

CPC Minutes of April 27, 2010

A regular meeting of the City Plan Commission (CPC) was held on Tuesday, April 27, 2010 at 4:45 p.m. in the Department of Planning and Development (DPD) 4th Floor Auditorium, 400 Westminster Street, Providence, Rhode Island 02903.

OPENING SESSION

Call to Order: Chairman Durkee called the meeting to order at 4:46 p.m.

Members Present: Chairman Steve Durkee, Vice Chairman Harrison Bilodeau, Meredyth Church, Andrew Cortes, Drake Patten and Bryan Principe. Samuel Limiadi arrived at 4:50 pm.

Staff Present: Robert Azar, Bonnie Nickerson, Choyon Manjrekar.

Approval of meeting minutes for March 16th 2010: Ms. Patten requested that the minutes be clarified to state that in reference to item number 3 on the February 23 agenda, she wanted to ask why a pre prepared typewritten motion was brought for a matter meant for discussion. Mr. Durkee replied that the minutes were reflective of what was said at the meeting. Mr. Principe made a motion, seconded by Ms. Patten to approve the minutes as amended. All voted in favor.

PROVIDENCE TOMORROW

College Hill, Wayland, Fox Point and Waterfront Neighborhood Plans

Mr. Durkee said that the item for potential use of the "Shooters site," was going to be voted on again at the advice of the City Solicitor. A vote was taken at the February meeting even though it was advertised for discussion. Mr. Durkee said he disagreed with the decision to vote on the item. He asked for a motion.

Ms. Nickerson explained the changes made to the neighborhood plans. Changes to the College Hill/Wayland/Fox Point (CH/W/FP) neighborhood plan were made on pages 22, 23 and 36 of the plan. The changes reflected prohibition of residential use on the Shooters site. Pages 34, 35, 36 and 44 of the Waterfront Plan were also changed to reflect the Commission's vote. Mr. Azar said that the Department of Planning and Development (DPD) had written a draft ordinance that would add a footnote to the zoning map to specifically prohibit residential uses on the Shooters site.

Mr. Bilodeau said that the motion made when the Commission voted on the matter intended to prohibit residential use, not restrict it. Ms. Nickerson said that the language in the plans makes it clear that residential uses are prohibited. Mr. Azar said language on the proposed ordinance and map could be changed to say prohibited instead of restricted. He said the proposed ordinance did not prohibit hotels as the DPD understood the Commission's discussion to apply to permanent residential uses, not temporary lodging. Mr. Bilodeau asked how the Zoning Ordinance classified hotels. Mr. Azar said that the Commission could explicitly prohibit hotels if desired. He referred to minutes from the February meeting where the Commission discussed hotels, but the motion did not expressly prohibit them. He read from the minutes, where it said that he (Mr. Azar) said that hotels were a possibility and asked where the Commission stood on the matter. He went on to read from the minutes wherein he outlined the uses permitted in the W-2 zone and Mr. Bilodeau asked if the Commission could take

away the multifamily residential use on the parcel and impose a height restriction. The minutes indicated that the board made a distinction between hotel and residential use. The motion that was made only specified permanent residential uses. Mr. Bilodeau said a clearly worded motion was required to specify what was being voted on. Mr. Durkee said he assumed the previous motion was going to be voted on again. Mr. Bilodeau said that a motion should be made in accordance with the Comprehensive Plan. Mr. Cortes asked Commission members if they believed that changes to the neighborhood plans reflected the events of the February meeting.

Mr. Azar said it was his impression that the hotel use was not prohibited. Mr. Durkee read the motion that was made at the February meeting, which modified the neighborhood plans to prohibit residential uses and permit other W-2 uses. He said that the plans were already approved. Mr. Principe said that the meaning of residential use was up to interpretation. Mr. Principe moved the motion initially proposed at the February meeting. The motion read, "That the Providence Planning Department revise wording of the CH/W/FP neighborhood plan and the Waterfront Plan in ALL instances referencing zoning of Parcel 10, "Shooters," in Fox Point so that the two plans are consistent in prohibiting residential uses for Parcel 10, while allowing other W-2 uses." Mr. Bilodeau seconded. Mr. Principe stated he did not believe that the manner in which the motion was proposed at the February meeting was inappropriate. Mr. Cortes asked if Commissioners wanted to specifically exclude the hotel use. Mr. Principe said he was comfortable with the motion presented because he believed hotels were a residential use. Mr. Azar said that the motion needed to specifically address the prohibition of a hotel if that was the intent of the Commission.

Mr. Bilodeau suggested amending the DPD's proposed ordinance to include the hotel use code among the prohibited residential uses. Mr. Limiadi said he was not opposed to a hotel on the Shooters site and did not believe that the motion included hotels as a prohibited use. Mr. Principe said he was comfortable with the motion, but it could be worded to state why hotels were prohibited. Mr. Durkee said if the Commission was comfortable with the motion made in February, the motion should state that the revised plans and draft ordinance presented by the DPD be approved. A discussion ensued on possible motions.

Mr. Azar said that the matter needed to be resolved and that two votes – one on the neighborhood plans and the other on the proposed Zoning Ordinance amendment – could be taken. Mr. Durkee asked for a vote on the motion to approve the neighborhood plans initially made by Mr. Principe and seconded by Mr. Bilodeau. The motion passed with Ms. Church, Mr. Principe, Mr. Limiadi and Mr. Bilodeau voting in favor. Mr. Durkee and Ms. Patten voted against it. Mr. Cortes abstained.

Mr. Durkee asked for a motion on the draft amendment to the Zoning Ordinance to prohibit residential use on the Shooters site. Mr. Azar explained how the amendment would affect the Zoning Ordinance and suggested that the amendment be specific to prohibit uses that the Commission did not wish to see. He said that the amendment as presented by the DPD would permit larger hotels with over 30 rooms. Mr. Principe asked why large hotels would be permitted and smaller ones prohibited. Mr. Azar said that the language used was similar to what was proposed for the Jobs District, which prohibits residential use. Mr. Cortes said that hotels generated jobs and economic development and were therefore part of the Jobs District. Mr. Azar said it was more of a commercial than a residential use.

Mr. Limiadi made a motion, seconded by Mr. Cortes, to approve the amendment to the ordinance as presented by the DPD. Mr. Bilodeau asked how high a hotel of more than 30 rooms would be. Mr. Azar said the amendment would not affect the allowable height of six stories and there was guidance in the plan to preserve the view corridors and site aesthetics for development proposals that came

before the Commission. He said that the height of a building would depend on the proposal before the Commission. Mr. Principe said that a hotel should be included as a prohibited use. He said that allowing a hotel on the site could open the door for residential uses if the hotel were converted to condominium units. Mr. Principe requested Mr. Limiadi to amend his motion to include use code 16.2 – hotels with more than 30 rooms – as a prohibited use on the parcel. Mr. Limiadi agreed to the amendment.

The motion, as amended, passed 4-3 with Mr. Limiadi, Mr. Principe, Mr. Bilodeau and Ms. Church voting in favor. Mr. Durkee, Mr. Cortes and Ms. Patten voted against the motion.

Referral 3326 – Ordinance to amend the Zoning Ordinance for inclusion of a new W-4 district and to change the zoning of certain parcels from W-3 to W-4

Ms. Nickerson presented an overview of the proposed changes beginning with a history of the waterfront plan. The plan has a list of actions and proposed zoning changes that the amendment would implement. Ms. Nickerson discussed the following features and goals of the amendment:

- Retain the working waterfront. A significant portion of the waterfront is reserved for maritime use.
- Encourage a diversity of activities and users on the waterfront. Create more public access points.
- Establish design criteria for the waterfront.
- Creating economic access for residents, especially those in neighborhoods that abut the area.

Proposed zoning changes included the following:

- In Fox Point, the W-2 district will remain the same, but the zoning map will have a footnote prohibiting residential use on the Shooters parcel.
- On the eastside of Allens Avenue, the W-3 zoning designation would remain. New uses would be permitted and the requirement that all commercial activity be tied to a maritime concern would be deleted. Existing maritime uses would be provided. Additional uses like boat repair and shipbuilding, which are not permitted in the W-3 zone, would be allowed.
- Hotels are permitted, but residential uses are prohibited. Artist live work space is permitted in the W-3 and will continue in the future.
- The seven story height limit will remain constant.
- The new W-4 working waterfront protection district is proposed for the area south of Thurbers Avenue. The Waterfront Plan designates Thurbers as the dividing line between the mixed use area to the north and the industrial area to the south. No distinction currently exists between the two. The W-4 zone would make the area south of Thurbers an industrial, working waterfront protection area.
- Chapter 13 of the comprehensive plan provides a framework for implementation, which states that it is possible to proceed with zoning changes after neighborhood plans are approved.
- The DPD is involved in other initiatives like investigating opportunities like short sea shipping. The city has applied for \$40 million in TIGER (Transportation Investment Generating Economic Recovery) funds and over \$6 million in EDA (Economic Development Administration) funds to expand and modernize the port. The Allens Avenue working group has been created for business owners to meet with City leaders to discuss issues. In addition, the Port Commission has been reconstituted.

Ms. Nickerson said that the proposed Ordinance would bring the Zoning Ordinance into conformance with the Comprehensive Plan. She presented corrections made to the ordinance after being submitted to the commission. Use code 53 – storage of petroleum products – is permitted in the W-4 zone and was mistakenly left blank. The footnotes under use code 68 were corrected. Use code 77.4 is permitted and references footnote 2. Ms. Nickerson also corrected a grammatical error. Mr. Azar said that the map depicting the zoning change to W-4 should have applied to two additional areas, which were excluded because they had not been assigned lot numbers.

Public comment was taken. Sean Coffey spoke on behalf of the Working Waterfront Alliance. He read from Table 13.1 of Section 3 of the Comprehensive Plan and said that based on his interpretation, zoning changes should not be proposed until a new Comprehensive Plan had been completed and approved. Mr. Durkee said that the CPC had approved the Waterfront Plan and was reviewing an ordinance that had been submitted by the City Council. Mr. Azar pointed out to page 136 of the Comprehensive Plan, which states that amendments may be made to the Zoning Ordinance based on recommendations from neighborhood plans.

Rob Stolzman spoke on behalf of Cumberland Farms whose property is located at 338 Allens Avenue. He asked if the Zoning Ordinance is required to be in conformance with the Comprehensive Plan. Ms. Nickerson explained that the proposed Ordinance would bring the Zoning Ordinance into conformance with the Comprehensive Plan and the Land Use Map. Mr. Stolzman said it was his understanding that Plat 47 Lot 368 for Cumberland Farms would remain in the W-3 zone. He said that changes in the ordinance would eliminate certain uses. He referred to Use Code 77.4: “other materials processing, distribution and storage,” which is going to be prohibited in the W-3 zone. As that results in the removal of a permitted use, he said that the notice of the meeting was inadequate. The meeting agenda said that uses would be added, but as the ordinance showed that a use would be eliminated, the notice was inadequate. He said that the proposed ordinance was not in conformance with the Comprehensive Plan. Mr. Azar asked if there was a precedent for Mr. Stolzman’s claim. Mr. Stolzman said that there were cases relating to meeting notices.

Mr. Thomas Moses spoke on behalf of Rhode Island Recycling. He said he supported Mr. Stolzman and recommended continuation of the matter. He said that his client has an option to purchase a property and obtained a zoning certificate and a permit from the board of licenses. He said that the proposed ordinance would prevent his clients from conducting their business as it would take away the recycling option under the W-3 zone through deletion of Use Code 77.4. He said an argument could be made for a taking if the rezoning went through. He urged the commission to cease activities related to his client’s parcel.

Mr. Andrew Teitz spoke on behalf of the Working Waterfront Alliance. He said he agreed with the previous speakers and that the proposed rezoning is inconsistent with the comprehensive plan. He said that the new Comprehensive Plan is supposed to deal with overarching themes of jobs, the environment, sustainability and protecting the neighborhood. He said that the proposed ordinance violates all three objectives.

He submitted a survey showing 863 maritime related jobs along Allens Avenue. He said that the proposed ordinance would endanger fuel oil dealers who depend on the Sprague terminal. The ordinance violates the jobs aspect of the Comprehensive Plan by putting their positions in jeopardy.

He submitted a copy of the Waterfront Protection and Management Overview by Ninigret partners presented at the Waterfront charrette that outlines different scenarios. The report said that mixed use could be provided with the aid of visual buffers. But the ordinance makes no mention of any

dimensional changes and only includes changes in use. As the dimensional protections of buffers were ignored, it violates the environmental aspect of the Comprehensive Plan.

Mr. Teitz said that the proposed Ordinance violated the Comprehensive Plan's objective of protecting neighborhoods. He presented the Providence Working Waterfront Assessment and Recommendations report by the Horsley Witten Group. He said that the speakers at the charrette said that industrial uses need to be protected or they will be driven out. He said that the northern part of Allens Avenue, which is not part of the W-4 waterfront protection zone, is vulnerable because of the potential for mixed use. He said there was a possible case for violation of equal protection as the ordinance would give an unfair advantage to the city port and endanger businesses on the northern portion of Allens Avenue. The city using its zoning power to empower the city port would be a violation of equal protection.

Mr. Teitz stated that the Zoning Ordinance says that industrial uses would be protected via covenant. He submitted a transcript of the testimony of Patrick Conley and Erik Bright before the department of environmental management where Bright testified against the issuance of a license to Teitz' client (did not specify whom). He said that the argument for covenants was fallacious because testimony was presented against an industrial use. He said the city is not protecting the waterfront neighborhood as required by the comprehensive plan.

Teitz submitted the approval letter from the State detailing the consistency of the Comprehensive Plan with the State Guide Plan, which had comments and recommendations. On page 5 of the handout, comment No. 2 dealt with the Port of Providence. It inquires why the area along the Allens Avenue waterfront was not included as part of the Port of Providence as required by the State Guide Plan.

Teitz went on to speak about the inconsistency with the State Guide Plan elements referring to Type 6 waters and the Comprehensive Plan.

"The Waterfront Element" section of the letter talks about designating a jobs district with no residential uses permitted which would act as a transition between heavier port uses and other areas like Downtown to the North and residential to the west. According to Teitz, Providence Tomorrow has received conditional approval from the State. This requires that the Comprehensive Plan be consistent with the waterfront uses by preserving heavy industrial uses intended for Type 6 waters along the Waterfront. Without the protection of industrial use, the plan is invalid. By taking away maritime uses in the W-3 and adding the hotel use, the proposed Ordinance is inconsistent with the Comprehensive Plan per the conditions imposed by the State.

Mr. Teitz presented an email from Coastal Resources Management Council (CRMC) with comments about the draft Waterfront plan from November 30, 2009. The letter talks about the plan proposing retail, restaurants and hotels. The letter says that there are other options for locating these uses. These uses would be inappropriate for Type 6 waters, which are meant for industrial, priority commercial uses as detailed in Coastal Resources Management Plan (CRMP) section 200.6 C. Residential uses would have to be incorporated into a water-dependent commercial or industrial marine use to be consistent with the priority uses outlined in Section 200.6.

Mr. Teitz said that the Waterfront portion of the Comprehensive Plan is not consistent with the CRMP and the State Guide Plan. Amending the zoning would be inconsistent with the State's recommendations. He said that these inconsistencies require that the proposed ordinance be tabled.

Mr. Durkee asked for a motion to continue the item given the issue with the notice. Ms. Patten made a motion seconded by Mr. Bilodeau to continue the item. All voted in favor.

Referral 3327 – Petition to change the Zoning of Lot 892 on Assessor’s Plat 80 from R-2 to C-2

Mr. Azar introduced the proposed rezoning requested by Mr. Azarig Kooloian. He said that the proposal was in conformance with the Comprehensive Plan and recommended that the CPC make a positive recommendation to the City Council.

Mr. Bilodeau made a motion seconded by Ms. Patten to make a positive recommendation to approve the proposed rezoning subject to the findings of fact made in the DPD’s staff report. All voted in favor.

Referral 3325 – Petition to change the zoning of Lots 340 and 352 on Assessor’s Plat 26 from R-G to C-2

Mr. Azar introduced the proposal. The lots in question contain a building in an R-G zone used for a medical supply business. He said that it would be appropriate to rezone the property as it was located opposite a C-2 zone. Ms. Church asked if the property had been previously rezoned from a commercial use. Mr. Azar said that the change probably occurred decades ago. Mr. Principe asked if the rezoning was required for a restaurant. Mr. Azar said that as a nonconforming use, the petitioner could operate a business within the same use code. Changing the use to a restaurant would require a rezoning or a variance. Mr. Principe asked if the R-G zone was similar to the R-P zone. Mr. Azar said they were different as R-G was meant for residential use. Mr. Principe asked about other uses that could occur in a C-2 zone. Mr. Azar said that neighborhood commercial uses, restaurants and retail were allowed in the C-2 zones.

Mr. Cortes made a motion seconded by Ms. Church to make a positive recommendation on the rezoning subject to the findings of fact in the DPD’s staff report. All voted in favor.

Mr. Cortes made a motion to adjourn the meeting, seconded by Mr. Principe. All voted in favor.

The meeting adjourned at 6:25 pm.

Respectfully submitted,



Choyon Manjrekar
Recording Secretary