

ZONING COMMISSION, CITY OF BOSTON

MINUTES

Wednesday, December 3, 2003

Room 900, City Hall, Boston

**Attendance**

**Commissioners**

Robert L. Marr, Chairman Building Trade Employers' Association	Present
Robert L. Fondren Boston Society of Architects	Present
Jay Hurley Greater Boston Massachusetts Labor Council AFL/CIO	Present
James C. Clark Mayor's Selection	Present
William Tarlow Neighborhood Association of the Back Bay	Present
Denise Doyle Mayor's Selection	Present
Ralph Cooper Franklin Field South Neighborhood Association	Present
M. Pat Tierney Greater Boston Real Estate Board	Present
Nelson Arroyo Mayor's Selection	Present
Jill Hatton Greater Boston Chamber of Commerce	Absent
Jane Brayton Neighborhood Association	Present

**Staff**

Rick Shaklik Deputy Director for Zoning/Advisor to the Commission	Present
Jeffrey M. Hampton Secretary to the Commission	Present

## **PUBLIC HEARINGS**

1. Mr. Marr called the meeting to order at 9:02 and opened the public hearing on Map Amendment Application No. 485 and a petition for approval of Planned Development Area No. 60.

The following spoke in favor of the petition:

Rick Shaklik – Advisor to the Commission  
Tai Lim – Senior Project Manager (BRA)  
Matthew Kiefer – Goulston & Storrs  
Ralph Cole – Kensington Investment Co.  
City Councilor Jim Kelly  
Dennis Ching – MONS  
Bill Moy – Chinatown/South Cove Neighborhood Council  
Father O'Regan – St. James Church  
Stanley Smith – Historic Boston  
Gary Walker - Electrical Workers' Union, Local 103  
Ying Chun Lee – Resident of Chinatown  
Paul Hong Lee  
Winnie Leone  
Jackie McBride – Representing members of the Park Plaza CAC in favor  
Representative from Chinatown Main Streets Initiative  
Steve Himes  
Meg Mizer-Cohen – Resident of the Back Bay  
Christine Dunn – IAG Member  
Richard Chin  
Tom Flynn – Carpenter's Union

Mr. Shaklik presented the petition to the Commission and stated what was being asked of the Commission in approving the proposed map amendment and Planned Development Area ("PDA"). Mr. Shaklik introduced Tai Lim, Senior Project Manager.

Mr. Lim passed out a summary of the proposed project to the Commission. He also gave some background information on the parcels of land that were involved in the Midtown Cultural District. Mr. Lim reviewed the zoning of the area and the Article 80 review process that the project had undergone, including approvals by other City agencies. Mr. Lim introduced Ralph Cole of Kensington Investment Company.

Mr. Cole gave a brief statement on his company and proceeded to show the Commission a Power Point presentation that lasted approximately 15 minutes. The presentation showed the overall objectives of the project, site plan, uses and layout of space, parking and appearance of the project. Mr. Cole also showed the Commission how the project had changed from the original submittal.

Commissioner Marr acknowledged City Councilor James Kelly and asked if the Councilor would like to speak in favor of the project.

Councilor Kelly spoke in favor of the project. He stated that the proposed project makes the immediate neighborhood a better place to live and was happy to see that the adult entertainment district was slowly disappearing.

Commissioner Marr asked if there was anyone else who would like to speak in favor of the petition.

Matthew Kiefer of the law firm Goulston & Storrs spoke to the zoning issues at hand. He stated that high density buildings were contemplated for this area of the City since the 1960s. Mr. Kiefer gave some background information on the planning and zoning process that the City undertook during the 1980s. Specifically, Mr. Kiefer stated that Article 38 of the Boston Zoning Code delineates certain areas where PDAs are allowed. He showed the Commission the areas delineated on Zoning Map 1A, Midtown Cultural District. Mr. Kiefer took a little time to go over the acreage issue that had come up during the Article 80 review process. He stated that there were land acquisitions undertaken to accommodate the one (1) acre minimum requirement. He also stated that this PDA was the result of a planning process that was done by the Boston Redevelopment Authority ("BRA"), and that there were substantial public benefits to this project, which are specified within Article 38 of the Zoning Code.

Mr. Cole summarized the public benefits associated with the proposed project. He showed the Commission the slides associated with the Power Point presentation as well as mentioning the handout submitted by Mr. Lim.

Commissioner Marr asked if there were any linkage payments.

Mr. Kiefer said that there were not any requirements because this was a residential project.

Commissioner Marr questioned the PDA overlay designation versus the actual boundary of the proposed project. Are they the same?

Mr. Cole said that this project would have its own PDA designation within an area that allows PDAs. That area, he stated, was larger than the designation that was being sought by the developer.

Commissioner Marr asked if the Boston Young Men's Christian Union forfeited their rights to build?

Mr. Kiefer stated that they did not. They were free to develop their property anyway they saw fit.

Commissioner Clark asked whether the contractor would conform to the Boston Employment Standards for the hiring of women and minorities.

Mr. Cole said that they would.

Commissioner Clark also asked if this would be a union job.

Mr. Cole stated that it would be.

Commissioner Arroyo questioned the Cooperation Agreement stated within the Citizens Advisory Committee ("CAC") letter submitted to the Commission.

Mr. Kiefer stated that the Park Plaza CAC thought that they should have been consulted prior to the Agreement being entered.

Mr. Cole stated that the Cooperation Agreement does not cut out any steps in the review process that the Park Plaza CAC is entitled to.

Commissioner Cooper stated that he was confused on why a Cooperation Agreement was even necessary. He also asked if the project had the one (1) acre minimum requirement.

Mr. Kiefer stated that it did.

Dennis Ching spoke in favor of the project.

Bill Moy spoke in favor of the project.

Father O'Regan spoke in favor of the project.

Stanley Smith spoke in favor of the project.

Gary Walker spoke in favor of the project.

Yung Chun Lee spoke in favor of the project.

Paul Hong Lee spoke in favor of the project.

Winnie Leone spoke in favor of the project.

Jackie McBride spoke in favor of the project.

Representative from Chinatown Main Streets spoke in favor of the project.

Steve Himes spoke in favor of the project.

Meg Mizer-Cohen spoke in favor of the project.

Christine Dunn spoke in favor of the project.

Richard Chin spoke in favor of the project.

Tom Flynn spoke in favor of the project.

**Commissioner Marr declared the petitioner's case closed at 10:44 AM and declared a five (5) minute recess.**

Commissioner Marr reconvened the hearing at 10:50 AM and opened the opponent's side of the hearing.

The following spoke in opposition to the petition:

Kenneth Tatarian – Representing Nicholas Romano

William Hawkes – City, Hayes & Dissette

Representative of Councilor Maura Hennigan

Representative of Councilor Felix Arroyo

Lee Eisman

Steve Landrigan

Michelle Yee

Lydia Lowe

Eliot Laughler – Neighborhood Association of the Back Bay

Jackie McBride - Representing members of the Park Plaza CAC in opposition

Allison Pultinas – Resident of Mission Hill

Frank Cullen – American Vaudeville Museum

Steve Jerome – Gaiety Theatre Friends

Jack Little

Shirley Kressel

Ken Tatarian spoke in opposition to the proposed project. Mr. Tatarian stated that he represented Nicholas Romano, owner of the Glass Slipper. He stated that Mr. Romano is the only property owner who is opposed to this PDA designation whose property is actually within the PDA designation. Mr. Tatarian argues that there will be huge legal ramifications of this project, both zoning and constitutionally. Mr. Tatarian read a prepared statement (submitted at hearing) which was the basis of his testimony.

William Hawkes spoke in opposition to the project. Mr. Hawkes gave testimony on the specific requirements of the Zoning Code. He stated that the Development Plan before the Commission is different than what was approved by the BRA Board. Mr. Hawkes said that approximately 40% of the area involved is public streets, Boylston Square and the Boston Young Men's Christian Union ("BYMCU"). Mr. Hawkes cited the definition of "lot area" which excludes public streets from that which is used in the calculation. The BYMCU is not subject to the Development Plan. He also stated that the Zoning Code requires that the Development Plan set forth the development of the entire site, this is not the case with BYMCU.

Councilor Maura Hennigan (through a representative) spoke in opposition to the project.

Councilor Felix Arroyo (through a representative) spoke in opposition to the project.

Both representatives cited the letter that was submitted to the Commission from Councilors Hennigan, Arroyo, Turner, and Yancey as the basis for their objection.

Lee Eisman spoke in opposition to the project. Mr. Eisman spoke to the Gaiety Theatre and the restoration thereof.

Steve Landrigan spoke in opposition to the project. Mr. Landrigan also spoke to the issue of the Gaiety Theatre and the specific provisions in Article 38 of the Zoning Code as they relate to the proposed project.

Michelle Yee spoke in opposition to the project. Ms. Yee stated that she believed Chinatown residents were not taken seriously. She asked whether or not all approvals were granted and had several questions with regard to zoning and development review and the public process in Chinatown.

Lydia Lowe spoke in opposition to the project. Ms. Lowe stated that she worried that the concerns of the residents of the neighborhood were not taken seriously. She also stated that the proposed project did not conform to the Midtown or Chinatown Plans.

Eliot Laugher spoke in opposition to the project.

Jackie McBride spoke in opposition to the project. She stated that she was now representing a majority of the Park Plaza CAC members who opposed the project. She stated that the more appropriate avenue would be to go to the Zoning Board of Appeals ("ZBA").

Commissioner Arroyo asked Ms. McBride how she voted on this project seeing that she spoke both in favor and opposed.

Ms. McBride stated she voted against the proposal.

Allison Pultinas spoke in opposition to the project.

Frank Cullen spoke in opposition to the project and addressed the issue of the Gaiety Theatre as well as various social, political and economic factors.

Steve Jerome spoke in opposition to the project and asked the Commission to delay any action on the proposed project. Mr. Jerome also spoke to the Gaiety issue as well as the loss of other, smaller theatres.

Jack Little spoke in opposition to the project.

Shirley Kressel spoke in opposition to the project. Ms. Kressel read from a prepared statement (submitted) dated December 3, 2003. She stated that she believed the versions of the Development Plan for public review, BRA Board approval, and Zoning Commission approvals are all different. She also spoke to the Gaiety Theatre issue.

Commissioner Marr stated that there was nothing that the Commission could do to save the Gaiety Theatre, stating that the owner did not want to keep it.

Ms. Kressel cited passages from both the Midtown and Hinge Block Plans how this area was supposed to be used and stated that no plan has come forward that meets that established criteria. She stated that the Commission is obligated to uphold the zoning laws of the city.

**Commissioner Marr declared the opposition's case closed at 12:09 PM.**

Ralph Cole read a letter from the City's Landmarks Commission with respect to the Gaiety Theatre. He also spoke out against some of the rumors that Kensington was going to "flip" the property.

Matt Kiefer rebuked the zoning allegations of spot zoning and non-conformity with underlying zoning. He also stated that the PDA changes that were made prior to the Commission's hearing were minor in nature and consistent with any approval process. As for the one (1) acre requirement, and the suggestions that it is an improper use to include public ways and private property in the one acre, Mr. Kiefer cited several examples where it was done, including the recently approved PDA for Columbus Center.

**Mr. Marr stated that the matter would be taken under advisement and would be discussed at the business meeting to follow and also extended an invitation to the public to attend the business meeting.**

**The hearing was declared closed at 12:20 PM.**

**Mr. Marr Opened the Business Meeting at 12:20 PM**

Mr. Marr opened discussion regarding the Kensington Planned Development Area that was held two weeks before.

Mr. Shaklik answered question from the Commission with respect to the one acre requirement established in the Zoning Code and whether public ways can be included. Mr. Shaklik stated that there was precedent for this and reminded the Commission that Columbus Center was approved using public ways.

There was general discussion among the Commissioners with regard to the eminent domain issue before the City Council and the process that the proposed project moves forward.

There were questions by the Commission with respect to the BYMCU not being subject to the PDA Development Plan. They were troubled that land could be included in the calculation of the acre but not subject to the Plan to which it was being associated with. The Commission requested that further work be done to include this site in the Plan.

Many of the Commissioners expressed concerns that the Plan had been changed from the BRA Board approval to the Commission's hearing. They had some concerns on whether they could approve a project that had undergone so many changes, yet left so many questions to be answered.

Mr. Shaklik stated that the Commission could table a vote on the Development Plan so that the BRA and the developer could move forward and answer some of the Commission's questions.

1. Mr. Fondren made a motion to continue the Business Meeting with respect to the Kensington Residences Planned Development Area and table a vote on said PDA until the BRA can provide clarity on the issues of the one acre requirement, the BYMCU site and it's association with the Development Plan, and the issue of the eminent domain taking by the City of Boston, until December 17, 2003. Mr. Hurley seconded the motion. Mr. Marr put the motion to vote:



Yeas: 9

Mr. Hurley, Ms. Brayton, Mr. Tarlow, Mr. Marr, Mr. Fondren, Mr. Arroyo,  
Ms. Tierney, Ms. Doyle, Mr. Cooper.

Nays: 1

Mr. Clark

**The motion was declared carried.**

**Mr. Marr adjourned the meeting at 1:25 PM**