

MEMBERS PRESENT:

Paul Ziarnowski, Chairman
James Liegl, Vice Chairman
David Bowen
Keith Pelkey
David Stringfellow

ABSENT: Elizabeth Schutt

ALSO PRESENT:

Sean Costello, Town Attorney
Allison Koczur, Secretary to the Boards
Jennifer Lucachik, Town Board Liaison
Sharon Bulger, Meadow Drive
Michael Metzger, Quaker Estates
Bill Solak, Quaker Estates
Sean Hopkins, Quaker Estates

MEETING TO ORDER

Chairman Ziarnowski called the meeting to order at 7:30 PM.

AGENDA ITEM 1 - AMENDED CONCEPT PLAN

QUAKER ESTATES, ILP - Bill Solak, Michael Metzger, Sean Hopkins

- Original amended concept plan presented at the September 11th, 2018 Planning Board meeting – concerns included “asking to rezone more than you really need”, specifically can it be moved further than Meadow Drive
- Met with Meadow Drive community members after the meeting on 9/11 and after review, resubmitted updated plan to the Planning Board in late September
- Setback from closest property went from 50 feet to 489 feet; adjusted what is being rezoned – only what is being proposed at this time – will have to come back some point in the future; amended part 1 of the Environmental Assessment form based on the renewed plan
- Town board will be required to hold a public hearing to review this request in the future

Dr. Ziarnowski: Thank you for the changes. When we first talked, one of my main concerns was that they were storage units – the direct effect and benefit of storage units to the Boston population. The restricted space is no longer there, correct?

Mr. Hopkins: Before what we had agreed to was that regardless of what occurs, we have the 55 feet of permanent open space backing up to Meadow. I think we’re still okay providing that. Regardless of what occurs here in the future, we’ll still honor that discussion we previously had with original project to leave the 55 feet.

Dr. Ziarnowski: The 17 acres of wetlands were going to be deed restricted, that’s off the table too?

Mr. Hopkins: Oh, no. We’ll still deed restrict the wetlands. Wetland consultant took a look at it; the entire area highlighted in red is a jurisdictional wetland. We are certain in saying it will not be developed. The 55 foot buffer, the intent would ensure the treeline would stay.

Dr. Ziarnowski: Word travels fast, there is interest in the remaining property by certain individuals as a possible purchase. I talked to Legal Counsel and Bill Ferguson today – what is the

possibilities that in our less than precise code that apartments can be built on this piece of property?

Mr. Costello: We need to think long and hard about that, given the C-2. The code doesn't clearly permit dwelling units to be built there, however there is language (two sections) that talk about restrictions on dwellings, implying that there is some intent that dwellings (probably apartments) would be permitted in C-2.

Mr. Hopkins: This issue came up long ago, going back a couple years ago. I believe at one point, Mr. Ferguson implied informally that he believed apartments were allowed. I did look at the code, and my general take on it is that if it is not listed as an expressed [papers shuffling] use, it's not allowed. But I do acknowledge that there is some language in there that seems like it doesn't belong.

Mr. Costello: It is problematic. But of course there is the solution, or potential solution of condition on the rezoning that there is no residential development.

Mr. Hopkins: We're okay with that.

Dr. Ziarnowski: My question to Mr. Costello is now we have storage units for gratuity?

Mr. Hopkins: No, it would be saying you cannot use apartments. The other uses that would be permitted in C-2 would still be allowed. They would have to come back in front of you for site plan approval.

Mr. Costello: So no residential?

Mr. Hopkins: No residential in the property we're rezoning.

Mr. Costello: You could say our code has provisions that say our rezoning requests can be accompanied with a site plan that's attached to the local law granting the rezoning and no building permit or certificate of occupancy shall issue that's not consistent with that site plan absent the consent of the Town Board. Or if the concern is not so much the other potential uses, in a C-2, if it's limited to residential use there – the condition could be simpler, it could just say "no residential use" and any other permitted use under C-2 would be allowed in the future subject to site plan approval.

[Discussion followed about which condition would be best. Option 2 would be most flexible.]

Dr. Liegl: I need clarification on the no residential part.

Mr. Hopkins: We're okay saying no residential.

Mr. Costello: We can say "No residential. Including but not limited to multi-family, single-family, apartments..."

Dr. Liegl: Did you show this to the residents? The updated one?

Mr. Hopkins: Some residents were here at the last meeting, they have seen it.

*There will be a public hearing with the Town Board regarding this project once a recommendation is made by the Planning Board.

Dr. Liegl: I appreciate the change and speaking to the neighbors.

Dr. Ziarnowski: Is there going to be any outside storage? Motor homes, boats, etc.?

Mr. Solak: I don't believe so; that's not the intention. It doesn't mean that if one of those units is big enough to store a vehicle for the winter inside.

Mr. Stringfellow: A comment – a man/business that has been in the business of building property for many years buys this lot that is zoned C-1 and has been here for at least 3 years, everything he has proposed has required to be rezoned to C-2. Why did he buy C-1 property? He must've known what he was buying.

Mr. Hopkins: When you buy a piece of property it doesn't mean that you then can't come in and ask for changes in zoning/use. Point well taken.

Mr. Solak: We aren't rezoning the entire thing, just a portion.

Mr. Bowen: Can you clarify which portion will be rezoned?

Mr. Metzger clarified the different colors on the site plan. Blue will be proposed rezoned to C-2; green will stay C-2. Only 25% will be proposed.

Mr. Hopkins: It's 8.47 acres of the 36.59 acres.

Mr. Bowen: What is the issue with the road access to 391? Are you sure you will have access to Boston State?

Mr. Hopkins: Yes but the specifics of that will have to be worked out with the NYS Department of Transportation. A question came up because of the proximity to the ramp, highways that have generally received general funding have come with what's known as "no rights of access" but we did check with that and that access line is closer to the [papers shuffling] than we are.

Mr. Bowen: So we're talking on the south side, that's going to be restricted. And we're also talking about the restricted wetlands?

Mr. Solak: The wetlands are there, we aren't going to develop that.

Mr. Bowen: That's not my question; my question is whether or not that is part of this proposal.

Mr. Hopkins/Solak/Metzger: No.

Mr. Hopkins: The two conditions we are willing to agree to are (1) that there be a minimum buffer of 55 feet along the southern property line to remain permanently undeveloped and (2) with respect to the property we want to rezone from C-1 to C-2, would be subject to condition prohibiting any residential use including but not limited to multi-family dwellings.

Mr. Bowen: Under what conditions could the restriction (deed restriction) be removed in the future?

Mr. Hopkins: If the deed restriction is recorded pursuant to a Town Board decision after a public hearing, any request to amend, modify or rescind the restriction would require the exact same process. Town Board would first be obligated to hold a public hearing and ask for the Planning Board recommendation first.

Mr. Costello: Nothing is irrevocable, but it's pretty difficult.

Dr. Ziarnowski: So if we accept the 55 feet right now, is that basically a giveaway that any project that is going to go on there, it can go to the 55 foot line without discussion?

Mr. Costello: It would still need a site plan review.

[More discussion about where exactly the 55 feet is on the site plan.]

Dr. Ziarnowski: What are the plans for the startup shops?

Mr. Solak: If a contractor needs a place to house his pickup trucks or store equipment or materials, there could be an overhead door and a man door. They could access the equipment through a big garage door and the man door for an office. It could be strictly office; it could be set up so that you could configure these things different ways.

Dr. Ziarnowski: So you have four little guys on the outside and one big thing in the middle?

Mr. Hopkins: That's just open area. Room to get vehicles in.

Mrs. Lucachik: How would you enter the center if you've got the structures to the south?

Mr. Metzger explained the road access via Boston State Road.

Mr. Hopkins: Hopefully that road would be shared access for something here in the future, depending on what it is.

Mr. Stringfellow: It was mentioned earlier in the discussion that the east half of the bottom green part may get sold. What happens to the 55 foot buffer on that part if you sell the property to someone else?

Mr. Hopkins: If we agree to a deed restriction, if someone buys it, they would be subject to the deed restriction. We would go and record a deed restriction at the Erie County Clerk's office, submit

a copy back to you, that if anyone is interested in purchasing that they take subject to that restriction. They're acknowledging they cannot develop that 55 feet.

Dr. Ziarnowski: On C-2 buildings, past the storage units, I know we talked previously about "are they things that the Town Board may not want in there?"

Mr. Costello: The Town Board can accept the recommendations for the conditions, it can add additional conditions, it can eliminate conditions. I expect the Town Board will place a lot of weight on this Planning Board's recommendations.

Mr. Hopkins: If there are any uses that anyone thinks someone may have a particular problem with, we are certainly willing to discuss that. We're going to have in our leases with those tenants for our own protection, no hazardous materials.

Mrs. Lucachik: Maximum lot coverage? What is that considered?

Mr. Metzger: Showing 6% on this plan; max is 40%.

Mrs. Lucachik: Dwelling height is not to exceed 35 feet.

Mr. Hopkins: It will be less than 35 feet.

Dr. Ziarnowski: Is this a long-term plan for these storage units?

Mr. Hopkins: It's long term and a big investment. At least for the next couple decades.

Mrs. Lucachik: Lots of tenants in a small space.

[Discussion about tenants asking about storage units.]

Dr. Ziarnowski: What is the size compared to the ones [storage units] on the state road?

Mr. Solak: It's similar, I think there are about 300 on the proposed plan. (288)

Mr. Metzger: You can change layout and put larger units in to reduce the count.

Mr. Solak: All buildings can be reconfigured.

Dr. Ziarnowski: This is a big footprint for a poor return. That's my only concern. \$2,800 a year on Boston State road as opposed to a Brunner's at about \$5,000.

[Overlapping discussion about taxes.]

Mr. Costello: A condition that might be considered would be that there is "no bulk storage of hazardous materials/explosives".

Mr. Hopkins: I believe that's your code, but if you want to reiterate it, that's fine.

Mr. Stringfellow read off uses allowed in C-2:

- Principal uses and structures allowed in the C-1 district
- New or used motor vehicle sales and service
- Automobile collision repair and painting, provided that there are no pollutants
- Gasoline stations
- Eating or drinking establishments with special permit needed for live entertainment
- Boat or marine sales and services
- Laundry or dry-cleaning plants
- Custom shops – printing, electrical, heating, plumbing or woodworking
- Warehouses, but not including storage of highly flammable or explosive materials
- Billiard or pool halls, bowling alleys, skating rinks, dance halls or video game rooms
- Dairies or bottling of nonalcoholic beverages from previously prepared ingredients

- Wholesale sales and distribution
- Terminals for local trucking and delivery service, but not including any tractor, trailer or tractor-trailer combination or automobile conveyor, provided that all vehicle loading, unloading and parking is on the premises.
- Commercial swimming pools
- Drive-in restaurants
- Drive-in theaters
- Golf driving ranges or miniature golf
- Commercial car washes

The following uses are also permitted provided that they are conducted within a completely enclosed building or within an area enclosed by a solid wall or fence at least six feet in height:

- Public garage, but not including auto wrecking or the storage of motor vehicles not eligible for New York State motor vehicle inspection stickers
- Building materials supply, including incidental millwork
- Public utility storage, service buildings and yards
- Small-animal hospitals “I believe that was taken out a couple years ago”
- Machine and tool sales, rentals and services
- Storage and sales of solid fuel
- Storage and sales of feed for livestock
- Contractor’s equipment and materials storage

Mr. Stringfellow: Is there anything objectionable from that list?

Mrs. Lucachik: I do have a request to review, when this is said and done, in the contract to the renters – most storage facilities that will house boats or cars, that the tanks be as empty as possible. The warehouse that blew up on Route 5 incinerated everything inside because of tanks being full. [Batteries need to be disconnected too.]

Mrs. Lucachik: If a fire truck needed to get to the back side, is there a stone drive? Or is there grass?

Mr. Metzger: We can work with Mr. Ferguson for fire code.

A motion was made by Mr. Pelkey but no second was given, and therefore the vote that followed was voided. Another vote was made further into the meeting. A discussion followed, recorded below.

Discussion about wetland designation followed.

Mr. Metzger: Restricted through federal wetlands, but there is a piece of property that is still open that could potentially be used for something in the future.

Discussion about clarification of the previous motion which was later voided. Once rezoning is approved, they can come in with different uses allowed in C-2 other than a storage facility, but a condition can be put in a recommendation by Planning Board to prevent that.

Mrs. Lucachik asked the board to explain their votes for Nay on the voided motion so she can take it back to the Town Board.

- Concerned over the changing of use once it’s zoned as C-2, that they can come back with another use. Plan is for storage units, but it can come back and change.

- Taxed based revenues – can do better.
- Lack of use on the Eastern portion
- Uncertainty based upon the minimum revenue generator when there are other possibilities
- Residents would not want a bar back there – they know about a storage facility right now.

Mr. Hopkins: If we were willing to restrict uses, would that change anyone’s opinion?

Dr. Ziarnowski: I’m just against storage units. I think you can do better.

Mr. Hopkins: Is it worth for us to re-organize and find a range of uses that we’ll say we won’t allow? Would you consider tabling it while we re-organize?

[People speaking over each other.]

Mr. Bowen: Have major chains ever been approached to be put in this parcel?

Mr. Hopkins: A study has been done of the possibility of a hotel in that one location, but it also says there could be demand for a smaller 40-50 room hotel. That’s still a possibility; we’d love for that to occur. I represent many hotel franchises and I’ve given it to them all. The problem is, generally speaking, hotels have an 80 room minimum.

Dr. Liegl, having voted nay on the previous motion, made a motion to reconsider the previous motion, seconded by Mr. Stringfellow. As stated above, the previous motion was voided because there was no second.

Discussion followed about whether or not there was a “majority vote” for this meeting because Mrs. Schutt was absent. There was then review of the Town of Boston Code book by Mr. Costello and Mr. Hopkins to see how many members of the Planning Board are needed. General consensus was that it’s a 7 member board (6 members currently, 5 present) with 2 alternate spots allotted. A majority vote of all members (at least 4 of 6) is needed.

Mr. Pelkey made a motion to recommend the Town Board approve the rezoning with conditions of no residential construction or multi-family use and a 55 foot buffer is deed restricted. Seconded by Mr. Stringfellow.

Mr. Bowen: No

Dr. Liegl: No

Mr. Stringfellow: Yes

Mr. Pelkey: Yes

Dr. Ziarnowski: No

No recommendation will be sent to the Town Board.

Dr. Liegl made a motion to table the matter for further consideration at the December Meeting. Seconded by Mr. Pelkey.

All members present were in favor.

AGENDA ITEM 2 – C-1, C-2 CODE REVIEW

- Reviewed during the Quaker Estates discussion

- Dr. Ziarnowski – spoke with Code Enforcement Officer about if apartments would be allowed in a C-1/C-2, referred him to the Town Attorney
- Mr. Costello: As an attorney, I think if I wanted to build apartments, I could make a pretty compelling case that apartments would be allowed under the current code.
- If conditions are explicitly written, there wouldn't be any residential on that project, and it would run as a deed restriction and zoning approval.
- Mrs. Lucachik: Local Law review → 2009 that continued from 2007 for an additional extension of a moratorium on the applications for the approvals of subdivisions, planned unit developments, cluster developments, and multiple dwellings over two units that the Town Board of Boston had this legislative intent with an ad-hoc committee formulating findings and reporting to the Town Board on zoning ordinances.
- Mrs. Lucachik: On e-code there is a listing for new laws and it says “adopted legislation that has not yet been incorporated into the code can be found below. Once a new law has been codified, it will no longer appear in this section” even though half have been adopted. → Mr. Costello: the town has not recodified since at least 2005, so the last 12 or 13 years of local laws are not reflected in code book or the online text. You can open each individually on the digital text.
- Local Law goes to Secretary of State, then ECode360 puts it on the website, but do not amend until the Town of Boston pays them to do so.

Dr. Ziarnowski asked the board members who voted “yes” on the motion, why they voted yes.

- C-2 uses are backed up against farmland with a buffer
- Will not be visible or bothering anyone, cannot just refuse to let him do anything
- Would hesitate on a trucking terminal or something like that, but he doesn't have access to big enough roads
- He put in all of the time and effort, talked to residents, talked to planning board
- Discussions with DEC and Army Corps, the wetlands was an issue 100 years ago because that was a use of water for the Town of Hamburg that fed into the 18 mile creek → they would set aside wetlands of permanent green space
- Mr. Costello: the nuance there is that the bulk of that is Army Corps jurisdictional wetlands, if they could make a wavy line around the wetlands, I'm sure they don't care about deed restricting that because it's of no value to anyone because you can't build on it. Apparently a little chunk in the northeast corner is not jurisdictional wetlands and they would be able to build on it.
- That property is the “door to Boston” and putting the storage units at the “door” is the first impression

NEW BUSINESS

- Wurtz Funeral Home Property – New Development Company would like to be on the agenda for next month.

APPROVAL OF MINUTES – October 9, 2018

Approval of minutes was tabled, since two members abstain themselves since they were not at the meeting. The Planning Board will vote on approval in December.

OLD BUSINESS

- No old business.

REPORTS

Planning Consultant

- No report.

Town Attorney

- No report.

Town Board Liaison

- Code Review meeting after Planning Board meeting tonight.

Secretary

- End of Month reports from Code Enforcement Officer were put in everyone's folders.

MEETING ADJOURNMENT

Motion made by Mr. Stringfellow, seconded by Mr. Pelkey.

Respectfully submitted
Allison Koczur, Secretary to the Boards