

A regular meeting of the Bath Planning Board was called on 12-5-17 for the purpose of conducting regular business.

**MEMBERS PRESENT**

Bob Oxton, Chair  
James Hopkinson, Vice Chair  
John Sunderland  
Russell Martin  
Greg Johnson  
Andy Omo  
Cal Stilphen

**MEMBERS ABSENT****STAFF PRESENT**

Ben Averill, City Planner

Mr. Oxton, Chair, called the meeting to order in the third-floor Council Chambers at 6:00 p.m. on Tuesday, December 5, 2017.

**Minutes of November 7, 2017, meeting**

**Mr. Sunderland mentioned that there were several cleric errors with the minutes from November 7, 2017 and wanted to amend the minutes. Mr. Sunderland requested that several amendments be made to the minutes to allow for the correct order of the minutes.**

**ON A MOTION MADE BY MR. SUNDERLAND, SECONDED BY MR. MARTIN TO AMEND THE PLANNING BOARD MINUTES OF NOVEMBER 7, 2017.**

**Mr. Oxton, Chair, advised that the agenda would be rearranged to allow for more complex items to be reviewed at the end of the meeting.**

**Introduction of Mr. Averill, New city planner.**

**New Business****Item 1**

**Public Hearing – Request for Land Use Code Map Amendment – 233 & 237 Washington Street (Map 38, Lots 13, 14, 15); Maine Maritime Museum, applicant.**

Amy Lent of Maine Maritime Museum (MMM) introduced the request for an amendment of the Land Use Code Map (a rezoning) of three parcels they have recently re-acquired by MMM. Ms. Lent noted that Lots 13, 14, and 15 are surrounded by the campus of MMM and are planned to be incorporated into a revised campus experience in the coming years. The conceptual plan was shared with the board earlier this year in a pre-application workshop. The parcels are part of a redevelopment effort to allow for a revised parking plan to allow for parking to be on contiguous lots. Change from residential to museum.

Mr. Hopkinson requested Ms. Lent to clarify if it only included lots 13 and 14 or if lot 15 was also included.

Mr. Averill, City Planner, replied that lots 13 and 14 were the only two lots in the amendment request. The abutting property was either already owned by MMM and zoned appropriately, or was not part of the request to rezone.

Mr. Omo asked whether the lot to the south of the parcel is part of Museum property.

Ms. Lent clarified that the lot in question is museum property which includes the education building.

**MR. HOPKINSON MOVED TO RECOMMEND TO CITY COUNCIL THAT THEY ADOPT A ZONING AMENDMENT FROM RESIDENTIAL ZONE TO MUSEUM ZONE. SECONDED BY MR. OMO. THE BOARD APPROVED THE MOTION 7-0.**

**Item 4 Request for Subdivision Amendment** – Western Avenue (Map 31, lot 69); Redlon Western, LLC, applicant.

**Item 5 – Request for Site Plan Approval** - Western Avenue (Map 31, Lot 69); Redlon Western, LLC, applicant.

Todd Ericson spoke for Blue Paint Development. The applicant Redlon Western, LLC/ Blue Paint Development has purchased the old “Eco Village” subdivision and would like to refine it. In order to do so they need to amend the subdivision and have created a new site plan. They have re- amended the subdivision to meet their needs. The 4 original approved structures will now be placed on one lot and each house has been moved to allow for the new setbacks to be met. The change is being proposed as there is an abutting parcel that was not conveyed in the original subdivision which they would like to add into the subdivision.

Mr. Ericson stated that they are currently approved for four homes in the current “Eco Village” subdivision and are hoping to move forward with help from the Board to have a better looking, fully functioning product. The amendment before the Board would eliminate the subdivision as the existing lot lines would go away. The amendment would allow for the subdivision to show the correct lot lines and would align the plan with the current easements and restrictions.

Mr. Ericson stated that he has worked with city staff to ensure that what has been proposed meets the guidelines and is requesting conditional approval for his site plan as they have a strict timeframe with their financing and would like to move forward as soon as possible. They were hoping that they could move forward and address the concerns of the Board without having two meetings.

Mr. Averill clarified that the applicant would be using this meeting as a pre-application workshop with the intent of coming back to the Board at a subsequent meeting. Additionally Mr. Averill clarified that the Board could request the applicant to produce a subdivision amendment and site plan that could be signed by the Board at the next meeting.

Mr. Hopkinson noted that there is no mylar or anything for the Board to review or sign and that there is no process or procedure to approve a subdivision amendment conditionally. He recommended that the applicant look to submit a subdivision amendment and site plan approval. Mr. Hopkinson stated that the Board is unable to approve the subdivision amendment/ site plan approval without the proper documentation as provided in the ordinance.

Mr. Ericson requested that the Board conditionally approve the amendment request so that they can move forward with the construction of the homes.

Mr. Russell Martin asked the applicant to clarify that the intent was for multiple homes to be placed on one lot. Mr. Ericson replied that yes that is the intent that the houses would be located on one lot and be rented out.

Mr. Averill, City Planner, also advised that this was set up as a pre-application workshop with no notice to abutters, as previously discussed with the applicant.

Mr. Ericson explained that he was looking for direction from the Board as to what would be needed to continue to process.

Mr. Hopkinson stated that the Board would need to see a full site plan/ subdivision amendment as well as any waiver requests that the applicant was requesting. Additionally the Board would need to review the E + S plan as well as any other management plans that the applicant could provide.

**Mr. Sunderland moved to continue to the next meeting- Mr. Martin seconded- 7-0**

**Item 2**

**Public Hearing – Request for Contract Rezoning – 2 Chandler Drive (Map 28, Lot 50); McDonald’s USA, LLC, applicant.**

**Item 3**

**Request for Site Plan Amendment– 2 Chandler Drive (Map 28, Lot 50); McDonald’s, USA, LLC, applicant.**

Mr. Averill introduced the item and gave the Board background regarding the application. The

Eric DeBrule, of Boehelor Engineering spoke for the applicant regarding the request for contract rezoning and the site plan amendment. The applicant, McDonalds, is proposing a full rebuild of the existing site. The existing structure will be removed and rebuilt with a side by side drive through feature. There will be new utilities placed at the site as the building will be rotating approximately 180 degrees on the site. There will be a new traffic pattern as well which is shown on the site plan. The applicant requests a waiver in the parking requirement to reduce the parking on site from 47 spaces to 32 spaces. Due to the new configuration of the site as well as the increased use of the drive through there has been fewer customers parking and walking into the store. The plan calls for the addition of a side by side drive through which will allow for less queuing.

Mr. DeBrule mentioned that the existing site with be demoed and a new, slightly smaller structure will be constructed to replace the current structure. The restaurant will be rotated to allow for a new, improved traffic design in addition to the re-configuration of the drive- thru with side-by-side ordering. The proposed change should eliminate backed up traffic and will allow vehicles to flow better. Additionally a sidewalk was added as well as construction of ADA doors to allow for better access for pedestrians. Additionally both curb cuts have been upgraded and the westerly curb cut has been modified to allow for better site lines. Green space has also been improved and increased.

The applicant is requesting a parking waiver of 15 parking spaces from 47 to 32. Additionally the applicant is requesting a waiver from the landscaping requirements to decrease the amount of landscaping that is required. There will be over 1,800 square feet of new green space, from the existing space added onto the site. The applicant also requests to move the dumpster location from the Western site of the property to the Northeasterly side of the site. The dumpster is approximately six feet in height and will be screened from the road by landscaping.

Mr. DeBrule fielded questions from the Board regarding the comments from the Public Works Director. The DPW director mentioned concern regarding a pipe located underneath the proposed location for the dumpster as well as the request for bi-monthly grease trap inspections from the company.

Additionally there was discussion about snow removal as well as the waiver request for landscaping. It was determined that the City Arborist did not have a chance to comment on the proposal.

The request will require a new contract zone and the applicant will wait for the City to complete the application.

**A motion to continue the site plan review and contract zoning for the site in question was put forward by Jim Hopkinson and seconded by Mr. Omo. The Board voted unanimously 7-0 to continue to the next session.**

## **Old Business**

### **Item 1**

**Request for Historic District Amendment – 133 Commercial Street (Map 26, Lot 258); Bath Riverwalk, LLC, applicant. (Continued from the November 7, 2017, meeting)**

Mr. Averill, City Planner introduced the item and gave a brief background on the results from the subsequent meetings on this item. Mr. Averill then introduced James Katsiaficas, Attorney with Perkins Thompson who is representing the City as conflict council.

Mr. Katsiaficas mentioned that the motion failed at the previous meeting. Mr. Katsiaficas states that in the last meeting it was a 3-3 vote and the motion may have failed as no affirmative motion was made. There had not been a tie vote in at least 25 years. There was a failed motion to approve as it was a tie vote and the vote may still be on the table. Additionally there was a request for reconsideration from the applicant regarding Section 8.12 of the Land Use Code as the ordinance is unconstitutionally vague. It was requested from applicant to re-review the amendment request as there was no clear offering as to why the Board voted in that manner. Mr. Katsiaficas suggests that the Board did not make a decision as there was a failed motion to approve. The Board can determine what a tie vote means. Mr. Katsiaficas suggests that under Robert's Rules a tie vote creates a failed motion.

Attorney Katsiaficas clarified to the Board that there is both a failed motion from the previous meeting as well as a request to reconsider the decision of the Board. The Board can choose to open deliberation on either action if it decides that is merited. A member of the Board would need to make a motion to reconsider the decision from the previous meeting; if it so chooses to do so.

**MOTION TO RECONSIDER MADE BY MR. SUNDERLAND- SECONDED BY MR. OMO. THE MOTION PASSED 7-0**

Mr. Katsiaficas instructs the Board that since they have voted to reconsider the application that they are now back into deliberation mode. Mr. Katsiaficas asked if abutters were notified about the potential to reconsider the motion.

There was discussion between the Board and Counsel regarding the notification of abutters and the presence of abutters in the audience. There was also discussion regarding whether additional comments or new information from the applicant were needed. The Board determined that there was no additional comments or clarification needed from the public or the applicant.

It was determined that there are 4 basic criteria and that the item under consideration has to be compatible with, harmonious with, or similar to. It has been determined that the standards may not be

applicable or enforceable. There was discussion regarding what portions of the ordinance may be enforceable.

The Board asked to hear from the applicant. Mary Costigan, attorney for the applicant, reiterated that she submitted a memo to the Board regarding the defensibility of the decision made at the last meeting. Ms. Costigan reiterated that the decision made at the last meeting does not seem to be defensible and that it would not hold up in court if challenged.

The Board clarified with Counsel that it should make a finding on each of the approval criteria even if that particular finding may not be defensible.

The Board finds that:

1. The construction of the new building or the addition or change to the existing building is consistent with the design, form, proportion, mass, configuration, building material, texture, color, and location on the lot as to be compatible with other buildings in the Historic Overlay District and with streets and open spaces to which it is visually related. **THE BOARD FINDS THAT THIS CRITERION HAS BEEN MET. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 7-0.**
2. The construction of the new building or the addition or change to the existing building is visually related to the surrounding area in terms of the following factors. New buildings may vary from neighboring properties in architectural treatment, but the relative proportions should match those of surrounding properties.
  - (a) Height: The height of the proposed building is consistent with the Comprehensive Plan or supporting documents pertinent to the Plan. **THE BOARD FINDS THAT THIS CRITERION HAS BEEN MET. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 7-0.**
  - (b) Width: The width of the proposed building is compatible with adjacent buildings and reflects the characteristic rhythm of facades along the street. If the site is large, the mass of the facade can be broken into a number of smaller bays. **THE BOARD FINDS THAT THIS CRITERION HAS BEEN MET. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 6-1.**
  - (c) Window Proportions: The window proportions, height versus width, are visually compatible with those of other windows in the same building and in other adjacent historic buildings of the same period. In the case of large plate-glass “display windows” on the ground floor, the large surface of glass can be divided into a number of smaller “panes” consistent with shop-front windows of the historic period that the building represents or, in the case of new buildings, compatible with the window size of adjacent historic buildings, where appropriate. Also, the ratio of window area to solid wall should be similar to surrounding facades. Windows are found to be compatible with other windows of adjacent buildings as well as with windows within the structure itself. **THE BOARD FINDS THAT THIS CRITERION HAS BEEN MET. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 7-0.**
  - (d) Roof Forms: The roof pitch employed on new buildings is similar to those found on the adjacent buildings. If it is a gable-type roof, its orientation to the street should be the same

as in neighboring buildings. Roofing materials should be harmonious with existing roofing material in the Historic Overlay District and roof colors should not dominate; dark, neutral colors and materials are best. **THE BOARD FINDS THAT THIS CRITERION HAS BEEN MET. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 4-3.**

- (e) Alternate-energy Devices: Wind generators, solar collectors, and similar alternate-energy devices may be utilized only if they can be installed in a manner in which they are not visible from a public way. **THE BOARD FINDS THAT THIS CRITERION IS NOT APPLICABLE FOR THIS APPLICATION. MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 7-0.**

The Board moves to approve the application for an amendment to the existing structure within Historic Overlay District **MOTION MADE BY MR. HOPKINSON, SECONDED BY MR. SUNDERLAND. THE MOTION PASSED 4-3.**

**Other business**

Mr. Oxtan announced that the next meeting would be on January 9<sup>th</sup> and not on the regularly scheduled date.

**MR. OMO MOVED, SECONDED BY MR. JOHNSON TO ADJOURN THE MEETING AT 7:58 PM.**

**UNANIMOUS APPROVAL**

*Minutes prepared by Ben Averill, City Planner from video recording.*