on a certain schedule, which I would have expected to see on a homeowner's association plan. Most importantly, it does not discuss any recourse if any offended neighbors or homeowners or the City has if less than adequate maintenance is done. The only thing it tells me thus far is that when 75% of the lots are sold the Vitales do not want anything to do with this anymore. The reason I stress, members of the board, is be careful on approving a plan on how the detention pond is being maintained in the future because our neighbors in Sennett, have one of these situations with this very developer. At the end of John Smith Blvd., there is a large detention pond and unfortunately Sennett did not adequately deal with it ahead of time. To a certain extent it has become something of a no man's land in the summer. The potential for this to become a problem if it is not adequately taken care of on day one is pretty manifest. I will remind members of this board that the developer's initial plan was to dedicate the detention pond to the City, we (City Manager's Office and Corporation Counsel) do not want to maintain private property. The developer needs to go back to the drawing board on paragraph 20.

- Paragraph 5A Committee to Oversee Aesthetic Concerns.

Provision 5A talks about the creation of a committee to approve visual changes/ improvements in the development. My concern is that once 100% of the lots are sold the Vitale's are no longer on the committee. So the role of the committee and the duties is pretty well noted in the covenants until the final lot is sold and then it says it becomes the responsibility of the homeowners, without any discussion of how many homeowners are on the committee and what's the vote and what's their jurisdiction and how do you deal with decisions that the committee comes up with. We need more details on what's expected of the homeowners association.

- Paragraph 16- Infrastructure

When the infrastructure was originally put in place in this development we were talking about laterals and lines to single family detached homes and now the plan is duplexes. I have concern with the shared laterals. If a home is vacant during the winter months and the heat is turned low or off, the lateral under that unit (if the lateral is located under the unit) may cause the pipes to freeze in both units. What if access is not granted to the vacant home? This could cause problems for the neighboring homeowner.

Stephen Selvek- I would like to touch base on Corporation Counsel's third concern regarding the lateral lines and supply of water. The revised plans that are before the board tonight show changes to the sewer and water laterals. Initially the sewer and water laterals served each of the 21 lots. The revised plan includes pulling the laterals back to the City's right of way and from the City's right of way the sanitary lateral would be a wide connection and go to either side of the residents. The same thing would happen with the water line. There would be a T inserted at the City's right of way and the water shut offs would occur in the City's right of way and there would be separate water shut offs for each property. Each unit stands separately from the other in regards to utilities. The third of Corporation Counsel's concern is addressed in the revised plans because each have completely separate utilities from the home to the right of way.

As for the first two concerns in regards to the storm water management pond, I agree with Counsel and additional clarification is needed. The board has a couple of different options at this point. First off if the board has any questions or comments please feel free to ask them tonight. A draft resolution with contingencies is prepared but this is in the board's hands in how they want to move forward.

Chair asks for Board questions and comments.

Tim Baroody- Paragraph 16 is taken care of with separate sewer and water services. Item 5A-I need clarity from Counsel on this. What legal right do Vitales have if 100% of properties are sold?

Andy Fusco- Certainly if they want to continue to maintain the detention pond after they have sold all of the lots, I have no problem with that. My concern with 5A is what the plan will be when the developer sells 100% of the lots. Currently all it says it will be the homeowner's responsibility. The best way to handle these situations is to set out what rules will be for all homeowners once 100% of the lots are sold.

Tim Baroody- We ran into the opposite scenario in Florida. The developer wanted to stay involved with everything when it was done however it was said that it is now our land and you are not going to tell me what to do. A lot of time there are common ownership problems. In this case there are not a lot of common ownership. You have shared roofs but not asphalt or a common roadway. So, set up some mechanism for when they do leave and tie 5A into 20 for the detention pond.

Michael Vitale, PMV Vitale Realty LLC.- I would like to address 5A. It is not our intention to control this subdivision after it is developed. It is so when we begin this that we have a chartered direction in how the homes will look, the maintenance of the exterior, and the roof conditions. As in every other subdivision that has been done in this area, every lot takes on an appearance and character of the homeowners choice not of a committees choice. We are not trying to create a situation, like in Radisson, where you have to buy a specific mailbox, which is a \$500 mailbox. There are homeowners associations that are very restrictive. We are selling each individual lot and each individual home. We are trying to control how the homes get built. As you buy the house you will have the ability to review and approve it but once the houses are built it would revert back to the municipality and their codes. Also, we do not have any shared ball fields, playgrounds, or facilities that have to be maintained. An HOA is really designed to control all those additional facilities that are shared as part of the subdivision. What we have here is one item, item 20, the detention pond and what we found is a simplified process called a CPS7 it's for de minimis interest common areas. Those de minimis interest areas are storm water detention basins, areas that are not common green spaces to be shared by all but is a function of the development. It is our intention for item number 20 to be moved toward a CPS7. It's a document that gets generated as part of this process and is reviewed by the attorney general and that will be the controlling entity to assure that it will be maintained properly. I will not be a Home Owners Association but it will be a CPS7.

Crystal Cosentino- Who will monitor it?

Michael Vitale- We will clarify that in the beginning. There will have to be a maintenance schedule established, there will have to be a periodic review and there will be shared expenses. The decisions will be put together collectively by the sellers and the City to make sure your concerns are addressed.

Tim Baroody- If item 17 disappears is 5A moot? If it is reviewed by the attorney general and it is inspected every three years, dredged every ten.

Andy- I am not aware of the CPS7 mechanism that Mr. Vitale outlined.

Stephen Selvek- The CPS7 is not something that I am familiar with but we should give this a look and review the CPS7. The covenants need to identify that the CPS7 would be the guiding factor. The concern I have is that there is the ability to amend the covenants.

Time Baroody- If they put it through this CPS7, I think we are good.

Sam Giangreco- Hearing from Mr. Vitale tonight and Corporation Counsel, I feel that we should table for fine tuning.

Tim Baroody- I have seen this handled three ways. Progressive areas set up a storm water district where it will allow future development where the municipality does maintain. The second way I have seen it is where the homeowner with the lot adjacent assumes ownership of it. This happened on Prospect Street. The third way I have seen this is through a homeowners association but the CPS7 sounds like a better way to go. Removes liability from City, and the homeowners will take it over.

Anne McCarthy- I would like to table for more information on the CPS7.

Crystal Cosentino- In regards to future planning. There are a lot of residents here right now and I assume it is because there is additional development that is potentially going to happen in this neighborhood. I just wonder if this project is going to be sucked into that. I am thinking of it and I know that these folks here must be thinking of it too. How are we, as a board, supposed to be approaching that thought and future planning? We do not know what is going to happen to this area 10 years from now but we have the potential to be adding a lot of residents to this area.

Stephen Selvek- My understanding is that the decisions that this board makes have to be made with regards to the existing circumstances. If the proposed student housing was underway, all of those items would come into play and considered. To go ahead and make a decision on what may come into play, ultimately penalizes any developer. I caution the board on making decisions based upon potential changes in the future.

Crystal Cosentino- I wonder in respect to the comprehensive plan and thinking from that planning perspective. I respect that the developer has done everything we have asked but the potential for future development is here and I want to make sure that our role is if the developer is dotting i's and crossing t's or is more holistic and thinking about what the neighborhood will look like in the future.

Tim Baroody- We have to look at what we have here in front of us and only what is in front of us because no one has a crystal ball.

Stephen Selvek- The board is ultimately reviewing this against the existing code. As to whether or not it meets the requirements for development. It is a residential zone and the developer has the right to develop on that parcel so long as they develop in accordance with our code. The comprehensive plan is a guiding document that has status. If we are looking at this development and if it was in complete opposition of the comprehensive plan, then the board could use the plan and say it does not agree with it. The development as a whole does not go against the comprehensive plan, there are small things that could be tweaked. One of the goals in the comprehensive plan is providing a variety of housing. This is a housing option that we do not currently have in the City.

Crystal Cosentino- Clearly the covenant identifies many of the concerns we have raised

Tim Baroody- Would it be the recommendation for approval based on tweaking or postponing for a month?

Sam Giangreco- We could either have a motion for subdivision approval or a motion to table the application. With Counsel's short notice to review the covenants, I feel uncomfortable with some things raised. I do feel an obligation to the neighborhood to preserve the integrity and have answers to all the questions before anything is done. But this is up to the board.

Anne McCarthy- I agree with you

Crystal Cosentino- I concur

Chair makes a motion to table the Final Subdivision Review of 1-19 Rear Prospect Street. Motioned by Anne McCarthy, seconded by Crystal Cosentino. All members vote. Motion carried.

Stephen Selvek- The application is tabled until the March meeting and the one thing I can see as the major concern is the management of the storm water management pond, which we can fine tune over the next couple of weeks.

The date of the next Planning Board meeting scheduled for Tuesday, March 5, 2013 at 6:30pm

Motion to adjourn by Tim Baroody, seconded by Anne McCarthy.