

A regular meeting of the Bath Planning Board was called on Tuesday, March 7, 2023, for the purpose of conducting regular business.

MEMBERS PRESENT

Bob Oxtan, Chair
James Hopkinson, Vice Chair
Haley Blanco
Mark Hranicky
Greg Johnson
Cal Stilphen

MEMBERS ABSENT

Andy Omo

STAFF PRESENT

Jenn Curtis, City Planner

Planning Board chair Bob Oxtan, called the meeting to order in the third-floor Council Chambers at 6:00 pm on Tuesday, March 7, 2023.

Minutes: February 7, 2023, meeting

MR. JOHNSON, SECONDED BY MR. STILPHEN, MOVED TO ACCEPT THE MINUTES OF FEBRUARY 7, 2023, AS PRESENTED.

UNANIMOUS APPROVAL.**Old Business****Item 1**

Request for Site Plan and Subdivision Approval – Western Avenue (Map 31, Lots 74-1 & 75-1); MLCU Holdings, LLC, applicant. (Continued from February 7, 2023, meeting) (6:01pm)

Ms. Curtis noted that the applicant has submitted additional information since the last meeting, mostly a lighting plan and landscaping changes as requested by the Board.

Joe Marden of Sitelines spoke on behalf of the applicant and presented a PowerPoint slide outlining the changes to the site plan including adjusting the pavement and fence along the eastern abutter to address concerns expressed by the Board. Landscaping and fencing were revised so that the landscaping is seen by residents rather than fencing. Trees have been added to the western side of the project, as well as additional landscaping at the retaining walls.

Mr. Marden further noted that a lighting plan was developed to include a light pole adjacent to the parking lot as well as four fixtures mounted at the building entrances. An informal path from the new building to Western Avenue was added including a culvert with path over a ditch. Architectural elevations were added to the plan to reflect changes to the second-floor deck and stairway, in addition to an engineered design for the retaining wall as required by ordinance. Mr. Marden reviewed the revised site plan highlighting the changes to the plan as presented as well as the landscaping plan. He noted concern from the Planning Department regarding a tree which has the potential to interfere with power lines, to which he suggested be made a condition of approval that stipulates the location will be adjusted in the field so as not to create future conflict.

Mr. Marden went on to present the lighting plan highlighting the location of the light pole and building-mounted lights which also highlight walkway, noting that the plan meets requirements so as not to allow spillage to neighboring properties. Ms. Blanco noted that lumens over Western Avenue may need to be reduced, to which Mr. Marden agreed.

Mr. Marden reviewed the minimal changes to the elevation plan.

Mr. Stilphen expressed his satisfaction that his concerns regarding fencing have been met, where it is now 2' from the property line

Mr. Johnson expressed concern that the northwestern retaining wall does not have plantings, noting that the wall faces neighboring property. He then questioned setbacks to the wall.

Mr. Marden recalled discussion with Code Enforcement that due to the height of the wall the location is permissible. Ms. Curtis confirmed that under Article 10, page 28 that plant materials must be planted between the wall and the property line, but agreed that the wall itself is permissible, to which Mr. Marden agreed.

Mr. Johnson asked why evergreen shrubs were not chosen as a planting.

Mr. Marden noted that the plantings would need to be water tolerant.

Ms. Blanco expressed appreciation for the walking path.

Ms. Curtis asked that the lighting plan be added to the index.

Mr. Oxtan opened the floor to public comment. Seeing none, Mr. Oxtan closed the public comment session.

Mr. Johnson expressed strong feelings regarding the landscaping and stated his preference that a revised landscaping plan be presented. Discussion followed on whether to make the requirement a condition of approval.

Mr. Oxtan addressed the Findings of Fact, noting a question on Part B 10.14 in regards to the erosion control plan. Ms. Curtis noted a corresponding condition of approval as included in the Findings of Fact.

Mr. Marden addressed condition 3 noting that because the fence has been moved an easement is no longer necessary to the vacant lot.

Ms. Curtis asked if the Board is comfortable leaving the lots separate or if the lots should be treated as adjoining lots.

Mr. Marden noted that the lots are owned by separate entities.

It was clarified that Lots 74-1 and 75-1 are in common ownership and included in the project proposal for the multi-unit residential building.

Mr. Hopkinson spoke to the need for an easement or a restriction that they must be conveyed together, as the lots are reliant on each other in order to meet space and bulk requirements.

Mr. Marden asked how the vacant lot can be protected in order to prevent future development, stating that the applicant is willing to work with the City in order to ensure this is addressed.

Ms. Curtis stated that as a matter of fence maintenance, she does not have an issue removing Lot 75-1 from the condition for an easement.

Mr. Hopkinson suggested a deed restriction with corresponding documentation on the plan in order to ensure the vacant lot is preserved.

MS. BLANCO, SECONDED BY MR. HRANICKY, MOVED TO FIND THE APPLICATION COMPLETE.

PLANNING BOARD UNANIMOUSLY APPROVED.

MS. BLANCO, SECONDED BY MR. HRANICKY, MOVED TO APPROVE THE APPLICATION WITH THE CONDITION THAT THE APPLICANT PROVIDE A REVISED LANDSCAPING PLAN THAT MEETS THE PLANNING DIRECTORS REQUIREMENTS THAT THERE IS LANDSCAPING TO THE ABUTTING SIDE OF THE RETAINING WALL, AND THAT THERE IS A NOTE PLACED ON THE DEED IN REGARDS TO THE SPACE AND BULK AND THAT ALL OTHER CONDITIONS OF APPROVAL ARE MET INCLUDING A NOTATION THAT THE ROBIN HILL TREE IN THE R1 SETBACK BE FIELD FIT AT THE TIME OF INSTALLATION SO AS NOT TO INTERFERE WITH POWER LINES.

PLANNING BOARD APPROVED WITH 5 IN FAVOR AND 1 OPPOSED.

Item 2

Request for Site Plan Approval – 79 Richardson Street (Map 31, Lots 74); Mason Loveitt, applicant. (Continued from February 7, 2023, meeting) (6:28pm)

Ms. Curtis noted that the applicant has submitted additional material based on Board requests for lighting and landscaping plans as presented during Item 1.

MS. BLANCO, SECONDED BY MR. STILPHEN, MOVED TO FIND THE APPLICATION COMPLETE.

PLANNING BOARD UNANIMOUSLY APPROVED.

Mr. Oxtan opened the floor to public comment. Seeing none, Mr. Oxtan closed the public comment session.

Mr. Johnson recalled concerns which he expressed at the last meeting that the project includes too many waivers and conditions, noting that his feelings regarding the application have not changed. He stated that he believes the project is asking too much of a small site.

Ms. Blanco asked for clarification, to which Mr. Johnson stated that the reduction of the retaining walls, setback reductions and driveway design are not acceptable.

Ms. Blanco noted that a site visit would have been beneficial to the project. She then stated her belief that the conditions are necessary in order for the project to move forward.

Ms. Curtis stated that if the project meets the standards the Board should approve the project. She then noted that if the Board believes the standards are not reasonable then it is the standards that would need to be changed. Discussion followed on what determines whether or not a standard is met.

MR. HRANICKY, SECONDED BY MR. STILPHEN, MOVED TO APPROVE THE APPLICATION UNDER THE CONDITION THAT ALL CONDITIONS ARE MET WITH THE EXCEPTION OF CONDITION 3 (AS STATED IN PLANNING MEMO DATED MARCH 10, 2023) REQUIRING AN EASEMENT FOR LOT 75.

PLANNING BOARD APPROVED WITH 5 IN FAVOR AND 1 OPPOSED.

New Business

Item 1

Public Hearing – Land Use Code Text Amendment – Article 2, Definitions; Article 9, Uses; and Article 11, Performance Standards; to define and allow land-based aquaculture in districts where similar land uses are currently allowed, City of Bath, applicant. (6:38 pm)

Ms. Curtis stated that the proposal has been reviewed by the City Council who determined that the amendment had merit to move forward. The Council is looking for the recommendation of the Planning Board incorporating any additional information and a recommendation as to whether or not to move forward.

Mr. Hopkinson stated that the ordinance does not currently have a definition nor any provisions allowing the use. The amendment would allow land-based aquaculture in districts C3 (Business Park) and C5 (Marine Business). Mr. Hopkinson asked if any areas along the waterfront outside of those zones which should be included, to which Ms. Curtis stated she was not aware of any additional areas.

Mr. Stilphen asked for clarification on aquaculture, to which Ms. Curtis noted the proposed definition is used by the USDA. Aquaculture organisms would include, for example mollusks and plants.

Mr. Oxtan opened the floor to public comment. Seeing none, Mr. Oxtan closed the public comment session.

Ms. Blanco asked if C5 district is the previous location of the cannery, which the Board confirmed.

MR. HOPKINSON, SECONDED BY MR. JOHNSON, MOVED TO RECOMMEND THAT THE AMENDMENT TO ARTICLE 2 ARTICLE 9 AND ARTICLE 11 FOR THE ADDITION OF THE DEFINITION OF AQUACULTURE, THE USE ALLOWED IN DISTRICTS C3 AND C5, AND THE CLARIFICATION OF THE PERFORMANCE STANDARD UNDER SECTION 11.03 WITH THE RECOMMENDATION THAT THE AMENDMENT OUGHT TO PASS.

PLANNING BOARD APPROVED WITH 5 IN FAVOR AND 1 OPPOSED.

Item 2

Public Hearing – Land Use Code Text Amendment – Article 11, Performance Standards; Section 11.30; to amend standards for transit shelters to facilitate a proposal for placement of transit shelters that exceed the currently allowed dimensions and placement, Bath Iron Works, applicant. (6:46pm)

Ms. Curtis stated that the proposal has been reviewed by the City Council who determined that the amendment had merit to move forward. The Council is looking for the recommendation of the Planning Board incorporating any additional information and a recommendation as to whether or not to move forward. She then noted one request by Councilor Dunn who would like to know if this amendment could be used to incentivize solar usage, to which City Staff confirmed solar to be an allowable use.

Mr. Hopkinson confirmed that transit shelters are currently allowed and that the amendment would increase the allowable size from 10'x10' to 14x7 and amending the height from 8' to 10'. He then noted the clarification that the shelters be allowed in an already illuminated area. Mr. Hopkinson stated that the expansion may encourage usage of public transit. He then argued that the increase may impact sidewalks.

Mr. Oxtan noted that while the amendment is proposed by BIW, the amendment would apply City wide.

Ms. Curtis noted that the increase is optional and not a required size increase. Discussion followed on whether to restrict the amendment to the zone containing BIW. Ms. Curtis observed that BIW has property throughout the City.

Mr. Hopkinson stated his satisfaction with the amendment.

Ms. Blanco expressed her support as the amendment will further encourage the use of public transportation.

Discussion followed as to whether including solar requirements is appropriate, to which the Board agreed it is not necessary to include.

Mr. Oxtan opened the floor to public comment. Seeing none, Mr. Oxtan closed the public comment session.

MR. HOPKINSON, SECONDED BY MR. JOHNSON, MOVED TO SEND THE PROPOSAL TO AMEND SECTION 11.03 OF THE ORDINANCE AMENDING TRANSIT SHELTERS TO THE COUNCIL WITH THE PLANNING BOARD RECOMMENDATION TO APPROVE.

PLANNING BOARD APPROVED WITH 5 IN FAVOR AND 1 OPPOSED.

Item 3

Request for Site Plan Amendment – 906 Washington Street (Map 26, Lot 178); Beth Israel Congregation, applicant. (6:57pm)

Ms. Blanco recused herself from Items 3 and 4.

Ms. Curtis introduced the request, and noted that the site received site plan approval in 2022. The applicant is proposing an amendment, to which the Board will need to closely review the stormwater management. The Public Works Director met with the applicant's agent and Ms. Curtis on site to propose solutions as noted in the findings. The Public Works Director was satisfied with the proposal so long as there is adequate evidence that the subsurface conditions will support the proposed plan.

Peter Bethanis, architect, introduced himself as the representative to Beth Israel Congregation. He then reviewed the request to amend the approved site plan due to financial considerations, noting that the plan has changed in its entirety. He then proceeded to review the floor plan which includes replacing a stairway at the entrance of the church with additional changes in order to address life safety. The vestibule will be modified for accessibility and fire safety, the lobby and office have been enlarged, proposed elevator will be replaced with a fire-rated lift similar to an elevator. In addition, two single restrooms will be added with a vestibule between them. To the rear of the building, a raised area may be removed due to financial reasons and may be put out to bid separately. Stairs to the rear of the structure will be replaced. On the second floor, study rooms have been rearranged and two additional restrooms are added.

Mr. Bethanis presented sketches of the proposed exterior which remains consistent with the existing building noting the addition of railings and walkway.

Mr. Bethanis noted that test borings are scheduled for March 8th, after which the results will be presented to the City in order to move forward. He added that a reduction in the addition will reduce stormwater runoff however final solutions will not be available until the results of the test borings have been reviewed.

Andrew Dunbar of Thayer Engineering stated that there are preliminary concepts however infiltration capacity must be determined in order to move forward. Mr. Dunbar confirmed that he has been in communication with City Staff and that the Public Works Director has been involved in the process.

Mr. Stilphen recalled the original approval noting concerns regarding the northern setback which was resolved by a setback plan to include screening.

Mr. Johnson observed that the northern addition is no longer being built, and therefore the screening is no longer necessary. Mr. Bethanis confirmed that the northern side will remain unaltered.

Mr. Johnson observed the roof of the addition with conflicting renderings.

Mr. Bethanis confirmed that the addition will be underneath the existing roof with a gutter system used to combine the roof water and a flat roof extending forward. The flat area will be roughly the equivalent of one parking space.

Mr. Oxton opened the floor to public comment.

Scott Dunn of Washington Street, abutter, expressed concern regarding stormwater and stated his satisfaction that the matter is being addressed by the applicant.

Mr. Oxton asked if there is a landscaping issue that adds to the stormwater issues, to which Mr. Dunn clarified that the parking area is the main source of stormwater.

Seeing no further comments, Mr. Oxton closed the public comment session.

Seeing none, Mr. Oxton closed the public comment session.

MR. STILPHEN, SECONDED BY MR. HRANICKY, MOVED TO FIND THE APPLICATION COMPLETE.

PLANNING BOARD UNANIMOUSLY APPROVED.

Mr. Hopkinson noted that technically without soil and water plan the application is incomplete, but the matter can be resolved by a condition of approval.

Mr. Hopkinson addressed a staff comment regarding paving.

Ms. Curtis noted that the roadway is not being changed, but suggested that the Board may wish to address the impact of the driveway if any. Discussion followed as to whether the previous site plan included changes to the driveway.

Mr. Hopkinson asked the Board if they would like to review the stormwater application or leave final review to City Staff.

Mr. Johnson stated that the Board typically relies on the expertise of City Staff, to which the Board agreed.

MR. HOPKINSON, SECONDED BY MR. JOHNSON, MOVED TO APPROVE THE APPLICATION AS SUBMITTED WITH THE FINDINGS OF FACT AS REVIEWED

AND REQUEST THAT THE FOLLOWING ITEMS BE ADDED AS CONDITIONS OF APPROVAL

- **THAT THE APPLICANT SUBMIT TO THE PLANNING DIRECTOR CONFIRMATION WHETHER THE ACCESS DRIVE IS PROPOSED TO BE PAVED SO THE APPLICATION IS CLEAR**
- **THAT THE BUILDING PERMIT NOT BE ISSUED UNTIL STORMWATER MANAGEMENT SUBMISSION HAS BEEN PROVIDED TO CITY STAFF AND APPROVED BY THE PUBLIC WORKS DIRECTOR TO THE SATISFACTION OF THE PLANNING DIRECTOR.**
- **THAT THE PLANNING DIRECTOR PASS ON TO THE PUBLIC WORKS DIRECTOR THE COMMENTS MADE BY THE ABUTTING PROPERTY OWNER**

PLANNING BOARD UNANIMOUSLY APPROVED.

Item 4

Request for Historic District Approval – 906 Washington Street (Map 26, Lot 178); Beth Israel Congregation, applicant. (7:23pm)

Mr. Bethanis stated that he has attempted to maintain the historical integrity of the structure, noting the architectural significance of the design. The existing gridline and arched windows were carried through to the addition with a roof addition intended to tie into the existing roof. Materials will be consistent with existing structure

Mr. Bethanis introduced landscaper Keith Smith. Mr. Smith provided a landscaping plan with the intention to mitigate the visual impact to abutters including shrubbery to side and rear of the structure with an ornamental tree and shrub to the rear left corner. Boxwood trees will be added towards the entrance to provide interest.

Mr. Stilphen asked if there is an actual landscaping plan, which Mr. Smith confirmed was provided to the City.

Mr. Oxton opened the floor to public comment. Seeing none Mr. Oxton closed the public comment session.

MR. HOPKINSON, SECONDED BY MR. JOHNSON, MOVED TO APPROVE THE APPLICATION AS SUBMITTED SUBJECT TO THE CONDITIONS AS PROPOSED IN THE FINDINGS OF FACT.

PLANNING BOARD UNANIMOUSLY APPROVED.

Item 5

Request for Historic District Approval – 45-53 Front Street (Map 27, Lot 125); Now You're Cooking, applicant. (7:30pm)

Ms. Curtis noted that she does not have much experience with historic review, however she did not find any issue with the application as the applicant is seeking to maintain the current appearance.

Ms. Blanco asked about the existing plywood panel which the applicant is seeking to refurbish.

The applicant, Betsy Fear, confirmed that she will see if the plywood is rotten and will either be replaced or remain the same and be repainted as necessary. She noted that the brick façade is not original, while the plywood is more similar to the original door and only requires replacement due to the recent wind storm. Replacement windows will be supplied by Coastal Glass and appear identical to the existing windows replaced a few years prior.

Mr. Johnson stated his desire to see detail for the windows in order to verify consistency. He then asked for clarification on the top glass panels, which have been closed in over time in order prevent drafts.

Ms. Fear then confirmed that the plywood will be replaced and painted to match existing door.

Mr. Johnson suggested a different color than the wood color and suggested possibly matching the green trim.

Mr. Hranicky expressed his preference for the tan color.

Ms. Blanco expressed concern that the paneling should not be plywood and suggested that brick may indeed be more appropriate to which Mr. Johnson agreed.

Ms. Fear expressed her desire to maintain the historical aspects of the building, noting that the brick was added to enclose doors no longer used. She noted that historical pictures do not show the entrance properly.

Mr. Johnson expressed his preference that the item be tabled to allow for further review.

The applicant agreed that she would like to maintain the current appearance of the windows.

MS. BLANCO, SECONDED BY MR. JOHNSON, MOVED TO TABLE THE APPLICATION TO THE NEXT AVAILABLE MEETING.

PLANNING BOARD APPROVED WITH 4 IN FAVOR AND 2 OPPOSED.

Mr. Stilphen clarified that cut sheets be provided for the windows.

Mr. Johnson noted he would like to see the cut sheets for the window and detail underneath the windows.

Ms. Fear clarified that Mr. Johnson is looking to return to the original design in deference to the existing façade. Discussion followed as to what details the Board is looking to include such as the panel design and color beneath windows.

Mr. Hopkinson recalled the limitations of the historic review which do not require cut sheets and stated that the Board does not have the authority to request the applicant to change the physical aspect of the existing building. He then suggested that the Board examine their historic district requirements.

Ms. Fear recalled the application was to replace the glass and suggested refreshing the panels but was not looking to make any changes to the panels.

Mr. Hranicky asked the purpose of the cut sheets, to which Mr. Johnson explained the purpose of the requesting examples to ensure that an appropriate design is chosen.

Discussion followed on reviewing the historic review requirements and how to move forward.

MR. HOPKINSON, SECONDED BY MR. HRANICKY, MOVED TO TERMINATE THE MOTION TO TABLE THE ITEM AND TO CONTINUE.

PLANNING BOARD UNANIMOUSLY APPROVED.

MR. HOPKINSON, SECONDED BY MR. JOHNSON, MOVED TO APPROVE THE APPLICATION AS SUBMITTED SUBJECT TO THE CONDITION THAT THE APPLICANT NOT INSTALL WINDOWS UNTIL THE APPLICANT HAS SUBMITTED TO AND RECEIVED APPROVAL BY THE HISTORIC DISTRICT COMMITTEE OF CUTSHEETS CONFIRMING THE NEW WINDOWS WILL MATCH IN FORM, STYLE AND WIDTH TO THE EXISTING STOREFRONT WINDOWS.

Mr. Oxton confirmed that if the windows do not match the application would be rejected and the applicant would need to return to the Planning Board for approval.

PLANNING BOARD UNANIMOUSLY APPROVED.

Ms. Fear expressed concern with the time limitations.

Mr. Oxton stated the committee review is traditionally by email with a timely turnaround.

Other Business

None

MR. HRANICKY MOVED TO ADJOURN, SECONDED BY MR. JOHNSON.

UNANIMOUS APPROVAL

MEETING ADJOURNED AT 8:05 PM.

Minutes prepared by Karly Perry, Recording Secretary