

**CITY OF NEW BRUNSWICK
PLANNING BOARD
MARCH 10TH, 2015
MINTUTES
7:30 p.m.**

I. ROLL CALL

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

Staff Attending:

X	Board Attorney AravindAithal
X	Board Secretary/Director of Planning Glenn Patterson
X	Principal Planner Mark Siegle
	Board Planner Henry Bignell
X	Board Planner Todd Bletcher
X	Board Engineer Tom Guldin
	Conflict Engineer Chas. Carley

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)

III. SALUTE TO THE FLAG

IV. MINUTES OF THE BOARDS FEBRUARY 26TH, 2015 MEETING

Motion to approve the minutes: Stellatella

Second: Barber

Approved by unanimous voice vote

V. COMMUNICATIONS AND REPORTS
Resolutions of Memorialization

A. DAVID NAIM ABISLEIMAN, PB-2014-11 , Site plan and variance application for the construction of a mixed use building located at 50 Easton, Block 49, Lot 30.01, Zoning District: C-4

Motion to Approve: Barber
 Second: Crum

	YES	NO
Suzanne Ludwig	X	
Linda Hunter		
David Fitzhenry		
Joseph Catanese		
Jeff Crum	X	
Carly Neubauer	X	
Clary Barber (Class I)	X	
Chris Stellatella (Class II)	X	
Betsy Garlatti (Class III)		
Josepha Rojas(Alternate #1)		
Andy Kaplan (Alternate #2)		

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

Mr. MacArthur asked jurisdictionally about whether there was a D5 variance, based on Mr. Gemma's testimony.

Mr. Aithal said his recollection was that Mr. MacArthur had previously brought up his objections before and they had been addressed. The Chair said the board would proceed. Mr. MacArthur said he would bring the issue up in his closing.

Public Comment Continued:

Elizabeth Cicconne, Welton Street:

She stated her background in historic preservation. She said the DEP's certificate of eligibility grants the same protections as the granting of historic designation and that a Section 106 review would be required. It protects any public work that impact a historically eligible project. She stated that the applicant is a public entity and are covered by the regulations. Further, the local permitting would also trigger the Section 106 review. She said this situation was similar to the situation with her house when the City did sewer work near her historic home.

The issue of parking variance has not been made clear as the number of spots and persons to live in the units seem to change. She feels the building should have 96 parking spaces. The applicant wants 43 spaces, with some spaces dedicated to handicapped-only use and another to car share. She feels this will negatively impact the historic district. She wants at least 1 space per unit.

She feels the application should be rejected and the parking variance should be denied.

Jeanne Fox, New York Ave.

She has been a long-time resident and has watched the city improve. The applicant has made promises that he can't perform. 96 parking spaces should be required. There is no visitor parking provided. The area is already crowded. The waiver of resident parking permits means you will have no place to put your car. Tenants will try to park in non-permit parking areas and this will be a detriment. It will hurt the businesses on Easton Avenue, such as Evelyn's Restaurant. The parking variance is not justified.

Charlie Kratovil,

He says he agrees with the previous comments made tonight. He asked when was the EIS completed. Mr. Kelso said it was submitted December 31, 201. Mr. Kratovil commented that the application was submitted a year earlier. Why was the EIS not done at the time of application? Mr. Patterson explained that it was an oversight and that he had discussed this at a previous meeting.

Mr. Kratovil said the EIS did not discuss the environment and focused on history. He questioned the credentials of the author of the EIS and asked why EIS statements had not been presented on other projects. He feels the EIS is not sufficient in detail and was prepared hurriedly.

Mr. Kratovil presented a brochure entitled "The Future Starts Here" that discusses development in the College Avenue area. Mr. Kratovil asked to submit this as evidence. Mr. Kelso objected to this. Mr. Catanese said the Devco involvement issue had been previously dealt with and they are not involved in the project.

Mr. Kratovil asked to submit a document that showed Mayor Cahill with his campaign treasurer Mr. Catanese. Mr. Catanese said he had previously put on the public record that he is the treasurer and that it was found to not be a conflict.

Mr. Kratovil asked the board to not approve the application as it would exacerbate problems cited in the master plan, such as the lack of homeownership. The homeowners on this block are all opposed to the project. No one has said this plot of land should not be built on but have raised concerns about the project. He feels tenants will have at least one car in each unit and will have visitors. The on-street parking is at capacity. He said the developer didn't know what the parking demand would be and they should provide the required parking. He said that residents need a car to do activities such as grocery shop. The public transport system in New Brunswick is subpar. Other projects that are closer to the train station have been appropriately granted parking variances but this one should not be granted as it is farther away from the train station.

He asked if 76 Louis Street, build by CMA, if it was age-restricted housing currently? The Chair asked him to keep his comments about 17 Mine. He said this was about the developer's ability to keep promises. Mr. Kelso objected to the question as not relevant to the application. Mr. Aithal stated that this time was for public comment, not cross-examination of witnesses. The Chair said the time for questions to witnesses had passed.

Mr. Kratovil said the Board had made a comedy of errors including having the original attorney who was a Rutgers employee. Board members said Mr. Kratovil had previously raised these issues and should move onto new topics.

Mr. Kratovil said the attorneys had not been sworn in and Mr. Kelso had introduced fact testimony, such as the undisclosed Seminary contract with CMA. Mr. Kelso said that he represented as an officer of the court that the agreement exists.

Mr. Kratovil asked if statements of fact by the applicant attorney are appropriate? Mr. Aithal said the attorneys are bound by court rules to be truthful and they can put facts on the record.

Mr. Kratovil commented he wanted to know how long the Seminary rental housing deal with CMA is for? Mr. Kelso represented that it was a 15-year initial deal with options to extend.

Mr. Kratovil distributed a form from NJELEC. Mr. Kelso objected to the relevance of the form. Mr. Kratovil said it showed payments by the applicant and Mr. Kelso to the NB Democratic Organization and the other page showed payments to three of the board members from the NB Democrats. Mr. Aithal said he did not see this as relevant. Mr. Kratovil asked to submit this into evidence. Mr. Kelso said he didn't object as it is a public document and people are allowed to contribute to campaigns. It was entered as O-26. Kelso reiterated that it was irrelevant to the application.

Mr. Kratovil said he thought the pre-October testimony should not have been thrown out. He was concerned that another member of the public was not allowed to talk about general corruption in New Brunswick.

Mr. Kratovil distributed deeds from Killington, Vt. from 1981 related to former mayor John Lynch and Mr. Kelso. Mr. Kelso objected to the document. The Chair said this was irrelevant to the 17 Mine application and asked him to move on with his comments. Mr. Aithal said he did not see the relevance to the application.

Mr. Kratovil said the Board is to decide on the parking variance and the testimony on record has not supported it. He said the car share plan is just a promise and is overstated about its impact. The developer should be asked if any of his buildings have maxed out on parking for the residents. He said the plan is profit motivated. He asked the three members who were paid by the NBDO to recuse themselves.

Public comment was closed.

Mr. MacArthur was asked to summarize his case. He thanked the board individually and collectively for their handling of the case.

He said he argued that a D use variance was required based on Section 5D of the redevelopment plan whether it was in the R-5A or IN-1 zone. His planner testified that a D5 variance was needed. If the Board finds the R-

5A standards are not superseded, a use variance is needed on density. The R-5A zone's purpose is to provide for medium density housing and to limit multifamily garden apartments. The density in this zone is about 10 units per acre. The redevelopment plan does not purport to supersede these density standards. The Board should read the zoning ordinance as a whole to determine the density threshold for this development.

He said Mr. Patterson said there was no density standard and FAR was used to regulate density. He said *Trust Co of NJ v Planning Board (1990)* says that courts give great deference when dealing with customary practices but that doesn't apply here. He said the bulk standards for the redevelopment area exceed those in other multifamily zones. He said the Board has not previously interpreted FAR this permissively. He said the standards for density and FAR must be read together. He said the *Randolph Town Center* case found FAR standards are normally used for commercial development and density for residential. He also said *Price v Liberty Harbor* said FAR and density have different proofs so they can't be used interchangeably.

He said impervious coverage was also a density standard not a bulk standard. He said the Board can't make an interpretation for using FAR if it is arbitrary and capricious. He said the most the Board could find is for 50 units per acre. He said a D5 was required and notice was insufficient.

He continued by stating the burden of proof is on the applicant. The applicant can't use the evidence of other applications or approvals to prove this case. The ingress driveway is a variance not a waiver. Public comment prior to October 14 should be considered. His clients did not get notice of the zoning change per the MLUL.

This application is about a parking variance and it is a substantial request. It should be denied as it is so extensive. The observations of residents trump the census data cited by the applicant. He also said it is a self-imposed hardship.

He cited *McDonald v. Koch*, where a funeral home was proposed at a busy location. It stood for when a dangerous condition is to be eliminated that is a reason for granting a variance. This is not the case here.

Lighting should have been sought as a variance. There were no proofs submitted for this. The same with the landscaping standards. Paying to the tree contribution fund is not a proof.

He said the same for the driveway standard and cited *WaWa v Ship Bottom*.

He said no evidence as to detriment to the public good as a use variance is needed. There has been no showing of other standards for traffic and safety.

He said the RSIS rules allow a waiver if there is a particular situation or hardship, but there has been no showing of that here. RSIS also allows a de minimus exception, but this is not de minimus as the parking variance is 55% of the standard. It also has standards for making a finding for an exception and this application does not meet this.

He said RSIS discusses that if no off-street parking is available then the required parking must be provided on-site. He said *Booben v Sea Isle City* supports this but it is an unreported case and he has copies. He said the case found that exceptions and waivers are different standards as only SAIB can grant the waiver and it can't be done through a de minimus exception. The letter from the RSIS is inadequate as this case supercedes it. No variance should be granted.

He feels the applicant did not carry their burden of proof.

He said Mr. Broder's testimony was vague and lacking specificity. This is not proof.

He said Mr. Schoch's testimony was there were no other buildings this big and that his building did not have federalist or Victorian elements. He said Schoch stated that no other buildings were of this shape.

He said Mr. Bogan testified he did not have answers about details of the plan and that things would be worked out later. He said Bogan also stated that if the 36' aisle was provided they would lose many parking spaces.

He said Mr. Olivo admitted Mine Street parking was at capacity. He said Olivo said car share doesn't stop residents from owning cars. He also said Olivo relied on census statistics. Even relying on census data, the parking is not sufficient.

He said Mr. Hughes' testimony was that most properties on Mine St are 2-story. Hughes further said that financial viability was not a reason for a variance under the MLUL. However, Olivo discussed financial viability. Hughes also said this would be the only apartment building on Mine

Street. Hughes also gave EIS testimony on engineering even though he is not qualified on these points. Hughes stated that the building is bigger in depth and height than other neighborhood buildings. Hughes also said the porch did not extend across the front like other homes. Hughes also said the EIS didn't take into account other permits needed, alternate designs and other items. MacArthur says the ordinance requires this. Hughes also said Olivo's report had an LOS report when it didn't.

MacArthur said Mr. Mills testified that cars often park illegally on Mine Street. Mills said that depriving people of parking is a bad way to encourage public transit use. Mills talked about how the Rutgers parking lot was being reoriented to enter/exit on Mine Street. There have been no proofs by the applicant on this point. Mills pointed out that only one floor of housing would be used for the seminary and this runs against the goals of the redevelopment plan. Mills talked about redevelopment guidelines not being met about design, setbacks and scale. Mills also stated that the design guidelines aren't met as the side elevations don't match the front. Mills said this would discourage homeownership.

Mr. Parirana stated that on-street parking would be lost due to the new fire hydrant. He talked about how his basement floods and the applicant didn't show that their building would not exacerbate this.

Mr. Litwornia testified about the unsafe design of the parking area and the insufficiency of the on-site parking. He stated that the applicant didn't support the claim that granting the parking variance was not detrimental. Litwornia had concluded about the detriments to the neighbors, that forfeiting parking variances was meaningless and change from the RSIS standards was not supported. He said that a detailed studied of the parking was needed and was not done.

Professor Drinkwater testified he had lived on Mine since the 1950's and has found historic artifacts. In order to satisfy the criteria for granting the variance you have to support the goals of zoning, one of which is supporting historic facilities. The application will degrade this historic area. Drinkwater had stated that the building did not relate to the other buildings in the neighborhood. He also noted that he hadn't been noticed properly.

Ms. O'Neil had asked about light weight construction details and could not pursue that issue. She also did not receive proper notice. She had also said that 31 Mine St was owned by Rutgers but was not included in the redevelopment area though the purpose of the redevelopment plan was to support university uses. Her exhibits showed the application to be out of

character to the existing neighborhood development. She had also talked about her property views being cut off from the rest of Mine Street and she would lose light, air and open space. She had talked about how there was no testimony as to how the sides of the building would impact the neighbors. She had also stated that the proposed building was twice the size of the brand new seminary it was supposed to serve. Further, aesthetics is a purpose of the MLUL and it is being violated per Ms. O'Neil. She had also discussed the difficulty of parking on Mine Street. She also discussed how this project, the Hillel and Rutgers project across the street were creating a perfect storm with the new driveways. MacArthur cited a case supporting that the Board could deny base on unsafe traffic patterns being created. She had talked about how cars double parked on Mine St now and this impacted emergency vehicle access. She also talked about nearness to campus not being related to having less cars.

Mr. Gemma had testified about low and mid-rise being defined in contradiction to Mr. Hughes' testimony and that any more than 25 units on the site is a use variance. He said Gemma said that the redevelopment plan did not create a new density standard. He had talked about the goals of the master plan are still in effect. He had also talked about parts of the 2004 master plan that are still in effect including development needing to be of similar density to the rest of the neighborhood. He also talked about the 2011 reexam report requiring new development to be complementary. It doesn't say build as much as you can, it says strike a balance. He had stated that the C2 standards were not supported as the positive and negative criteria were not balanced and the purposes of the MLUL were not advanced. When discussing the negative criteria the applicant failed to carry their burden. He had then discussed the design standards that discussed harmonious development and that this project was not due to design style, number of units, building design elements and other factors. He had also discussed an exemption to the design standards that was violated by the demolition of the existing buildings. He had further stated that you can't say that the application didn't have a substantial impact from the parking variance.

Ms. Beardslly had testified about cars blocking driveways, a decrease in water pressure and that the nearby grocery store was closed. Others also testified about shopping being far away and transit being inadequate. Ms. Grey had testified about public transportation being poor.

It doesn't matter how many times this developer has received previous approvals. He hasn't met the standards and the application should be denied.

Mr. Kelso summed up his case. He thanked the Board for its patience with the application.

This is a site plan application in accord with the redevelopment plan with one variance and one design waiver. The client will comply with the landscaping standard so the only waiver is the driveway width. Therefore the application comes down to the parking variance. The objectors want the board to believe the previous approvals the redevelopment plan has gone through are not relevant, but they are relevant. The objector also argues there are jurisdictional issues.

The process that got us here is relevant as it means the Board has reviewed the redevelopment plan standards before and that the City Council has taken public action to say it wanted these standards to be used by the Board. He respects but disagrees with the jurisdictional arguments.

The process that has gotten us here was a very public process. It has gone through a public redevelopment approval process. After Council approval of the standards, the project goes to the redevelopment agency for a public meeting where it was determined the CMA concept is in conformance with the plan. The objector asks you to ignore this when it was a detailed process to create the standards. Mr. Gemma says the standard shouldn't mean anything. He says this because the application complies with the standards. The project complies with the "bulk envelope" where the building is permitted. They also argue that the redevelopment plan is being interpreted wrong, despite that the redevelopment plan states that its standards supersede the zoning standards.

Mr. Gemma's argument about the parking variance discredits his credibility as he asks that the standards should be ignored and the Board should look elsewhere for reasons to deny.

The redevelopment plan has design guidelines and the Board should consider this. All of the applicant's witnesses have discussed these guidelines. The overall design concept cited on p. 19 of the plan states that while the proposed development is of a higher density than is on the campus. It recognizes that higher intensity is intended. It also talks about step backs and other standards to mitigate the density. His client's professionals have testified as to how this is being done and they have made plan changes address this. It also talks about building design elements, which his client's testimony spoke to and how it complied. The plan talks about human scale at street level and the testimony has been

about how they complied with this. Mr. Broder had testified how they changed the modern design to a more compatible design to the neighborhood.

Kelso said the EIS discussed the building height and how it was only four feet higher than the building that was on the site. The original building was only 1.5 ft off the property line where this building will be 5 feet off the line. The setback for the building complies and other buildings on Mine vary from 5 to 30 feet setbacks.

The exterior of bricks and shakes are commonly used in the neighborhood. It uses a partial mansard roof that is commonly used on Mine Street.

He said the applicant has gone to great lengths to comply with the guidelines for a project that is intended to be a higher density.

The parking variance is being justified on a C2 standard where the benefits outweigh the detriments. The parking requirement in the plan is the statewide RSIS standard. It is not a specific standard for a particular area. RSIS allows unique local conditions to be considered and the Board has great latitude to vary the standard. The City received a letter from NJDCA about RSIS parking that stated that local reviewers are intended to have great flexibility over parking if the applicant shows the alternate standards better reflect local conditions and that notice is not necessary. The applicant requires a variance but the State recognizes that the state standard has to be the standard but can be varied. Their planner admitted that the Board can vary the standard.

He reviewed the support for the parking variance: The 2012 reexam report recommended a lower parking standard than what the State standard is. While most of the units are "open market", realistically they will be rented to students primarily and the reexam report said to consider a ratio of 1:1 per unit.

Kelso said it was ironic that Litwornia said you could vary the standard but that a study has to be conducted but he cites a masters thesis that supports the applicant's position about less parking being needed. The logical conclusion is that a variance is needed but that it is justifiable. Actual experience in the neighborhood with similar projects by the applicant is available. The objector wants you to ignore this as it hurts their argument. Mr. Litwornia did not look at these projects in the neighborhood and that undermines the credibility of his testimony.

Kelso said that he challenges Gemma's testimony as he also did not look at the projects in the neighborhood.

Kelso said it is just as problematic to build too much parking. It is critical to look at what is built in the neighborhood as it is relevant.

His client has introduced the idea of car share. People are finding this relevant for those who don't own a car. It was testified to as to the parking that can be replaced by car share. They think the project works without car share but they are offering.

The giving up of the parking permits should not be laughed at as the objector does. Eliminating the permits creates a benefit for the rest of the neighborhood and it mitigates against the parking variance.

He said public transit was shown to be available in abundance near the site including Rutgers bus, bike lanes and the train station. Daily and monthly parking is available at the Gateway deck.

He said Mr. Hughes testified to the C2 balancing test and showed the benefit to the public for granting the variance. By having less parking on site there will be less traffic on Mine Street and the objectors have cited traffic on Mine Street as an issue. They can't argue for more parking and less traffic. The enclosed design for parking is a better design.

He said Hughes cited purposes of the MLUL that were advanced by the project. The project is consistent with the master plan's goal for the area. He had also opined that it would comply with the 2012 reexam report's parking goal.

The driveway width is a waiver not a variance. Mr. Bogan has testified as to how the garage will work successfully.

He said the historic district issue is a red herring. There has been no determination that there is a historic district. No properties on Mine Street are on the historic register. This is relevant in showing that the historic issue is not relevant. No Mine St property has been declared historic since the 1980 historic survey.

The applicant has rights as well.

A short recess was taken. Roll was retaken when the meeting resumed and all members were present.

Mr. Aithal gave instructions to the Board about their deliberations. He said undue hardship is not a standard for a C2 variance. He then reviewed the standards that do apply to granting a C2 variance, including details of the positive and negative criteria. He said the burden of proof rests with the applicant for the relief sought from the Board. If the Board finds the statutory requirements are not met, it must deny. He reviewed the dates of hearings that should be considered by the Board. When testimony is in conflict, the Board has to determine what the true facts are. Objections to support a denial must relate to lack of support for granting of the relief. The Board is not required to accept expert testimony if there is a reasonable basis to do so. The Board may use any reliable source of information about a fact and it is part of the record so that interested parties can cross examine. Written submissions can not be considered unless the person submitting it is present to testify. The Board has to decide based on the MLUL standard and what is in the record not on the number of persons testifying for or against. Variances can only be granted where evidence supports the grant. The board must discuss the issues in public and must not discuss issues in private. The board can approve in part and can attach conditions. All voting shall occur after a motion and second.

Mr. Patterson recited conditions for an approval.

Ms. Ludwig asked if the parking permit loss would be a deed restriction. Mr. Kelso said it would be in the deed and in the individual leases.

Mr. Patterson also asked if the car share conditions should be in the deed. Mr. Aithal said they should be. Mr. Kelso said he did not object.

Mr. Catanese addressed the comments about his involvement with the New Brunswick Democratic Organization. The payment referred to was for him working the polls on Election Day and he does not know who the donors are. Ms. Ludwig and Barber said their payments were for the same thing.

Mr. Catanese said the car share restrictions should be in the deed, but if there is no demand are they bound by it? Mr. Aithal said the applicant would have to return to the Board to have the condition removed and the reasons for it.

Mr. Crum asked about the car share membership restriction. Mr. Patterson discussed how he crafted the wording for the condition based on his understanding of the applicant's offer. Mr. Kelso said both the membership fee and the space were to be perpetual.

Ms. Ludwig asked about the driveway width waiver.

Ms. Hunter thanked the public for expressing their opinions as that helps the Board in its process. She said that any city would welcome new housing but after hearing the testimony she has two issues: the parking shortage, as the mitigations are not sufficient to deal with the realities as to how people will deal with the parking shortage; parking has major impacts on quality of life; the second issue is the scale of the building and its relationship to the neighborhood. She said she applauded the applicant for making design changes but it is too big and too dissimilar.

Mr. Catanese said he feels the project meets the requirements of the redevelopment plan. He realizes the project is large, but most houses on Mine are not owner-occupied and often in poor condition. There are Rutgers projects across the street and around the corner. The project addresses the entire neighborhood not just Mine Street. The plan says the plan standards supersede the zoning ordinance standards. On page 38 the plan talks about goals the plan supports and the project supported these goals. He said he walked from his house to downtown and he lives farther from downtown than this project. He feels the project is in close proximity to the train and bus. The general public can use the Rutgers bus plus the Brunsquick Shuttle. The local objectives in the redevelopment plan are met. Giving up the parking permits is relevant as it holds down the number of cars. There is also monthly parking at Gateway, which is nearby. There are parking alternatives available. He said he recalled that Mr. Litwornia's reference to the parking study he cited was challenged and that his report actually supported the parking standard for the project.

He found Mr. Broder's testimony about his other projects operation to be credible. Those projects have similar parking ratios. He hasn't heard anything to the contrary about these projects' parking not working.

Ms. Neubauer thanked the public for coming out. She said she supported the redevelopment plan and rebuilding the city. She said she understood that not everyone would be happy with redevelopment changes but that having the parking variance on Mine Street does impact the quality of life on Mine Street and could not support the variance.

Ms. Ludwig stated she had concerns about the scale of the building. She appreciated that the applicant had made changes but was disturbed by the shadow study impacts. She said she didn't know if the car sharing would work.

Motion to Approve with the conditions cited by Mr. Patterson: Catanese
 Second: Rojas

	YES	NO
Suzanne Ludwig		X
Linda Hunter		X
David Fitzhenry		
Joseph Catanese	X	
Jeff Crum	X	
Carly Neubauer		X
Clary Barber (Class I)	X	
Chris Stelatella (Class II)	X	
Betsy Garlatti (Class III)		
Josepha Rojas(Alternate #1)		x
Andy Kaplan (Alternate #2)		

VII. OTHER MATTERS OF INTEREST TO THE PUBLIC

VIII. ADJOURNMENT

A motion to adjourn was made, seconded and approved by the Board at 11:10 PM