



BELLINGHAM PLANNING BOARD

2 MECHANIC STREET
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April 9, 2009 Meeting Minutes

- **Present at the meeting:**

Patricia Buckley (PMB), Chairman
Glenn C. Wojcik (GCW), Vice Chairman (absent)
Stephen Bartha (SB), Secretary
David Brown (DB)
Brian J. Sutherland (BJS)
John Sexton (JS), Associate Member

Other officials: Stacey J. Wetstein (SJW), Town Planner (absent)
Amy Sault (AS), Coordinator (absent)
Jay Talerman, Town Counsel

PMB opens the meeting at 7:00pm.

57B Mendon Street (Hiawatha Properties), Development Plan Review, Continued Public Hearing

(Waiting for applicant to arrive)

Old Business

March 26th meeting minutes to be signed at a later date after corrections are made.

BJS: Motion to sign the vouchers.

DB: Second.

Vote: 4-0 Approved. (PMB, BJS, SB and DB)

57B Mendon Street continued

Jay Sturn, Hiawatha Properties and Steve O'Connell, Andrews Survey and Engineering representing the applicant.

PMB mentioned that the last time this project was before the Board that there were a lot of unanswered questions due to the absence of the owners.

PMB brought up discussion of possible violation of zoning bylaws. Jay Talerman, Town Counsel, discussed several potential issues. But there is a fundamental flaw in the project. There are three principal uses on the property and none can be considered accessory. The bylaw allows for more than one principal use; however there is a problem with the fourth principle use structure. The bylaw is incredibly generous and unusual to allow multiple uses.

Mr. Talerman stated that this is a 40,000 square foot zone and you have 93,000 square feet and the map just does not work for this property. He does not see how the applicant can get past this issue. (BJS asked for clarification 40,000 s.f. per principle use, with three existing uses would require 120,000, and adding a fourth principle use would require 160,000 s.f.) PMB questioned Mr. Talerman and if his suggestion was for the applicant to go before the Zoning Board. Mr. Talerman advised there may be the potential for variances.

PMB questioned Mr. Talerman if this project should be in front of the Planning Board. Mr. Talerman advised that the Board would be compelled to deny this project the way it is right now or the applicant can withdraw without prejudice as to prevent any problems with reapplication in the two year window.

PMB asked Mr. O'Connell if he has read through this information and asked for his input. Mr. O'Connell advised that SJW had also brought this up to him as well as with Stewart LeClaire, the Building Inspector, who has yet to respond. Mr. O'Connell has two questions: (1) Does Town Council think that there is an existing zoning issue and if so what is the anticipated approach. (2) He believes that the building they are creating is an accessory structure to the existing tenant of Flat Out Motor Sports.

PMB advised that the problem is that they are not in compliance with zoning now. Mr. Talerman stated that business certificates are not zoning issues and that the outstanding issues regarding the usage for the existing building are for the building inspector not the Planning Board. Mr. Talerman advised that with the three principle uses for these current buildings this means that it is no longer conforming and the new building would be a post existing non-conformity. He went on to say that not only would they need both §6 relief for expansion of a pre-existing non-conforming but they would also need a variance as well.

Mr. Talerman advised that it would be difficult to characterize a building that is as large as the accessory building and it would be difficult to grant a permit over something that does not comply with the zoning bylaws. Mr. O'Connell stated that Mr. Talerman is correct with the discretionary call on the proposed building and also stated that a 20x20 building is not customary as an accessory building to the principle building. Mr. O'Connell also agrees with Mr. Talerman in that there needs to be a determination on how the three existing non-conforming principle uses will be addressed. Mr. Talerman advised Mr. O'Connell that if a variance is needed to get it and commented that something may have been missed in the past.

PMB advised that in light of what Mr. Talerman has said that the Board needs to discuss what should be done. Her suggestion is that they should withdraw their

application without prejudice and then allow themselves an opportunity to regroup and go before the Zoning Board. BJS advised that they could not continue because Town Council has advised it is not practical to do so with the current application as presented. BJS explained to the applicant that if they do not withdraw without prejudice and the Board has to make a decision then any activities with regard to zoning would be mute for two years. SB commented that it is nothing that the Board can discuss because of the zoning issues. Mr. O'Connell asked the Board if they could give them some time to discuss as they were not prepared to withdraw tonight but they will make the request in writing before the next hearing.

BJS commented that continuing a public hearing for the sake of it is not something the Board likes to do especially since the determination from Town Council is clear and indisputable. Mr. Talerman advised that the decision is up to the Board and because this may be the first they are hearing of this it wouldn't be a problem to continue the hearing provided that is clear to them that when the public hearing is opened at the next meeting to be closed and then to be denied.

BJS reiterated to the applicant and Mr. O'Connell that the Board's position is not going to change with regard to this project the way it is: it's just to allow them time to review with their own council. Mr. Talerman clarified on the two year rule; if there is a withdrawal after the notice of a public hearing then the two year rule applies. PMB agrees that they should have an opportunity for a continuance so that they may review Mr. Talerman's findings. Mr. O'Connell stated that he would appreciate the continuance so that he may have a chance to review the history of the property.

BJS: Motion to continue the public hearing of 57B Mendon Street (Hiawatha Properties), Development Plan Review until May 14, 2009 at 7:00pm.

SB: Second.

Vote: 4-0 Approved. (PMB, BJS, SB and DB)

BJS: Motion to accept a request for the decision deadline for 57B Mendon Street (Hiawatha Properties), Development Plan Review until May 15, 2009.

SB: Second.

Vote: 4-0 Approved. (PMB, BJS, SB and DB)

PMB opened the meeting to the public for questions.

John Uttero, 8 Northeast Dr, questioned why the delay of the withdrawal because he and his neighbors have spent a lot of time on the hearings for this property not only for this owner but previous owners and plans as well. He stated that this is asking a lot of everyone when they could have just investigated the properties zoning before a hearing. Mr. Uttero stated that he does not believe the Board should grant the continuance. PMB appreciates the comments but she does believe that he has the right to get representation on this by his own council. Mr. Uttero questioned that if they are going to come back to withdraw then is there a way for the abutters to call before hand so they do not have to come to the meeting. PMB advised Mr. O'Connell that if they are going to withdraw, that they do it as soon as possible and get it to SJW so it could be added as a side note to the May 14th agenda item.

Michelle Greenberg, 7 Northeast Dr, stated that she would like their questions answered that were brought up at the last meeting regarding neighborhood issues from the current buildings. PMB stated that the Planning Board does not have any authority to deal with issues on a matter that is already closed. The Board can request that things be done in compliance with the project that is before the Board but we cannot go back. PMB suggested that she contacts the police with the noise and any other issues.

Nick Leberoni, owner, advised that they had no idea that the light was bothering anyone and that the first they heard of it was at their first meeting. He advised that since the last meeting, he has put shield over on all the lights. Mr. Leberoni claims that if anything else is bothering the neighbors he wants them to tell him directly where they are seeing it because the lights are completely shielded. PMB questioned the hours of operation, Mr. Leberoni claims between 9am – 6pm. He also advised that sometimes they do load vehicles onto trailers later than that, PMB advised that their business must be closed no later than 9pm.

DB: Motion to adjourn.

SB: Second.

Vote: 4-0 Approved. (PMB, BJS, SB and DB)

Minutes Accepted on: 4/23/2009

(Date)

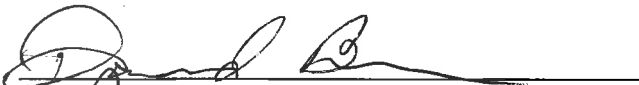


Stephen Bartha

(prepared by: Amy Sault)

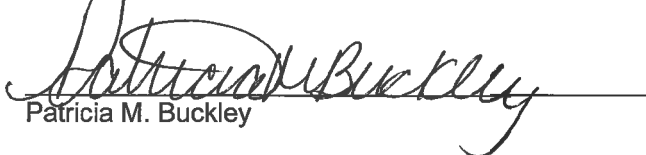


Brian J. Sutherland



David Brown

Glenn Wojcik (absent)



Patricia M. Buckley