

Town of Boston
Planning Board Meeting
September 5, 2023 Minutes

The Town of Boston Planning Board met for a Special Meeting at 6:00 PM on Tuesday, September 5, 2023 in Boston Town Hall. Those attending included Chairman Paul Ziarnowski, Jay Jackson, Gary Stisser,, Elizabeth Schutt and Arlene Weiss.

Others in attendance included Town Attorney Sean Costello and Board Clerk Jennifer Cavarello.

7072 Boston State Rd LLC – Requesting Site Plan Approval and a Special Use Permit for a project involving the construction of a 5,183 sq.ft. building consisting of a convenience store with fuel and a Tim Horton’s with drive-thru, as well as a 6,000 sq.ft. office building at 7072 Boston State Road

Chairman Ziarnowski stated that Ms. Weiss would be a voting member at this meeting because there was a vacancy.

Attorney Sean Hopkins, representing Miranda Development LLC (applicant), stated that his office is located at 5500 Main Street, Suite 343, Williamsville, NY 14221. He stated that the parcel on which the project is proposed is approximately 2.65 acres in size and zoned C-1. He noted that all Planning Board members had received a copy of the detailed submission made on behalf of the applicant and dated August 10, 2023. He stated that the detailed submission contained the letter of intent with extensive documentation.

Attorney Hopkins stated that the project consists of the construction of a 6,000 sq.ft. office building and a 5,183 sq.ft. convenience store building that would include a 1,000 sq.ft. Tim Hortons with an accessory drive-thru, as well as an accessory fueling facility, 57 parking spaces, lighting, storm water management, etc.

Attorney Hopkins stated that the above components of the project are permitted pursuant to the Town of Boston’s zoning code as follows:

- Section 123-71 (A) (2) (Principle Uses and Structures in the C-1 zoning) explicitly allows retail sales, as well as eating and drinking establishments subject to certain requirements.
- Section 123-71 (B) (1) (Uses Subject to a Special Use Permit) requires that filling stations receive a Special Use Permit.

Attorney Hopkins stated that the Planning Board will be making a recommendation to the Town Board at a future meeting in connection with the request for a Special Use Permit.

Attorney Hopkins noted for the record that a Special Use Permit application, as well as very extensive documentation, was submitted on behalf of the applicant.

Attorney Hopkins stated that the following documentation has been submitted in connection with this project as follows:

- Site Plan

- Landscaping Plan
- Lighting Plan
- Environmental Assessment Form (EAF)
- Wetland investigation letter
- No Impact letter from the New York State Office of Parks, Recreation and Historic Preservation
- Phase 1 Phase 1B Cultural Resource Report
- Geotechnical Report

Attorney Hopkins stated that lighting would be LED and dark-sky compliant and there would be no light spillover. He noted that lighting fixtures would be 15 feet high (12 total fixtures).

Attorney Hopkins stated that after the Town Board granted Site Plan Approval and a Special Use Permit for this project, the neighboring property owner, Boston Valley Capital, commenced an Article 78 proceeding against the Town of Boston, as well as the applicant. He noted that there were certain allegations that were made that at least had some merit in terms of going back and making sure everything was handled properly procedurally and substantively, so ultimately the decision was made, in consultation with the Town's counsel, to go through the review and approval process again rather than spend a lot of time and money defending the litigation.

Attorney Hopkins stated that the neighboring property owner is a competitor and currently has a lease with the applicant for the existing Tim Hortons and the applicant plans to vacate that lease once this project is completed. He noted that the neighboring property owner's motivations are unclear.

Attorney Hopkins stated that the Town Board adopted a resolution on August 25, 2023 rescinding its previous approvals, classifying the project as an Unlisted Action pursuant to SEQR, referring the conceptual plot plan, Special Use Permit application and Site Plan Application to the Planning Board and scheduling the required public hearing on the request for a Special Use Permit for the filling station to be held on September 20, 2023.

Attorney Hopkins stated that a referral has been made to Erie County Department of Environment & Planning that is required pursuant to New York State General Municipal Law Section 239-M because Boston State Road is a New York State highway. He further noted that New York State Department of Transportation (DOT) was provided with a copy of the updated Traffic Impact Study (TIS) performed by Amy Dake, Senior Traffic Engineer at Passero Associates. He noted that Planning Board members were also provided with the updated TIS.

Attorney Hopkins stated that a Lead Agency Solicitation letter was issued on behalf of the Town Board for it seeking Lead Agency Status pursuant to SEQR that is consistent with the resolution that was adopted by the Town Board during its August 23, 2023 meeting.

Attorney Hopkins stated that if one looks at the criteria in the Boston Town Code for the submission of a conceptual plot plan application and the criteria for a recommendation, it is clear that the applicant has met those criteria and the applicant is simply asking the Planning Board to adopt a resolution that it is comfortable with the project layout (there have been no changes made to the project since it was initially approved). He stated that the applicant is also asking the Planning Board to issue a recommendation to the Town Board on Final Site Plan Approval and a recommendation to the Town Board on the requested Special Use Permit at a future meeting.

Attorney Hopkins noted that a copy of the extensive documentation submitted for this project has been provided to counsel for the adjoining property owner.

Attorney Costello noted for the record that he is not aware of any correspondence from counsel for the adjacent property owner or any comments submitted in connection with this project in advance of this meeting.

Attorney Hopkins stated that along with the detailed updated TIS based on input received from the DOT, an accompanying letter was submitted. He provided copies of that letter to Planning Board members.

In response to a question from Chairman Ziarnowski, Attorney Hopkins stated that the position was taken by the claimed aggrieved party that the traffic analysis had not been finalized. He noted that Amy Dake, author of the TIS, contacted the DOT, received some additional input and prepared an updated comprehensive TIS, as well as the accompanying letter dated August 15, 2023 that summarizes responses to comments she received during a conversation with the DOT on August 2, 2023. Attorney Hopkins stated that as part of the SEQR Coordinated Review, DOT comments are expected.

In response to a question from Mr. Jackson, Attorney Hopkins stated that he will clarify the answer to the question in the Environmental Assessment Form provided by the project engineer regarding solid waste.

Attorney Hopkins stated that this project is an Unlisted Action pursuant to SEQR. He further stated that the applicant could have submitted the Short EAF but instead took the extra step to submit the far more detailed Long EAF and the Town Board chose the more conservative approach and conducted a Coordinated Review instead of an Uncoordinated Review, thereby giving numerous Involved and Interested Agencies the opportunity to comment.

In response to a question from Chairman Ziarnowski, Attorney Hopkins stated that the Site Plan Review process in the Town of Boston is a two-step process. He noted that Step 1 is Conceptual Plot Plan Review where the Planning Board takes a look at the submitted documentation and provides any additional relevant input, which is taken into consideration before the applicant prepares fully engineered plans and file a Final Site Plan application. He noted that in this instance, the Planning Board has already been given the above-mentioned documentation, so Step 2 will be only to review the Final Site Plan application and make a recommendation to the Town Board.

Attorney Hopkins stated that there is also a request for a Special Use Permit for the fueling facility ("filling station") and a recommendation is required from the Planning Board to the Town Board on that request. He further noted that the Town Board is required to hold a public hearing on the Special Use Permit request.

In response to a question from Mr. Jackson, Attorney Hopkins stated that the existing building(s) located at 7072 Boston State Road would be demolished and then, depending on the time of year and weather conditions, the goal would be for the project to be complete in four (4) to six (6) months.

Attorney Hopkins stated that Boston Town Code requires that a Building Permit application be filed in connection with the Site Plan Review process. He noted that that application has already been filed and is pending before the Building Department.

Chairman Ziarnowski stated that Attorneys Hopkins and Costello, as well as Mrs. desJardins (planning consultant) and Town Supervisor Keding came up with a time frame whereby the

Town can get this project underway rather than dragging it out for months since time is of the essence in terms of the applicant's current lease.

Chairman Ziarnowski made the following motion:

"WHEREAS, the Town of Boston Planning Board previously reviewed applications for site plan approval and for a special use permit for a filling station from 7072 Boston State Road LLC (the "Applicant"), for the proposed mixed-use development of a 5,183 square foot convenience store with an accessory fueling facility and a Tim Horton's with drive-thru, a 5,000 square foot office building, and associated improvements at 7072 Boston State Road, Boston, New York (collectively the "Project"); and

WHEREAS, subsequent to the Town Board issuing a special use permit and granting site plan approval for the Project, the owner of an adjoining property filed litigation in State Supreme Court challenging certain aspects of the prior approvals for the Project including but not limited to the environmental review pursuant to the State Environmental Quality Review Act ("SEQR"); and

WHEREAS, with its August 9, 2023, Letter of Intent, the Applicant supplied a conceptual plot plan, elevation plans for the proposed buildings, a completed Part 1 of the Full Environmental Assessment Form with attachments prepared pursuant to SEQR, an updated Traffic Impact Study dated August 2023, a Phase I Cultural Resource Investigation report dated February 8, 2023, and a Geotechnical Report dated May 2, 2023; and

WHEREAS, rather than incur the delay, expense, and uncertainty associated with litigation, the Applicant has previously decided to re-submit its Project for approval, and the Applicant's August 9, 2023, letter of intent states that the re-submissions will provide the opportunity to address the concerns raised in the litigation commenced by the adjoining property owner; and

WHEREAS, on August 18, 2023, the Applicant filed a Special Use Permit Application that included a letter of intent dated August 18, 2023 along with supporting documentation for the purpose seeking a special use permit for a filling station pursuant to Section 123-119 of the Town of Boston Zoning Code ("Zoning Code"); and

WHEREAS, during its meeting on August 25, 2023, the Town Board adopted Resolution 2023-74 for the purpose of the following:

- (1) Rescinding the following Resolutions the Town Board passed on June 21, 2023:
 - a. Resolution 2023-47, SEQR Negative Declaration for Mixed Use Development at 7072 Boston State Road (Revised);
 - b. Resolution 2023-48, Special Use Permit for Filling Station at 7072 Boston State Road; and
 - c. Resolution 2023-49, Site Plan Approval for Mixed Use Development at 7072 Boston State Road; and
- (2) Classifying the Project as an Unlisted Action and seeking lead agency status for the purpose of the Town Board conducting a coordinated environmental review of the Project pursuant to SEQR
- (3) Referring the Applicant's conceptual plot plan and any site plan which is developed from that conceptual plot plan to the Planning Board for its review and recommendation;
- (4) Referring the application for a special use permit for a filling station to the Planning Board for its review and recommendation; and

- (5) Scheduling a public hearing on the application for a special use permit for a filling station for the Town Board's September 20, 2023 meeting; and

WHEREAS, pursuant to Section 97-6 of the Town of Boston Town Code ("Town Code"), the purpose of the conceptual plot plan review process is for the Planning Board to make recommendations regarding development of the site, zoning of the property and such other recommendations as may be appropriate.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board makes the following recommendations and findings based on its review of the conceptual plot plan submission:

1. The property at 7072 Boston State Road ("Project Site") is properly zoned C-1 Local Retail Business District ("C-1") for the proposed Project pursuant to the Town of Boston Zoning Map.
2. In connection with its completion of the conceptual plot plan review process, the Planning Board is not requesting that the Applicant make any modifications to the layout of the Project as depicted on the engineered plans for the Project prepared by Carmina Wood Design.
3. The Planning Board has received the special use permit application and supporting documentation and is not requesting any additional information regarding the Project in connection with its review of the requested special use permit and its issuance of a recommendation to the Town Board pursuant to Section 123-174 of the Zoning Code.
4. The Applicant is authorized to proceed with the submission of a Final Site Plan Application for the Project for the purpose of the Planning Board making a recommendation to the Town Board on the request for Final Site Plan approval pursuant to Section 97-10 of the Town Code."

On September 5, 2023, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Planning Board member Weiss: aye

Planning Board member Jackson: aye

Planning Board member Stisser: aye

Planning Board member Schutt: aye

Chairman Ziarnowski: aye

Attorney Hopkins noted that the above resolution was prepared by Attorney Costello. He further noted that the above findings are consistent with the criteria set forth in Section 97-6 of the Boston Town Code.

Attorney Hopkins stated that given that the engineered plans, reports and studies have already been submitted, he will prepare a letter addressing the criteria for Final Site Plan approval and will submit it so that Board members can review it before the September 12, 2023 Planning Board meeting.

Mr. Jackson made a motion, seconded by Chairman Ziarnowski, to adjourn the meeting. The meeting was adjourned at 7:20 PM.

Respectfully submitted,
Jennifer Cavarello, Board Secretary

Date: September 6, 2023