

**CITY OF NEW BRUNSWICK
PLANNING BOARD
OCTOBER 14, 2014
MINUTES
7:30 p.m.**

I. ROLL CALL

X	Suzanne Ludwig
X	Linda Hunter
X	David Fitzhenry
x	Joseph Catanese
X	Carly Neubauer
X	Clary Barber (Class I)
	Kevin Jones (Class II)
	Betsy Garlatti (Class III)
X	Josepha Rojas(Alternate #1)
X	Andy Kaplan (Alternate #2)

Staff Attending:

x	Board Attorney Aravind Aithal
x	Board Secretary/Director of Planning Glenn Patterson
x	Principal Planner Mark Siegle
	Board Planner Henry Bignell
x	Board Planner Todd Bletcher
	Board Engineer Tom Guldin
	Conflict Engineer Chas. Carlie

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)

III. SALUTE TO THE FLAG

IV. APPOINTMENT OF SUBSTITUTE BOARD ATTORNEY

Mr. Patterson discussed that Board Attorney Bucca had opted to not act as Board Attorney on the 17 Mine Street application to avoid creating a potential appeal issue related to the filing of an ethics complaint. Mr. Patterson stated that Aravind Aithal, the Zoning Board attorney had agreed to serve as substitute

counsel to the Planning Board. Mr. Aithal is familiar with the City’s zoning and planning documents and is familiar with working with the professional staff.

Mr. Patterson suggested that the Board memorialize Mr. Aithal’s appearance as substitute board counsel through adoption of a resolution so that it is clearly documented that the Planning Board accepts him in this role.

Motion to accept Aravind Aithal, Esq. as substitute board counsel related to the 17 Mine Street application: Fitzhenry

Second: Barber

	Yes	No	Abstain
Suzanne Ludwig	X		
Linda Hunter	X		
David Fitzhenry	X		
Joseph Catanese	X		
Carly Neubauer	X		
Clary Barber (Class I)	X		
Kevin Jones (Class II)			
Betsy Garlatti (Class III)			
Josepha Rojas(Alternate #1)	X		
Andy Kaplan (Alternate #2)	x		

IV. MINUTES OF THE BOARDS SEPTEMBER 9, 2014 MEETING

Motion to Approve: Hunter

Second: Kaplan

Approved by unanimous voice vote

V. COMMUNICATIONS AND REPORTS

Resolutions of Memorialization

A. None.

VI. OLD BUSINESS

A. CONSTRUCTION MANAGEMENT ASSOCIATES, PB-2013-25, Site plan and variance application for the construction of a residential building located at 17 Mine Street, Block 71 Lot: 4.01, Zoning District: R-5A and Redevelopment Area 2

Chairman Ludwig discussed the order of business for the application.

Mr. Kaplan discussed that he was a Rutgers employee and did not feel there was a conflict with his participation in this application. Mr. Aithal said his situation did not appear to meet the test for a conflict and cited the Marlboro Manor case and its standard. Mr. Aithal said that as Rutgers is not the applicant or owner of the property, Mr. Kaplan doesn't have a direct or indirect outcome in this application, but the Board may wish to discuss this and the objector attorney or applicant attorney may ask questions of Mr. Kaplan on this issue.

Mr. Kelso (applicant's attorney) stated that the applicant recognizes that Mr. Bucca has elected not to proceed as attorney and that this is related to his Rutgers employment but as Rutgers is not applicant or owner, he does not believe there is a conflict. Rutgers owning property within 200 ft does not create a conflict.

Peter McArthur, the objector's attorney, representing the owners at 13 and 15 Mine Street. He cited the *Wyzykowski v. Rizas* 132 NJ 509, which cites a 4 part test for conflict. He believes the indirect personal interest applies and that there is a conflict as there is a relationship with Rutgers.

Mr. Kelso responded that the Seminary has no relationship to Rutgers and Rutgers is not an applicant or owner. Mr. Aithal agreed with this.

Mr. Fitzhenry asked if a Board decision would be jeopardized if Mr. Kaplan participated. Mr. Aithal said he couldn't answer that but that he didn't feel it was a conflict.

Mr. Kaplan decided to recuse himself though he didn't feel he had a conflict. He stated wanted to avoid an appeal issue would therefore step aside. Mr. Kaplan then left the meeting room.

Chairman Ludwig asked if there were other jurisdictional issues.

Mr. McArthur began to reference an NJDEP letter. Mr. Kelso objected as he had not seen the letter. Mr. Aithal said the contents of the letter could not be entered but he could state the objection. Mr. McArthur said the property was eligible to be listed on the historic register. Mr. Kelso stated that the property is privately owned and historic review doesn't apply. Mr. Kelso stated that the law did not allow a property to be placed on the historic register without the owner's consent and the owner did not consent.

Jennifer O'Neil of 15 Mine Street was sworn into read the letter date August 8, 2014 from NJDEP. The Board was instructed to not consider the letter by Mr. Aithal. Mr. McArthur said the letter was an exception to the hearsay rule and would be acceptable in a court of law.

McArthur's 2nd objection was that the Board did not have jurisdiction as the use is not permitted. He said Section 5d makes the redevelopment zone an overlay zone and there was no notice of a zone boundary change.

The 3rd objection is that Devco formed a subsidiary for this project and then sold its development rights to the applicant. He referred to the Wyzykowski tests again. As Mr. Bucca is the Rutgers tennis coach, he accepted a donation to the Rutgers tennis team from Devco's Chris Paladino and has an indirect personal interest. Mr. Bucca's recusal is not sufficient, as the Board has been irretrievably tainted by his participation. Mr. Bucca is also Facebook friends with Paladino and "likes" Devco. McArthur cited the Kane Properties case regarding a municipal attorney recusal. The standard cited is whether an appearance of impropriety was created. The Court said the incomplete recusal in Hoboken irretrievably tainted the process even though the attorney didn't participate in the hearing. After reviewing the earlier records, his client felt Bucca was siding with the applicant. Mr. Bucca asked the applicant's planner questions as if the planner was his witness. The taint with this Board is irretrievable and the application needs to start over with a new board.

Charles Kratovil stated there were other conflicts of interest present on the board. The board has not been adequately constituted, as there is no environmental commissioner on the board who attends environmental commission meetings. He also said that Chairman Ludwig was a Democratic committee person and Kelso is the executive director of the New Brunswick Democratic Organization and it is therefore a conflict. He also said Mr. Aithal's employment represents a conflict as he works for Bob Smith and Associates, where the name partner is a Democratic State Senator.

Bruce Newling felt that Mr. Bucca has acted as the Board chairman, not Board attorney in previous hearings and he feels this taints the Planning Board for this application.

Elizabeth Ciccone addressed the NJDEP certification of eligibility letter for historic designation. When you receive such certification, it triggers a Section 106 review and this gives the State and Federal government jurisdiction.

Kevin O'Neil stated that he felt this application was a use variance that should be heard by the Zoning Board.

Mr. Fitzhenry asked if the area was in the R-5 or IN-1 zone. Mr. Patterson stated that the redevelopment plan placed the site in the IN-1 zone and that low- and mid-rise housing was a permitted use in the redevelopment plan district.

Mr. Aithal asked how the NJDEP letter was a public record. Mr. McArthur stated that it was on NJDEP letterhead and signed by a NJDEP employee. Mr. Aithal advised that the letter was not maintained by a public agency and therefore did

not fall within the hearsay exception. The rules of evidence are more relaxed here though. He stated that the letter does not say the Board does not have jurisdiction and there have been no experts presented to state that it does.

Mr. Aithal asked if each issue could be addressed separately starting with the NJDEP letter. Mr. Fitzhenry said that he thought the Board was instructed to not consider the letter. Mr. Kelso said that if everything in the letter was correct, there is nothing that would affect the Board’s jurisdiction.

NJDEP letter - Motion to proceed with the hearing: Catanese
Second: Hunter

	Yes	No	Abstain
Suzanne Ludwig	X		
Linda Hunter	X		
David Fitzhenry	X		
Joseph Catanese	X		
Carly Neubauer	X		
Clary Barber (Class I)	X		
Kevin Jones (Class II)			
Betsy Garlatti (Class III)			
Josepha Rojas(Alternate #1)	X		
Andy Kaplan (Alternate #2)			

Second objection as to a use variance’s existence. Mr. Aithal said that Mr. Patterson said that the use was permitted under the redevelopment plan.

Motion to proceed with the application: Catanese
Second: Barber

	Yes	No	Abstain
Suzanne Ludwig	X		
Linda Hunter	X		
David Fitzhenry	X		
Joseph Catanese	X		
Carly Neubauer	X		
Clary Barber (Class I)	X		
Kevin Jones (Class II)			

Betsy Garlatti (Class III)			
Josepha Rojas(Alternate #1)	X		
Andy Kaplan (Alternate #2)			

3rd objection regarding the taint of Mr. Bucca’s prior participation. Mr. Aithal asked if Mr. Kelso was going to start the hearing anew on this application tonight. Kelso said he will be doing this. Kelso felt the allegations had nothing to do with the applicant’s standing before this board. There is no taint from Mr. Bucca’s participation with this hearing. Mr. Aithal stated that the Kane case cited by McArthur discussed Kane’s involvement in discussing an appeal to the governing body including drafting a procedural guide. There was a continuing taint in that case. The distinction here is that the case is beginning anew and Mr. Bucca would have to participate in the ultimate conclusion of the case to create a continuing taint, which is not the case here. The Kane case is not applicable as Mr. Bucca is not here tonight.

Motion to proceed as Board not tainted: Fitzhenry
 Second: Neubauer

	Yes	No	Abstain
Suzanne Ludwig	X		
Linda Hunter	X		
David Fitzhenry	X		
Joseph Catanese	X		
Carly Neubauer	X		
Clary Barber (Class I)	X		
Kevin Jones (Class II)			
Betsy Garlatti (Class III)			
Josepha Rojas(Alternate #1)	X		
Andy Kaplan (Alternate #2)			

4th jurisdictional issue of Mr. Kelso’s and Ms. Ludwig’s Democratic Committee involvement. Mr. Aithal cited a quote from Oliver Wendell Holmes about relationships not always being conflicts. The affiliation has to be more than just belonging to the same organization. This applies to the issue brought up about his (Aithal’s) employer also.

Motion to continue: Fitzhenry
 Second: Hunter

	Yes	No	Abstain
Suzanne Ludwig	X		

Linda Hunter	X		
David Fitzhenry	X		
Joseph Catanese	X		
Carly Neubauer	X		
Clary Barber (Class I)	X		
Kevin Jones (Class II)			
Betsy Garlatti (Class III)			
Josepha Rojas(Alternate #1)	X		
Andy Kaplan (Alternate #2)			

Mr. Aithal asked if a board member was a member of the Environmental Commission. Ms. Neubauer said she was.

Mr. McArthur objected that the hearing was noticed as a continuing hearing. Mr. Kelso said that it was not. Mr. Aithal read the notice and asked if McArthur if he could point to the wording about a continuation as he could not see any. McArthur said he did not have the letter in front of him. Aithal and Kelso read parts of the letter. Aithal advised that the Board that it should proceed with the hearing.

Ludwig stated the order of presentation and that new testimony would not be taken after 10:30 PM.

A 5 minute break was then taken.

Tom Kelso, Esq. – the applicant is seeking site plan and variance approval for a project with 52 residential units and 43 underground parking spaces. The applicant is the designated redeveloper in the College Avenue Redevelopment Area and it is a permitted use. One variance is requested for parking, where 96 spaces are required and 43 spaces are provided.

Mitchell Broder, Principal – His firm had been undertaking projects for over 20 years. They were named as redeveloper for this project to provide replacement housing for the New Brunswick Seminary seminarians for 10 units on the first floor with the additional 42 units available for general occupancy. The units will have modern conveniences and appointments. Parking will be concealed underground, which is safer and more aesthetic. The parking ratio is similar to that at other projects they have developed in the area and which have worked successfully. The project is near transit facilities and will have bike facilities to reduce the need to have a vehicle. This applies particularly to Seminary and Rutgers students who rent here. They will forfeit access to on-street resident

permit parking. Parking on-site will be regulated by hang tags and towing. The storm water and water systems will be upgraded to the benefit to the entire community. The project has had significant changes since the project was originally presented.

The project façade has been changed to be a more traditional residential look with dormers and other features. The front of the building is lowered from 4 to 3 stories. The transformer pad variance has been eliminated. All other aspects of the plan are in compliance with zoning standards. The number of units have been reduced by 5 units. They have reached an agreement with Enterprise Car Share to provide for shared parking at the building. They will pay the Enterprise Car Share fee for all residents who agree to not have a car at the project.

The project will generate \$130,000 in tax revenue compared to its previous tax exempt status.

Steven Schoch, Architect

Mr. Schoch reviewed his credentials including his NJ license and licensure in 16 other states. He is a principal of his firm and has presented multiple times in front of this board. The Chair accepted him as an expert in architecture.

A-1 Aerial Photo of Neighborhood

A-2 Neighboring Property Photos

A-3 Neighborhood Mine Street Property Photos

Some of the properties are multifamily and fraternities.

A-4 Rendered Site Plan

The two former lots have been consolidated and the proposed building setbacks conform to the zoning standards.

A-5 Rendered Building Perspective (View 1)

A-6 Former Rendered Building Perspective (View 1)

The comparison illustrates the reduction of mass and introduction of architectural element. The old style was a contemporary design. In response to comments made by the public they looked where significant impacts could be made. The building is still four stories, but the four story height is set back from the front and the new design is more in keeping with other nearby buildings.

Both corners have been setback farther and softened. The electrical transformer is set back further.

There are Colonial brick elements and mansard dormers that mimic some of the adjacent styles.

A-7 Rendered Building Perspective (View 2)

A-8 Old Rendered Building Perspective (View 2)

The façade materials create different building segments to evoke the imagery of townhomes. The first floor is entranced in the middle of the building and will be used by the seminarians. Other residents use a separate entrance that is elevated. The entire building is handicapped accessible.

The building footprint is “H” shaped to provide more perimeter skin for sun and light and reduce the shadowing of the building.

11 units are studios, 28 are 1BR and 14 are 2BR units. Trash is handled via a trash chute and trash room. The trash room is accessed through a door on the front that looks like a residential garage door. Private pick up will be used and trash will remain inside until picked up.

The parking garage will hold 43 cars and will be non-gated, which is similar to other underground parking in the area. The building is fully fire suppressed and there are on-site security cameras.

The building meets all of the bulk standards. Many of the prior comments dealt with the contemporary design and its compatibility. The redevelopment plan intends for there to be more dense development on the site. The plan calls for using design elements to make larger buildings compatible. The design draws from local references to do this.

The design guidelines seek to make the building pedestrian compatible. The pushing back of the 4th floor does this and makes the building more pedestrian compatible.

The plan also suggests using stepped designs, which this plan does. It also uses building design elements that are prevalent in the area.

The design guidelines call for large horizontal buildings to be broken down into bays, which this building does. It is also wall dominated rather than roof dominated as suggested by the guidelines. Windows are used to create human scale per the guidelines. The guidelines also notes that perceived heights are important in relation to adjacent building heights, which this design does.

Edward Bogan, Engineer

He holds a BA in Civil Eng and Masters Degree in Planning. He is a licensed engineer in two states and has worked for municipal governments and in the private sector. He has designed projects for the applicant for about 10 years. He was accepted by the Chair as an expert in engineering.

A-9 Existing Conditions Plan (Sheet 2 of 12)

The 3 existing structures on the site are shown. The property is 130 feet wide and 200 feet deep.

Referencing A-1, he described the location of the building on the site. The site topography moves towards College Avenue. He reviewed how the building design meets the zoning bulk standards.

On-site stormwater detention is provided through an underground system that meets State and local standards. New stormwater pipes will be constructed. An undersized 6" water line in Mine to College Avenue will be replaced with an 8" line by the developer. Additionally, the sanitary lines will be tv'd to determine if any repairs are needed.

The Planner's Report discusses the lack of foundation planting, but it will be difficult to maintain landscaping in these areas and they would have little impact. Landscaping has been focused on the front and rear. A waiver is requested regarding the foundation landscaping.

The front curb cut is 34 feet, with 10 feet of that devoted to access to the trash room.

Sheet 3 of 4 (Site Plan) shows the 24 ft wide driveway that accesses the underground parking. The two elevators are shown. The 24 ft width is a waiver request. The width is adequate for residential use and is typical for such residential designs. The garage will typically only be accessed by cars. The parking spaces are 9'x18' feet and comply with the ordinance, as does the 24 ft aisle width. The garage ceiling height is 8'2" so as to be handicapped van accessible.

The applicant will address and comply with all of the comments made by Board Engineer Guldin in his August memo.

Fitzhenry – how is stormwater to be handled. Bogan – there is an underground detention basin designed for a 100 yr storm that will gradually release stormwater.

Bletcher – submit a drawing of how a trash vehicle will access the trash room out of the vehicle travel way. Bogan said this was not possible but that trash would be picked up at off hours. This is typical of how trash is picked up in this area. Mr. Bletcher said his concern was about traffic on Mine St being blocked. Mr. Bogan said the trash container can be pulled out to Mine Street so the truck can be parallel in Mine Street and does not need to back in.

Rojas – asked about the doorway and stair locations related to move-in. Mr. Bogan pointed them out on the plan. Mr. Schoch stated the main entrance is in the front. The rear and side doors are emergency entrances. Move-in happens through the front lobby and uses the elevator.

Charles Olivo – Traffic Engineer

He is a civil engineer with a concentration in traffic engineering. He has a BA from Notre Dame and is a licensed engineer in NJ and throughout the east coast. He is also a licensed traffic engineer. He serves several towns as a traffic engineer and has testified on many plans like this. Chairman Ludwig accepted his credentials as a traffic expert.

Referring to the A-1 aerial photo he oriented the project with the circulation system. The area has a street grid and sidewalk system that provides circulation. The site is near the Seminary. The site is about a 7 minute walk to the College Ave campus and about 11 minutes from downtown. It is also near the train station and several bus lines (less than 10 minute walk). This is the context in which the parking variance is discussed.

The building will have one full access driveway for the 52 units. 43 parking spaces are provided. Residents enter the driveway with their car and enter the parking deck, which has .8 spaces per unit. This is sufficient given the alternative transportation in the area.

Census data shows that 43% of New Brunswick residents do not use single-occupancy vehicles for journey-to-work. This shows many residents are less car dependent and allow for a variance from the RSIS standards. A more relaxed parking standard can be used for the project. Table 4.4 in the RSIS standards provides parking standards, which would generate requirement for 96 spaces. But RSIS allows for alternative parking standards where alternate transportation is in proximity to the site.

They did a trip generation analysis for the project. It expects less than 50 peak hour trips. NJDOT looks at 100 peak hour trips as having a significant impact. This project is about half that standard.

If 96 parking spaces were built, it sends a message to residents that cars are preferred and encourages car use. This may effectively increase trip generation into and out of the site. The 43 spaces is not only adequate but helps bolster the use of mass transit, cycling and walking. Additionally, an Enterprise Car Share spot will be provided and studies show this reduces car ownership significantly.

The ITE published a study showing that residential projects in areas with good transit access can have a parking ratio of .5.

Additionally, the City has well developed parking rules, including consolidate parking garage areas so that residents can unbundle residence and parking. The ability to rent from the parking authority provides options to residents.

The parking provided on-site is adequate because of the project's location near good transit. The traffic from the project will be lessened by having less parking

spaces. From a balancing perspective, the project strikes an excellent balance for parking to be provided.

Neubauer – What is the maximum number of occupants?

Patterson said that the applicant had previously volunteered to limit occupancy to two persons per bedroom, which would be 66 bedrooms with total occupancy of 132 persons.

Olivo stated that the applicant would also waive rights to on-street parking permits.

He added that parking is also self-regulating, in that if there are no spaces, residents will tend to not bring cars to the project. His opinion is that the parking provided adequately supplies parking for the project.

Hunter – did he look at existing parking in the area?

Olivo – Yes. The area has tight parking now, but the developer is waiving rights to on-street parking and providing adequate off-street parking.

Keenan Hughes, Planner

He is a licensed professional planner in NJ. He is a member of AICP and is LEED certified. He has a planning degree from Pratt Institute and has been accepted as an expert by over 40 municipal boards including New Brunswick and works in the private sector. Chairman Ludwig accepted his credentials.

A-10 ½ Mile Planning Context Map

The map identifies the walking and transit access in the neighborhood, including proximity to the Rutgers campus, Seminary, train station and employers. The neighborhood is oriented to the university. There are only 3 owner-occupied properties on Mine Street, with 29 occupied by Rutgers or Rutgers students. The site is an ideal location for seminary and student housing.

The redevelopment plan emphasizes using space near the campus efficiently to support the university uses. The project is consistent with the plan's vision. The project proposes housing for seminarians and primarily students.

The master plan re-exam report supports these kind of uses. It cites the old housing in the campus area as being inadequate. The project is consistent with the master plan and planning board vision for the area.

The plan calls for bike and car share facilities on-site.

The building design elements are harmonious with the redevelopment plan design guidelines, including the mansard roof step back. The texture and depth of the façade break up the mass of the building. It is consistent with the design guidelines.

Regarding historic preservation he hasn't had the opportunity to review the NJDEP letter but it National Register listing provides no protections of historic properties.

The RSIS suburban parking standards that apply statewide call for 96 parking spaces. Hughes said that Patterson had previously said that the City didn't have a choice but to use the RSIS standard. But the RSIS allows for changes from the standards if there are alternative to using cars. NJDCA sent a letter to the City stating that the City had great flexibility in approving parking standards.

The neighborhood was developed as 1- and 2-family housing and adequate off-street parking is not offered in many of these older houses. The reexam report addressed that parking standards needed to address realistic standards and suggested a 1:1 unit to space requirement. The project proposes parking similar to this. The campus is nearby, as is the seminary. Buses run on Easton and College Avenue. Car share is available at the Gateway Deck and the train station is nearby. The site can support lower parking standards than the RSIS standard.

Car share will be offered on-site and at the Gateway Deck. This is a parking demand reduction strategy. In Montclair, a reduction of 6 spaces were allowed for each shared car. The university setting should have a greater impact from car share. The applicant is also offering to pay for car share membership of residents do not bring cars.

Several projects are currently successfully operating at similar parking ratios or less including 6 and 66 Sicard. At the recently opened 100 Hamilton with 31 units, the parking demand was for only 22 parking spaces from tenants.

There is no detriment to the neighborhood from the parking variance as the parking provided is adequate. Cruising for a parking space is eliminated, which reduces traffic in the neighborhood. The project will generate less traffic than most projects, encourages a walkable environment and promotes purpose A of the MLUL, as well as purpose E, purpose G and purpose H.

There is adequate parking and from a policy standpoint, providing excess parking would be contrary to the vision for the area for creating a walkable, transit-oriented neighborhood.

Less on-street parking will occur from the project. The reduced parking supply will reduce trips to and from the project. There is no substantial detriment to the public good.

Experience shows that parking ratios of less than 1:1 have worked and that these projects have been developed since the re-exam report was prepared and if the re-exam report were done today, it might recommend a lesser standard.

There is no substantial impairment to the zone plan.

Flexibility from RSIS standards is supported at this location with these facilities. The benefits clearly outweigh the detriments and the parking variance can be justified on a C2 basis.

Mr. Catanese moved to adjourn the meeting at approximately 10:45 PM and Mr. Fitzhenry seconded. Mr. Patterson announced that the hearing would be continued on November 18, 2014 at 75 Bayard Street at 7:30 PM. No additional notice is. The board voted unanimously to adjourn and continue the hearing on November 18.