

The Brockton Planning Board held a meeting on March 1, 2011 at 7:00 in the GAR Room, City Hall. Members present: Chairperson Wayne McAllister, Susan Nicasastro, Donald Ritucci, Avalon McLaren, Anthony Donegan, and James McCarthy. Also present was Secretary Pamela Gurley.

1. Rescission Hearing

Property: 25 Granite Street and 11 Stearns Avenue

Property Owner: Walter Balchunas et al

Representative: Attorney John McCluskey

Attorney McCluskey said that he is before the Board tonight regarding the letters he sent to the Board regarding the Balchunas property. He said he understands that there is a question as to whether or not the covenant has breached. He said he has not seen the legal ad that was run in the paper by the Board but understands that they were requested to be present tonight.

Ms. Nicasastro stated for the record that the applicant was present tonight because of the notice of recording of the deeds that appeared in the paper and the Board's subsequent move to rescind the applicant's approval of the subdivision because of that action.

Attorney McCluskey said he was not involved in the presentation before the Planning Board for the subdivision. He explained that there were already two pre-existing homes on lots 1 & 2 and lots 3 & 4 are the new lots and are the main focus of the Covenant. He said that lots 1 & 2 should have been released as there are no utilities, services or roadwork proposed for those lots and lot 3 has been released. He noted that assuming that lots 1, 2 & 3 are out of the covenant only one lot is subject to the covenant.

Attorney McCluskey gave the Board the following background: The family home of the Balchunas' was divided in two and in the 1980s and the parents had life estates in 25 Granite and the applicant lived on the Granite St. side. The property was subdivided more recently by Mr. Balchunas creating four lots. Some time after that it was noticed that the subdivision plan did not fit with layout of the lot lines and the life estate. He said that had surveyor known about the life estate he assumes that the lot re-division would have followed the life estate. The Mother is now in a nursing home and a lien from nursing home could have been placed on both lots as lots 1 & 3 make up majority of life estate. The life estate still exists on Lot 1 and they need the life estate released by the state on the remaining lots. Mr. Balchunas had the property appraised for estate purposes and created two nominee trusts (there was no change in ownership). The people in control of the trust are the beneficiaries. Attorney McCluskey agreed that the Covenant should have included his sister as her name is on lot 3. He said there has been no conveyance and no sale for lot 4. Attorney McCluskey said he wanted to be transparent and send the letters to the Board.

Ms. Nicastro said that the Covenant should have contained all the property owners names and that those names should also be on the application. She said all four lots are subject to covenant and that the covenant is bad. She said she would suggest that the covenant is set aside and that the applicant makes a deposit of money to cover the work remaining to be done within the street layout.

Attorney McCluskey suggested that the matter be tabled for several months. Mr. Balcunas will then have time to do the remaining work. Once complete he can come back before the Board and asked for the remaining lot release.

Mr. McLaren pointed out that the applicant is not here for lot releases. He said that whether or not the covenant was violated is up for interpretation and the fix seems to be to release the covenant and to have the applicant secure the subdivision with cash. Mr. Balcunas agreed to place the cash surety in the amount of \$10,000.

A motion was properly made (Nicastro), seconded (Ritucci) and unanimously passed to allow for alternate surety to secure the subdivision in the amount of \$10,000. Upon receipt of the surety the covenant is to be released and a lot release is to be issued for the remaining property.

2. Request for Permission to Return to the ZBA

(Original hearing date 2-8-11)

Property: 385 Westgate Drive

Applicant: VIP Communications, Inc.

Representative: Dr. G Kachroo, Kachroo Legal Services PC

Ms. Nicastro stated for the record that the applicant was allowed to withdraw her application last month and is back this month back with same application.

Councilor Jass Stewart stated that he was in full support of the proposal. He said that in his opinion this type of advertising is the way of the future. This type of billboard is more flexible, targeted and more effective than a static billboard. He said that it is good to see someone looking to make an investment and would like to see Brockton on the forefront of this type of advertising.

Dr. Kachroo said that the standard that the Planning Board needs to use in making their decision whether or not to grant permission to return to the ZBA is whether or not their application has been substantially changed and whether or not it will be beneficial to the City.

Dr. Kachroo said that originally six permits were requested when they applied to the ZBA and now they are requesting only two. She feels that meets the requirement of a substantial change. She stated again that the applicant is willing to support the City with public service time which the ZBA was looking for.

Since the last meeting Dr. Kachroo said she has spoken with Ken Thompson, Chief of Staff to the Mayor who stated that they would be most willing to sit down with the applicant once the issues before the Planning Board and ZBA are completed. She said that relative to receiving permission from the Building Superintendent and Traffic Commission she stated that only applies to public service signs. She said that the Superintendent of Buildings did not provide an opinion and that the Traffic Commission has sent the request to the City Solicitor. She noted that Mass. Dept. of Transport has assessed that a change to the billboard every 10 seconds is deemed safe.

The applicant showed a photo shop image of what the billboard will look like; the image was not to scale. The applicant also showed a plot plan of the approximate location of the billboard and the existing cell towers. Mr. McLaren asked if the Super 8 sign is staying and Dr. Kachroo said it was. She said at the last meeting she was not sure, however she said if it is in the way of getting a permit it will come down.

Mr. Ritucci asked Dr. Kachroo to explain the changes to the application. Dr. Kachroo said they have agreed not to illuminate the billboard between 11pm and 7 am; the images will change every 10 seconds instead of every 8 seconds; they agree to conform to the colors in the Ordinance. Ms. Nicastro asked if that meant they were not going to have the color red on the billboard. Dr. Kachroo said that was not listed in the ZBA decision and feels that it is not an issue. She said that she does not think that anyone will confuse the billboard with a stop light. Dr. Kachroo said the applicant will need to apply for a variance for size and height. She said they are also no longer asking for a variance to have a billboard 660' from the roadway as she does not believe that applies in this case.

Mr. McCarthy asked why they think it does not apply. Dr. Kachroo said that since the ZBA did not say anything about in their decision they felt it did not apply.

Mr. McAllister said that the current Municipal Lien Certificate shows outstanding fees owed to the City. He said that the outstanding amount needs to be paid. He said that unfortunately no one noticed that the MLC submitted with the application was outdated. If the current MLC had been sent in with the application this hearing would have not been scheduled.

Ms. Nicastro said that the proposed billboard more than double of the maximum allowed and as is the proposed height. Mr. Donegan asked how the sign on Rt. 24 for Jordan's Furniture measures up to this sign and was told it is approximately the same size.

Mr. McAllister read criteria required in the Board's Rules & Regulations granting a return to the ZBA.

Mr. Donegan asked the applicant how committed to the size of the billboard they were and he was told size is critical. Mr. Ritucci said that he thinks that the height is the purview of the ZBA and sees one change as significant and said he will make motion to return.

A motion was properly made (Ritucci) and seconded (McLaren) to grant permission to return to the ZBA.

In favor: McLaren, Ritucci and Sullivan

Opposed: Nicastro, McAllister, McCarthy and Donegan.
Motion failed to carry; permission to return was not granted.

3. Site Plan Review

(Continued from 1-4-11)

Property: Plot 18 West Elm Street

Applicant: Steve Torrey, Affordable Properties

Representative: Attorney John McCluskey

Attorney McCluskey said that Mr. Torrey's application was denied because the Board felt that the original design was not in harmony with the neighborhood.

Mr. Torrey presented an alternate design to the Board. The home on the presentation board is a home on Leydon Street that Mr. Torrey found. Mr. McAllister said that he appreciated what he was doing. Mr. Torrey said if the Board likes this design he will come in with complete plans. He said he had to reduce the size of the units.

Mr. McCarthy asked how many units will be in the building and was told the same number of units but each unit will be smaller by 100'.

Mr. McLaren asked if the applicant will be able to carry the design through the depth of the project and was told no that the building will be offset. You will not visually see the sides of the building from the street.

Mr. McAllister said that he still wants to see the proposed landscaping. Mr. Torrey said he is willing to come up with another design if the Board would like to see two different designs and is not comfortable with twin designs on the same property.

Mr. McLaren asked if the building is going to be located where the current building will be and was told no. Mr. Torrey said that he was willing to come up with drawings that will show what you will see from the side of the street.

Mr. McAllister and Ms. Nicastro told Mr. Torrey that he had done a great job and that the Board appreciated what he has done. Mr. McLaren said that he felt that the applicant did exactly what the Board asked for.

Mr. McLaren asked if he intended to put up management signs as are on his other buildings. Mr. Torrey said he won't if the Board does not want to see them, but he said he is willing to put up a smaller sign and will bring in pictures of what he is proposing. He said the management sign is helpful for fire protection, etc.

4. Site Plan Approval

Property: Lot 2B Liberty Street

Applicant: RJ Messina

Representative: Ross Messina and Scott Boyd

Mr. Boyd said that the proposal for was for a 3,000 SF metal pre-fabricated building to be used to store construction vehicles, a small office and a small area of parking. He said that they have been issued an order of conditions and addressed comments and suggestions from tech review;

Mr. McAllister asked where the offices will be and was told towards the front of the building where the parking is.

Mr. McCarthy asked how the electric if being brought in. Mr. Messina said that it was already in, that they brought in when the other building was built.

Mr. McLaren asked where their offices are not and was told on Sumner St.

Ms. Nicastro noted that the plan does not identify the lot as lot 2B and requested that this be added to the final plan. She then asked about landscaping. Mr. Boyd said that the site is all asphalt and that the building is not visible from the street. Mr. Messina said that the property along Liberty Street was landscaped by him.

A motion was properly made (Ritucci), seconded (Sullivan) and unanimously passed to grant the special permit under site plan review and issue the standard approval letter.

5. Site Plan Approval

Property: Plots 112, 114 & 117 Oak St.

Applicant: Brian Porter, Brophy & Philips

Representative: Walter Watson, JK Holmgren Engineering, Inc.

Mr. Watson said that the proposal is for a 36 unit apartment building. He said there will be 30 2 bedroom units and 6 1 bedroom units. He said this project was previously approved by the Board several years ago. Mr. Watson said the applicant has made changes to the stormwater management system. He said

that zoning requires 72 parking spaces and they are providing 75 spaces. The project meets all the zoning requirements and he said that the existing turn around easement is for the benefit of both buildings.

Mr. McCarthy asked if the applicant corrected the problem of snow removal. Mr. Watson said that the extra parking spaces will be used for snow storage and if necessary the snow will be removed from the site.

Mr. McLaren asked if the building will have the same façade as the Oaks I and was told yes but different colors.

Ms. Nicastro asked if there is a bus stop in the area and Mr. Watson said there is one in the general area.

Mr. Ritucci asked the applicant what his thought process was in constructing additional units since the City already has many vacant units. Mr. Porter said that they saw a need for market rate apartments.

Mr. Donegan asked what rents will be and was told approximately \$12,000 a month. Ms. Nicastro asked how many of the units are ADA compliant and was told two.

Mr. McCarthy asked when they planed to break ground. Mr. Porter said that they are in the process of completing the architectural.

A motion was properly made (McCarthy) and seconded (Sullivan) to grant the special permit under site plan review and issue the standard approval letter.

In favor: McAllister, Donegan, Sullivan, McLaren and Nicastro
Opposed: Ritucci

6. Re-Organization of the Planning Board

Traffic Commission

Mr. Ritucci nominated Paul Sullivan to serve as the Planning Board's representative to the Traffic Commission. The nomination was seconded by Mr. Donegan and there were no further nominations. The motion carried by unanimous vote.

Mr. Ritucci nominated Susan Nicastro to serve as the Planning Board's representative to the Zoning Board. The nomination was seconded by Mr. Sullivan and there were no further nominations. The motion carried by unanimous vote.

Mr. Sullivan nominated Wayne McAllister to serve as Planning Board Chairman. The nomination was seconded by Mr. Ritucci and there were no further nominations. In favor: Sullivan, Ritucci, Nicasastro, McLaren, Donegan and McCarthy. Mr. McAllister abstained.

Ms. Nicasastro nominated Mr. Donegan to serve as Planning Board Vice Chairman. The nomination was seconded by Mr. McCarthy and there were no further nominations. In favor: Sullivan, Ritucci, Nicasastro, McLaren, McAllister and McCarthy. Mr. Donegan abstained.

In favor: Sullivan, Ritucci, Nicasastro, McLaren, Donegan and McCarthy. Mr. McAllister abstained.

Mr. Donegan nominated Paul Sullivan to serve as custodian of the records for the Planning Board. The nomination was seconded by Mr. Ritucci and there were no further nominations. The motion carried by unanimous vote.

Mr. Sullivan nominated Susan Nicasastro to serve as the Planning Board's Clerk. The nomination was seconded by Mr. McCarthy and there were no further nominations. The motion carried by unanimous vote.

Other Business

Review and Approve Minutes

A motion was properly (McLaren), seconded (Nicasastro) and unanimously passed to approve the January minutes as edited.

Update on projects – no updates.

Knight's Way – The secretary passed out copies of the applicant's appeal to the members.