

CITY OF LEWISTON
PLANNING BOARD MEETING
MINUTES for October 22, 2012

- I. **ROLL CALL:** The meeting was held in the City Council Chambers on the first floor of City Hall and was called to order at 5:30 p.m. Chairperson, Lucy Bisson, chaired the meeting.

Members in Attendance: Lucy Bisson, Bruce Damon, Kevin Morissette, Eric Potvin, Trinh Burpee, Walter Hill and Paul Robinson

Associate Member Present: Michael Marcotte and Sandra Marquis

Staff Present: David Hediger, City Planner, Gil Arsenault, Director of Planning & Code and Cathy Lekberg, Administrative Assistant, Economic & Community Development

- II. **ADJUSTMENT TO THE AGENDA:** None

- III. **CORRESPONDENCE:** None

Lucy read the Planning Board Meeting process to the staff and the public.

- IV. **PUBLIC HEARINGS:**

- a) Apple Request for an extension of approval of the conditional use permit for Apple Valley Estates Subdivision.

David read staff comments to the Board.

Gard Crow gave his presentation to the Board explaining that the economy was quite soft right now but he has a lot invested in this project and he believes in it. He said he just needs buyers. Lucy asked if there were any buildings completed and Gard said there were two homes built and a community center with exercise equipment and with social gathering space on the second floor. There are also two tennis courts and nature trails.

Bruce asked if the closing of the golf course would have an impact on his ability to sell the units. Gard stated it has not helped us sell any units at this point but he explained that the golf course was never a part of the planned amenities. Bruce asked about the DEP annual storm water report and Gard stated they went through the five year recertification and submitted a report with pictures; however, DEP did not respond. Staff at DEP stated that he should keep up the good work.

Public comment – None.

The following motion was made:

MOTION: by **Paul Robinson** to grant a one year extension of the conditional use permit with an expiration of November 26, 2013 pursuant to Article X, Section 5 of the Zoning and Land Use Code to Gard Crow

on behalf of Apple Valley Estates, LLC for Apple Valley Subdivision, a planned community with 48 single family detached homes and a recreation building located at 317 Pinewoods Road in Lewiston.

Second by **Walter Hill**.

VOTED: 7-0 (Passed)

- b) An application by A.R.C.C. Land Surveyors Inc. on behalf of the Masjidul Salaam Mosque to establish a religious facility and accessory parking at 240 Bartlett Street.

David read staff comments to the Board.

Lucy noted there was a correction needed on note #3, it says "No church, social functions and any other use of the north western portion of the building or basement shall not be allowed" in other words it would be allowed and David stated yes that he will remove the word "not". Lucy stated that this is identified this way in other documents. David stated he would correct this and the Board can add that the site plan be amended as a condition of the motion.

Gil explained that this project would otherwise be a minor development but staff thought it would be more appropriate to have the Planning Board hear it just to give the public a greater opportunity be involved in the process. The Code provides the planning director with the ability to classify a project meeting the minor development classification to be classified as a major project if significant public input is expected.

Art Montana of A.R.C.C. Land Surveyors explained what is planned at the site for the Mosque. He said that Steve Morgan is representing the Mosque this evening and there are three members of the Mosque in attendance to answer any questions. He thanked the planning staff for working with them and that there were a number of revisions. Due to limited parking and floor area at 256 Bartlett Street, they purchased 240 Bartlett Street.

Originally they wanted to create 44 parking spaces, but this would be too costly because of their financial limitations. He said they worked with City staff and staff recommended closing a portion of the building to reduce occupancy and thereby reducing parking to 24 parking spaces. Art showed the Board a site plan and pointed out the part of the building which would be closed off. He stated that there would be an additional 751 SF of impervious area added to the site to accommodate the 24 parking spaces and other improvements. Though it wasn't required Art stated that he obtained a letter from a traffic engineer addressing the traffic that would be generated by this change of use and the letter was submitted with the application. Art said the building had a below grade loading access to the basement and this exterior access to the basement was eliminated and the access area was filled to the level of the surrounding grade. This work also resulted in better utilization of the existing impervious area for more parking.

In closing, Art indicated he could review the criteria of Article XIII and answer any questions.

Paul asked what the structure to the left is and Art said it was the Tri-County Mental Health Building. Eric asked about the access to the two handicap spots in the front and do they encroach on the City sidewalk. Art reviewed this on the site plan and he stated that there is no encroachment.

Trinh asked about lighting and Art explained that lights are proposed on the building and he indicated the locations on the plan. She also asked about snow removal. Steve Morgan stated they did not discuss this but they would probably hire a subcontractor to remove snow or push it out back as needed.

Kevin asked what would happen to the part of the building that is closed and David stated nothing would be done with such space. If they want to utilize it at a later time, they would have to come before the Planning Board for approval for the additional parking.

Paul asked if this was a financial decision to close off part of the building and Art said yes, due to the cost to create 44 parking spaces versus the proposed 24 spaces.

Mike stated that there is a typo in the deed section of the document on page 3, Exhibit A, dated October 29, 2957. This should read "1957".

Lucy opened this item up to the public.

Denis Theriault stated he lives at 21 Marguerette Street and owns the buildings at 239, 241, 243 and 245 Bartlett Street. He felt there were a number of issues with the Mosque renovating this site.

He stated there was an underground parking drain that was backfilled; however, it was not removed and public works has concerns that soil materials could infiltrate into the combined sewer in the street. He said that this should be removed and capped.

Another issue Mr. Theriault expressed is the need for storm drains on the property and safety concerns. He stated he understands the need for an additional 16 parking spaces and the 751 SF of additional impervious area but there are no catch basins on the project and everything dumps into the street heading towards Mailhot Sausage to a catch basin in the street. He said any freeze-thaw cycles will impact that area. If you are there in the winter, it will be interesting and that is a large concern to me. He is also concerned with the type of loading that catch basin will receive. There is enough flow coming from Bartlett hill as it is right now in that general area to load that basin at peak demand times. He did not see any drainage calculations. He stated he spoke to Ryan Barnes who reviewed this plan and Ryan said this was designed based on existing impervious surface drainage. Mr. Theriault stated that this area was backfilled and was not a parking area.

This was a gigantic slope and if you are familiar with Bartlett Street over the years you know that Screen Printing business had a giant bowl at the bottom and loaded paper there and that is why they put the drainage at the bottom. It was a giant bowl that was backfilled.

Denis said that across the street at his apartment building, he created 11 parking spaces and he was forced to put in a catch basin. He said when he built his mall with 73 parking spaces; all drainage had to be handled on-site.

Another concern was possible future expansion and where will the storm water go. He mentioned the need for drainage to be installed by the City when 23 parking spaces were recently created at the Armory on Central Avenue and that a detention pond was installed.

Denis said when looking at the plans, he noted there were no bathroom facilities. He asked if the planned occupancy was designed without the bathroom facilities being removed from that total square footage. There are no bathroom facilities, nothing for water and sewer and where it comes in or out, or if there is going to be an adequate capacity to handle that use of the building. He said the reason he raised the bathroom issue is because they lived a nightmare when the Mosque was located at 256 Bartlett Street as human waste was being thrown to the rear of the building and he does not need a repeat performance.

He also was concerned there were no crosswalks. People walk right across the street and could get hit by cars coming down Bartlett Street. He saw a child was run over there by a man from a plumbing company. If you are going to create a facility like this something has to be done. The users of the Mosque are not going to stay on the sidewalks.

In the plan notes, it seemed a bit confusing with respect to Note #4 and Note #7. Note #4 has an expiration of approval in five years yet on Note #7 it seems to circle around a certificate of occupancy and that a substantial portion of this project would have to be completed in order to meet the occupancy requirement to obtain a certificate of occupancy. He asked what is the percent of completeness that is needed to allow for a certificate of occupancy.

Denis stated his final concern leads him to the financial performance guarantee. In your packets there was a letter from Androscoggin Bank stating that the Mosque's account with Androscoggin Bank has sufficient funds to cover all outside construction projected in the 240 Bartlett Street project. The present letter only speaks to financial capacity for the outside construction work. It does not say it will cover all items. He asked why the inside worked is left out. Also the letter from Androscoggin Bank is not an irrevocable letter from a financial institution. This letter does not set in stone assets which the City can reach should this project not perform as designed. It merely states that assets are in place. He said when he did his mall he

had to prove quite a bit more to do his project. He said there is a section of the code that speaks to this.

Lastly, the deed makes reference to the Franklin Company and he wondered if there might be any reversions of land depending upon how the land is being used.

Denis stated that you're not going to see just 20 cars parked at this facility, but there will be 50 or 60 cars and they will be parking on the grass in the back which happened at the old site. Denis said that right now my neighbors, Italian Bakery, and others are facing all kinds of stuff from stealing to rocks being thrown at our properties. He said that Italian Bakery was going through the hell that he did. He did not have an answer as to how to address this other than intensifying the protection of his properties. Fences will be installed. He has told City staff and met with the Chief of Police and that he will be investing in cameras that will be able to do facial recognition and be able to see car license plates. He will have people arrested for trespassing. This is his property and he has leases and he will not have his properties blocked as has occurred before. He stated he is quite a bit better "seasoned" in preparing for this and as are his attorneys and if we have to, we will haul the LLC into court and request restraining orders. He said that he is not here to threaten but here to lay the ground work because this time we are ready for this.

Lucy asked Art about the storm drain that was backfilled and Art explained he was unaware of drain and that Public Works was fine with the site improvements.

Art stated he was not sure about the bathroom issue as they did not come before the Board for interior renovations to the building. Art stated there were no crosswalks in that area and there probably would not be one. The families will need to watch their kids when crossing the street.

Art stated the letter from the bank was sufficient for this type of project. Art stated that this is not a huge project. It is only a paving project.

Gil stated Denis had some good comments, and that David and I can go through these issues for the Board.

Gil stated public works reviewed the project and there were no issues with the drainage. He told the board they could certainly make this a condition and have it discussed with public works again. Denis mentioned there are no catch basins. Gil explained that typically on a flat site where there is no impervious area increase of consequence, staff does not require catch basins. If the Planning Board feels that staff is not making the appropriate call and they want a catch basin added, that the Planning Board could make that a recommendation.

Gil stated Denis mentioned the Armory which was much different where storm drainage needed to be provided and it is actually a rain garden. There was almost 9,000 SF of new impervious area at the Armory. This project has only 751 SF of new impervious area. If they want to plan an expansion in the future, that is different. As indicated they did not want to spend the money on that now. If they want to expand, they need to come back to the Planning Board. David stated there is a sewer line that goes through the property that can be tied into with a catch basin if they want to expand in the future.

Gil stated that there will have to be bathroom facilities. This is not plan review from a building permit standpoint. This is a simple site plan review approval only. At the planning level we are not looking at building design, snow loading or bathroom issues. The bathrooms will be required when the building is occupied.

Gil stated that typically they do not do crosswalks mid-block on streets. This would be something that the Board needs to discuss. If you want to do a crosswalk mid-block you really are looking at a raised speed table or something other than just painting lines. It is very hard to limit, pedestrians to crossing at intersections.

Gil stated Denis raised a good point with respect to Note #7, Certificate of Occupancy. Typically staff handles temporary Certificates of Occupancy. He stated he thinks staff use reasonable judgment with respect to allowing a businessperson or homeowner to occupy their building without the project being 100% completed. We make sure it is safe and make sure the project functions properly. From an exterior standpoint to allow the property to be occupied, if the Board has specific issues that they have with respect to the site improvements, Gil suggested the Board could consider that by adding conditions as may be appropriate.

Financial capacity in this case is not a letter of credit. We just did a project at staff review level on the end of Summit Avenue which was a City owned property that was purchased by John Danforth. It is a very steep site. In that case staff required a letter of credit because if something happens on that site with respect to serious erosion issues and something happens to the developer, we want to make sure the City can do what needs to be done. We do not believe there is anything on this site that will cause any issues for the City if the project does not get built so we are not asking for a letter of credit. The code says you have to demonstrate financial capacity and I think they have done that. The driver is the Certificate of Occupancy. If we issue a temporary certificate of occupancy it will expire on a set date. If we give it a full blown certificate of occupancy it means the project was built in accordance with whatever the Board approved. Given the slight increase in impervious and the relatively flat grades, we do not see the need for a letter of credit.

David stated to Denis that he is accurate to the section he referenced but if read; it specifically speaks to city streets, water sewerage systems, and

drainage system and traffic improvements. This is common when we are reviewing subdivisions.

Gil stated Denis also mentioned the deed. This property has been used commercially for many years and the City does not enforce deed and covenant restrictions and I do not see that as a matter for the Planning Board.

Gil indicated Denis's reference to issues he had with people using his property especially rock throwing which is certainly unnecessary. He thinks the fact that Denis is putting cameras on his property is good. In this case there should be plenty of parking on the new mosque property so hopefully there should not be any problems.

Denis questioned Gil, about not coming from the mosque. He stated you and David stood there and watched it. He stated he has pictures of Gil and David standing there. Police had to be brought in. Where were the rocks coming from, not from heaven? Both of you did not want to be there after that; you were very nervous and scared. Trust me this will be a whole different situation if it happens again. Gil stated we saw one car go onto his property and Denis responded to that one car and that he had pictures.

Denis said to Gil, I do not know if you are asleep at the wheel. This would not have happened had you not designed parking on the old site that backed over Mr. Berry's land. How you achieved those parking spaces is beyond me. Lucy stated that is enough, this issue does not belong here. Kevin stated everything Denis was talking about had nothing to do with what the Board was here to approve. Lucy stated we are here to approve a plan not safety and other issues. That is enforced by the police.

Denis Theriault stated he did not trust staff and would see them in court and left the meeting at 6:35 p.m.

Paul asked if the drainage was an issue before the mosque project came up or was this road block to prevent the mosque and Art stated that it was not an issue before.

Lucy closed the public portion and brought it back to the Board.

Michael stated he did not believe that buried drainage line was a non-issue. He said he was concerned about the sewer line under the property and if it connected to the major sewer system. Lucy stated that the drainage line being discussed was only a two inch drain that goes to the street. David stated that this is a private line on an older property. Michael asked who is liable if something happens to the private line and Lucy stated the property owner.

Bruce asked why in the checklist for development review two items were not checked off. He asked if they should be checked or are they not a

requirement. David stated when it is not checked, it is not an issue, if it is checked, and the applicant has addressed it as part of the application or plan.

Bruce asked if this project will happen this year or is this a spring project. Steve Morgan stated he is not 100% sure. They have gotten some quotes from contractors and as soon as we get the okay from the Planning Board they want to try to have it happen this year but contractors might be too backed up and it may not start until spring. Lucy asked if they would get an occupancy permit when this is done and Steve stated they would not. David stated even if they get the site improvements done, there is an expectation the lot should be stripped. That is something that would have to be discussed. They may be able to give them a temporary certificate of occupancy if the stripping did not get done. But until the interior improvements are completed, they will not receive the certificate of occupancy. Gil stated the Board does not get involved in the certificate of occupancy; however, in this case, if it is something they feel is critical to this project it can be a condition of approval.

Walter stated getting back to one of the points Denis made concerning safety and the crosswalks he asked was your point that people should not be crossing the street because they are going to have all this additional parking available on site versus what they (the Lisbon Street mosque) are doing on Canal Street which is really dangerous. This would probably be a safer place for them to have their mosque versus right now. Gil stated that is not what he was suggesting. Typically you're not going to do a crosswalk mid-block unless it is a unique situation with significant pedestrian traffic and it has to have lights and be raised. Denis was referring to events like Ramadan when there were a lot of people walking to the mosque rather than driving. Not everybody is going to cross at a crosswalk.

Bruce stated that this is a census tract in the City where there are significant amounts of people that do not have private transportation and do a lot of walking and depending upon what path they come from where they are domicile, if they come from the Pierce Street Park behind Denis' property, there a natural flow of pedestrian traffic in this direction just because of the proximity of Pierce Street Park and the mosque in that area. Gil stated pedestrians tend to come down Bartlett Street from the Birch Street area. He has not witnessed many people walking down there, but there are only a handful of days the mosque is very busy and that is when they were coming down Bartlett from Birch Street.

Bruce stated that people don't use crosswalks on Main Street and it is virtually impossible to enforce it.

Trinh stated that on Pine Street, people don't care. They walk right out in front of a car.

Steve Morgan stated that the mosque has only two major holidays and that is when you get 50 people or more. He said that the Somalis just want to go by the rules.

The following motion was made:

MOTION: by **Bruce Damon** finds that the application meets all of the necessary criteria contained in the Zoning and Land Use Code, including Article XIII, Section 4 of the Zoning and Land Use Code and to grant approval to the Masjidul Salaam Mosque to establish a religious facility and accessory parking at 240 Bartlett Street subject to the following concerns raised by the Planning Board and staff:

1. No building or structure, nor any use of land hereafter erected, moved, added to, or structurally altered, and any and all site improvements, nor any use of the land which intensified shall be permitted until the code enforcement office has issued a certificate of occupancy, certifying that the completed building, structure, site improvements and/or use are in conformance with the terms of this code and the approved site plan.
2. Maximum occupancy is limited to 94 people.
3. No church, social functions and any other use of the north western portion of the building or basement shall be allowed. The basement use is limited to the structures mechanical and utilities infrastructure. No storage of any kind is allowed in the north western portion of the building or basement. Any proposed future use of the northwestern portion of the structure or basement will require development review approval.
4. A non-pass through separation wall, in the middle section of the building must be constructed to prohibit through access to the northwestern portion of the structure.
5. Upon applying for a permit, the applicant must address the concerns noted in Lewiston Fire Preventions Plan/Code Review dated October 16, 2012.
6. Any additional impervious area added beyond that approved must be reviewed to determine whether additional storm water analysis and improvements are required and must come back to the Planning Board for review.
7. Notes 7 and 11 on the Plan must be amended to remove the double negatives.

Second by **Eric Potvin**.

VOTED: 7-0 (Passed)

This item ended at 7:15 p.m.

- c) Proposed amendment to the Zoning and Land Use Code to repeal Article XIII. Development Review Standards, Section 14, Additional standards for large-scale retail development.

Lincoln explained that the legislature passed the Informed Growth Act in 2007 which has since been repealed. However, Lewiston continues to have local regulations on new retail developments of 75,000 SF or larger. This has deterred big box developers from coming to Lewiston to build. He said the City would like to repeal this act so that big box store developers did not have to jump through so many hoops to build in Lewiston.

Eric stated he did not agree with repealing the act and because the economy has slowed, he would rather see smaller stores come into the downtown areas.

Kevin said they should try and fill up the malls they already have and also did not agree with taking the language out.

Lucy stated that the act was created for smaller towns that did not want Wal-Mart coming to their town.

Eric thought that \$40,000 is not a large amount for an economic analysis for a large store like Target to pay to build there. Kevin said that Lisbon Street is growing fast and he thought these hoops were good for large developers.

Bruce stated that they should let the marketplace decide whether a business fails or not. He thought they should not add the extra burden to developers that want to build here. Lucy agreed that the marketplace should dictate what happens and Lisbon Street is small stuff. Walter also agreed that the act should be repealed.

The following motion was made:

MOTION: by **Paul Robinson** pursuant to Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation for the City Council's consideration a proposal to amend the Zoning and Land Use Code to repeal Article XIII. Development Review Standards, Section 14, Additional standards for large-scale retail development. Second by **Walter Hill**.

VOTED: 5-2 (Passed)
Kevin Morissette & Eric Potvin Opposed

- d) Proposed amendment to the Zoning and Land Use Code, Article II. Definitions, Section 2 Definitions and Article XI. District Regulations, Sections 1 through 21. Said amendment will result zoning district regulations being placed in table format, clarification of permitted uses, and clarification and modifications to space and bulk standards applicable to district regulations.

Lucy listed some typos and corrections she wanted to change in matrix.

The Board discussed a few other changes but then decided to leave it as is and wait until the Comprehensive Plan was completed to make additional changes.

The following motion was made:

MOTION: by **Eric Potvin** pursuant to Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation for the City Council's consideration a proposal to amend the Zoning and Land Use Code, Article II. Definitions, Section 2 Definitions and Article XI. District Regulations, Sections 1 through 21, Second by **Walter Hill**.

VOTED: 7-0 (Passed)

- e) Proposed amendment to the Zoning and Land Use Code, Article XI. District Regulations, Section 22 to create a Parks and Recreation District to govern land uses for those properties managed or owned by the City of Lewiston for park and recreation purposes.

The following motion was made:

MOTION: by **Eric Potvin** to table Item IV. e on a permanent basis so as to be discussed as part of the Comprehensive Plan. Second by **Walter Hill**.

VOTED: 7-0 (Passed)

V. OTHER BUSINESS:

- a) Request by City Council that the Planning Board consider establishing a Business Transition Zone and recommend areas where such a zone might be appropriate.

The following motion was made:

MOTION: by **Walter Hill** to table Item V. a on a permanent basis so as to be discussed as part of the Comprehensive Plan. Second by **Bruce Damon**.

VOTED: 7-0 (Passed)

- b) Planning Board representative to serve on CDBG Committee.

David told the Board that the Community Development Block Grant Review Committee needs a Planning Board member to serve on their committee. Walter Hill volunteered.

The following motion was made:

MOTION: by **Bruce Damon** to nominate Walter Hill to serve as the Planning Board's Community Development Block Grant Committee member. Second by **Paul Robinson**.

VOTED: 6-0-1 (Passed)
1 Abstained – Walter Hill

- c) Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

VI. READING OF MINUTES: Adoption of the September 24, 2012 Planning Board Minutes.

The following motion was made:

MOTION: by **Paul Robinson** to accept the September 24, 2012 Planning Board Minutes as presented. Second by **Walter Hill**.

VOTED: 7-0 (Passed)

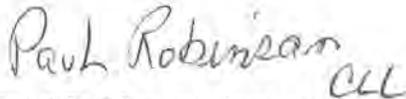
VII. ADJOURNMENT: The following motion was made to adjourn.

MOTION: by **Paul Robinson** that this meeting adjourns at 8:35 p.m. Second by **Kevin Morissette**.

VOTED: 7-0 (Passed).

The next regularly scheduled meeting is for Monday, November 26, 2012 at 5:30 p.m.

Respectfully Submitted:

Handwritten signature of Paul Robinson in cursive, with the initials 'CLR' written below the signature.

Paul Robinson, Secretary