

Town of Boston
Planning Board Meeting
September 12, 2023 Minutes

The Town of Boston Planning Board met for a Regular Meeting at 7:30 PM on Tuesday, September 12, 2023 in Boston Town Hall. Those attending included Chairman Paul Ziarnowski, David Stringfellow, Jim Liegl, Jay Jackson and Gary Stisser,.

Others in attendance included Town Attorney Sean Costello, Planning Consultant Sarah desjardins and Board Clerk Jennifer Cavarello.

Excused: Elizabeth Schutt and Arlene Weiss

Regular Meeting

Mr. Liegl made a motion, seconded by Mr. Stisser, to approve the minutes from July 11, 2023. Carried.

Mr. Liegl made a motion, seconded by Mr. Stringfellow, to approve the minutes from August 8, 2023. Carried.

Mr. Stringfellow made a motion, seconded by Mr. Jackson, to approve the minutes from the September 5, 2023 Special Meeting. Carried.

Old Business

Public Hearing - 7:30 P.M., Larry Stolzenburg - Requesting Preliminary Plat Approval of a three-lot subdivision to be located on vacant land on the south side of Eddy Road near Cole Road

In response to a question from Chairman Ziarnowski, Ms. Cavarello stated that no correspondence was received regarding this proposal.

Attorney Costello noted that correspondence was received from Erie County Department of Environment & Planning subsequent to the submission of the 239-M indicating that this matter is of local concern, no recommendation was made and that the Planning Board should consider the fact that the parcel being subdivided contains federal wetlands.

Mr. Larry Stolzenburg, applicant, stated that he previously submitted a layout from his surveyor showing where the new homes could be located without affecting the wetlands.

Chairman Ziarnowski stated that he hopes that the wetlands on the site are respected and protected for environmental reasons.

Mr. Jackson made the following motion regarding SEQR, seconded by Mr. Stisser:

“WHEREAS, Larry Stolzenberg has submitted an application, including a survey dated July 12, 2023, and a subsequent survey showing that the proposed lots are suitable for building without interfering with potential or delineated wetlands, for the subdivision of a 38-acre parcel on Eddy Road (SBL# 212.00-4-38.1) into three individual lots, two of 5 acres and one approximately 28 acres in size, in Boston, New York; and

WHEREAS, the Town of Boston Planning Board has plenary authority for subdivision approvals in the Town, and has reviewed the environmental impact of the proposed project at its September 12, 2023, meeting; and

WHEREAS, the Planning Board has duly considered the survey and other information provided by the applicant, comments received from the Erie County Division of Environment and Planning, a Short Environmental Assessment Form, the criteria for determining significance set forth in 6 N.Y.C.R.R. § 617.7(c) of the State Environmental Quality Review Act ("SEQRA"), and such other information deemed appropriate; and

WHEREAS, the Planning Board has identified the relevant areas of environmental concern, has taken a hard look at these areas and has made a reasoned elaboration of the basis for its determination; and

WHEREAS, the proposed action is classified as Unlisted with respect to SEQRA; and

WHEREAS, Unlisted actions are subject to environmental review under SEQRA; and

WHEREAS, the Town of Boston Planning Board is the only involved or interested agency with regard to SEQRA; and

WHEREAS, the Planning Board may determine to act as Lead Agency with respect to the environmental review of the project as it has final authority to approve or disapprove subdivision plats; and

WHEREAS, there are no other involved agencies, so the environmental review can be uncoordinated; and

WHEREAS, the Planning Board hereby has determined that the project will not have a significant adverse impact on the environment; and

WHEREAS, the Planning Board has determined that the proposed subdivision is authorized pursuant to the Town Code and meets the requirements thereof, including minimum lot size for the applicable zoning district.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board of the Town of Boston declares itself as Lead Agency with respect to the environmental review of the project; and

IT IS FURTHER RESOLVED, that the Planning Board of the Town of Boston hereby makes a negative declaration pursuant to the State Environmental Quality Review Act for Larry Stolzenberg's proposed subdivision of a 38-acre parcel on Eddy Road (SBL# 212.00-4-38.1) into three (3) individual lots, two (2) of five (5) acres and one approximately 28 acres in size as shown on the survey submitted by the applicant dated July 12, 2023."

Carried.

Mr. Stringfellow made the following motion regarding Preliminary Plat Approval, seconded by Mr. Jackson:

"The Planning Board of the Town of Boston hereby approves the proposed subdivision of a 38-acre parcel on Eddy Road (SBL# 212.00-4-38.1) into three (3) individual lots, two (2) of five (5) acres and one approximately 28 acres in size as shown on the survey submitted by the applicant dated July 12, 2023."

Carried.

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

Attorney Sean Hopkins, representing Miranda Development LLC (applicant), stated that this project was presented to the Planning Board on September 5, 2023 and at that time the Planning Board completed the Conceptual Plot Plan Review. He stated that the project presented at this meeting is the same exact project that was presented to the Planning Board on September 5, 2023 in connection with a request that the Planning Board issue a favorable recommendation to the Town Board on the pending request for a Special Use Permit for a filling station, which is part of the overall project. He noted that the applicant is also requesting that the Planning Board issue a favorable recommendation to the Town Board on the pending request for Final Site Plan Approval.

Attorney Hopkins stated that the project consists of the construction of a 5,000 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, access to Boston State Road, lighting, landscaping, storm water management, etc.

Attorney Hopkins stated that this project was previously approved and the applicant decided to go back and seek the approvals once again in order to address some concerns that were raised in connection with a pending Article 78 proceeding. He noted that the project engineer already has received all the required approvals for water, sewer, etc.

Attorney Hopkins stated that Mrs. desJardins made the required referrals to Erie County Department of Environment & Planning pursuant to New York State Municipal Law Section 239-M. He noted that on August 28, 2023 Emily Moll from that department issued a letter stating that this project is of local concern.

Attorney Hopkins stated that the Town Board has authorized seeking Lead Agency Status for purposes of a Coordinated Environmental Review of the proposed project pursuant to SEQRA. He noted that on September 7, 2023 correspondence was received from the Erie County Water Authority concurring with the Town Board acting as Lead Agency.

Attorney Hopkins stated he received a correspondence on September 6, 2023 from Attorney Costello that was from Mr. Matthew Laufer to the Planning Board dated September 5, 2023. He stated that it is his understanding that this letter was emailed to the Town very shortly before the Planning Board’s September 5, 2023 meeting. He noted that the only information in that letter is that he indicated that his client wants additional time for his unnamed traffic consultant to review the updated Traffic Impact Study (TIS) prepared by Amy Dake, Senior Transportation Engineer at Passero Associates dated August 15, 2023.

Attorney Hopkins addressed the criteria set forth in Section 123-119 of the Zoning Code “Limitations on Filling Stations, Gasoline Service Stations and Public Garages”:

- The project complies with the requirement regarding the proximity of the building to a residential district or any school, church, playground or park.
- The project complies with the requirement that no gasoline, pump or fueling facility be located within 20 feet of the street line.
- The project complies with the requirement that two (2) reservoir spaces be provided for each gasoline pump.

- The project complies with the requirement that the storage of gasoline be in underground storage tanks in accordance with the requirements of the New York State Department of Environmental Conservation.
- The project complies with the requirement that there may be no use of the lot except for landscaping or screening within 20 feet of any residential district.
- The project complies with the requirements in Section 123-120 that deal with lighting and landscaping.

Attorney Hopkins addressed the criteria set forth in Section 97-10 "Approval of Site Plan" in the Town Code as follows:

- The project complies with the requirement that all buildings on the layout design be an integral part of the development and that convenient access be provided to adjacent uses and roadways.
- The project complies with the requirement that individual buildings be related to each other in terms of the mass, material, placement and visual integration.
- The project complies with the requirement that no buildings have undue exposure to concentrated loading or parking facilities wherever possible.
- The project complies with the requirement that all buildings be arranged to be accessible to emergency vehicles.

Attorney Hopkins noted that the project also complies with the very stringent standards set forth in Appendix D of the New York State Fire Code.

Attorney Hopkins addressed the criteria set forth in Section 123-167 A "Criteria for Review; Recommendations" in the Zoning Code as follows:

- The project complies with the requirement that there be a harmonious relationship between the proposed uses and design and existing adjacent uses and architectural features.
- The project complies with the requirement that the project be designed to maximize safety of vehicular circulation between the site and the street network.
- The project complies with the requirement that the layout be designed to provide adequate interior traffic circulation, parking and loading facilities with particular attention to vehicular and pedestrian safety.
- The project complies with the requirement that there be adequate fire protection and accessibility for emergency vehicles.

Attorney Hopkins noted that the project complies with all applicable setbacks for pavement, building placement, etc. He further noted that two (2) electric vehicle charging stations are proposed, as well as pedestrian access on site and picnic tables for customers and employees. He stated that an on-site fire hydrant would also be installed to ensure there is adequate distances from all points of the buildings.

Attorney Hopkins stated that part of the updated submission included an updated TIS prepared by Amy Dake from Passero Associates. He stated that the TIS was accompanied by a very detailed letter that she prepared to Kevin Hebert from the New York State Department of Transportation (DOT) dated August 15, 2023. He noted that the DOT has not yet commented specifically on that updated TIS but the 30-day comment period pursuant to the Lead Agency Solicitation letter issued on behalf of the Town Board has not expired. He stated that he spoke to Mr.

Hebert on September 12, 2023 and was assured that the DOT will make every effort to provide written comments prior to the expiration of the 30-day comment period.

Attorney Hopkins stated that this project is back in front of the Planning Board and Town Board because of litigation that was commenced by an adjoining property owner. He stated that that adjoining property owner is the owner of a commercial plaza where Mr. Miranda's current Tim Hortons is located. He noted that the litigation is more about competitive aspects, which are not appropriate for land use review, and the adjacent property would lose this tenant because Mr. Miranda plans to own and operate the proposed new Tim Hortons location. He further noted that it has not been easy being a tenant of the landlord at the existing Tim Hortons location.

Attorney Hopkins stated that copies of extensive documentation have been provided by the applicant to the counsel of record for the adjacent property owner, Attorney Colin Knoer. He stated that the letter received on September 5, 2023 from Attorney Laufer suggests that it is unclear who the adjacent property owner's counsel actually is. He noted that he has not received anything submitted either to the Planning Board, Town Board or himself from Attorney Knoer expressing any additional comments relative to the pending applications that are before the Planning Board and Town Board.

Attorney Hopkins stated that if the Planning Board issues favorable recommendations on the two (2) pending land use applications, the Town Board will be in a position to hold a public hearing in connection with the pending request for a Special Use Permit for the proposed filling station during its meeting on September 20, 2023.

In response to a question from Mr. Liegl, Attorney Hopkins confirmed the the proposed office building would be 5,000 sq.ft. in size. He further noted that as previously approved by the Town Board, the proposed building was 5,000 sq.ft.

In response to a question from Chairman Ziarnowski, Attorney Hopkins stated that as part of the Lead Agency Solicitation letter, the DOT was provided with a copy of the updated TIS dated August 15, 2023 and a Highway Work Permit will be required from the DOT. He stated that the improvements that are proposed and the layout of the proposed project have specifically been based on input previously received from the DOT.

Mr. Stringfellow made the following motion regarding the request for a Special Use Permit, seconded by Mr. Jackson:

"WHEREAS, 7072 Boston State Road LLC ("Applicant") is seeking recommendations from the Planning Board to the Town Board relative to the Applicant's pending requests for site plan approval and for a special use permit for a filling station 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 to be located at 7072 Boston State Road (collectively the "Project"); and

WHEREAS, the Planning Board completed the Conceptual Plot Plan review process for the Project during its meeting held on September 5, 2023, and further reviewed the Project at its September 12, 2023 meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Boston Planning Board hereby makes the following findings based on its review of the Special Use Permit for the proposed accessory filling station to be located at 7072 Boston State Road (the "Project Site") pursuant to the special use permit standards as set forth in Section 123-119 of the Town's Zoning Code:

1. The proposed filling station will not be located within 25 feet of any R District boundary or within 300 feet of any school, church, playground or park located in an R District.
2. The filling station will not be located within 20 feet of the Boston State Road Right-of-Way.
3. The required number of reservoir spaces is provided as depicted on the Site Plan [Drawing C-100] prepared by Carmina Wood Design.
4. The storage of gasoline consisting of underground tanks shall comply with the stringent standards of both the New York State Department of Environmental Conservation and the United States Environmental Protection Agency.
5. The Project Site is not contiguous to property zoned R District.
6. The portion of the Project Site to be utilized as filling station complies with the requirements set forth in Section 123-20 of the Zoning Code (titled "Limitations on automotive use areas") for the reasons set forth in the Letter of Intent from Applicant's counsel that accompanied the submission of the Special Use Permit Application.

BE IT FURTHER RESOLVED, that upon the foregoing findings and a complete review of all documentation submitted in connection with the Project, and such other or further information as deemed necessary, the Town of Boston Planning Board respectfully recommends that the Town Board issue the pending requested Special Use Permit for a filling station at 7072 Boston State Road."

On September 12, 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 Liegl: aye

Planning Board member Jackson: aye

Planning Board member Stisser: aye

Planning Board member Stringfellow: aye

Chairman Ziarnowski: aye

Carried.

Mr. Jackson made the following motion regarding the requested Site Plan Approval, seconded by Mr. Stringfellow:

"WHEREAS, 7072 Boston State Road LLC ("Applicant") is seeking recommendations from the Planning Board to the Town Board relative to the Applicant's pending requests for site plan approval and for a special use permit for a filling station 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 to be located at 7072 Boston State Road (collectively the "Project"); and

WHEREAS, the Planning Board completed the Conceptual Plot Plan review process for the Project during its meeting held on September 5, 2023, and further reviewed the Project at its September 12, 2023 meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Boston Planning Board hereby makes and issues the following findings based on its review of the Site Plan Application for the Project to be located at 7072 Boston State Road (the "Project Site") based on its consideration

of the criteria set forth in Section 123-167A of the Zoning Code (titled “Criteria for review; recommendations”) and Section 97-10 of the Town Code (titled “Approval of site plan”):

Section 123-167A of the Zoning Code:

- (1) The proposed project proposes uses that are in harmony with surrounding uses and also allowed within the C-1 zoning district. As documented in the Applicant’s submissions, architectural elevations for the two (2) commercial buildings include features that are harmonious with existing buildings in the surrounding area, including peaked roofs, a mixture of materials and appropriate signage, site lighting and landscaping.
- (2) The Applicant has provided detailed documentation of a Traffic Impact Study and plans which reflect the conclusions and recommendations from that study. The project layout provides a driveway to access Boston State Road which allows for one lane entering and two lanes exiting. The exiting lanes are a dedicated right turn lane and a dedicated left turn lane. The radii and dimensions of these lanes have been designed for the safe entering and exiting for delivery vehicles, include the fuel delivery truck. Additionally, the improvements being made to Boston State Road will provide a right and left turn lane into Project Site for the safety of traffic circulation.
- (3) The circulation on the Project Site as depicted on the Site Plan allows access to the drive-thru lane and the fueling facility area without having to circulate through the Project Site by providing a right turn driveway shortly after entering the main site driveway. The circulation design also allows the fuel delivery trucks to access the Project Site, off-load the fuel and exit the Project Site. The project layout provides 55 parking spaces, which satisfies the requirements of the Zoning Code (54 parking spaces are required pursuant to Section 123-103 of the Zoning Code) and also provides two electrical vehicle charging stations. A sidewalk with a striped crosswalk provides a pedestrian path from the convenience store to the proposed office building to be located on the western portion of the Project Site. This pedestrian path can be used to access the grass area where picnic tables are provided for the customers and employees, an addition previously requested by the Planning Board when a withdrawn application for site plan approval for the Project was under review.
- (4) The landscaping proposed for the Project Site as depicted on the Landscape Plan [Drawing L-100] is compatible with the surrounding environment. The setbacks for all components of the Project satisfy or exceed the standard in the Zoning Code.
- (5) Emergency vehicles including fire trucks can easily enter and circulate through the Project Site without being in conflict with the parking, fuel area and pedestrian paths. A new private fire hydrant will be provided on Project Site to ensure all points of the two (2) proposed buildings are within the required distances as specified in the NYS Fire Code.

Section 97-10 of the Town Code:

- (1) On-site improvements and off-site roadway improvements are proposed to allow for ease of access from adjacent uses and roadways. These improvements are based on the analysis of potential traffic impacts per the traffic analysis conducted by Passero Associates and input received from the NYS Department of Transportation (“NYSDOT”). New left turn and right turn lanes are being installed on Boston State Road to provide access to the Project Site. These improvements have been designed in accordance with NYSDOT standards and the required approval from NYSDOT will be obtained prior to construction of the improvements. The proposed project provides a driveway to ac-

cess Boston State Road which allows for one (1) lane entering and two (2) lanes exiting. The exiting lanes are a dedicated right turn lane and a dedicated left turn lane to allow for ease of exiting the Project Site.

- (2) As shown on the Elevation Plans for the Project, the architecture and materials for each of the two (2) buildings are complementary of each other and will provide a visually and physically integrated development.
- (3) The location of the proposed parking spaces on the Project Site is appropriate based on the consideration of the uses of each of the two (2) proposed buildings. The number of parking spaces located adjacent to each building is appropriate for the anticipated demand of that particular building.
- (4) Fire trucks can easily enter and circulate through the Project Site without being in conflict with the parking, fuel area and pedestrian access. Drive aisles are located in the front of each of the proposed buildings that can be accessed by emergency vehicles, including fire trucks, when needed.

BE IT FURTHER RESOLVED, that upon the foregoing findings and a complete review of all documentation submitted in connection with the Project, and such other or further information as deemed necessary, the Town of Boston Planning Board respectfully recommends that the Town Board approve the Site Plan for the Project proposed for 7072 Boston State Road.”

On September 12, 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 Liegl: aye

Planning Board member Jackson: aye

Planning Board member Stisser: aye

Planning Board member Stringfellow: aye

Chairman Ziarnowski: aye

Carried.

As there was no old business and no reports, Mr. Liegl made a motion, seconded by Chairman Ziarnowski, to adjourn the meeting. The meeting was adjourned at 8:00 PM.

Respectfully submitted,
Jennifer Cavarello, Board Secretary

Date: September 16, 2023