



EAST PROVIDENCE WATERFRONT DISTRICT COMMISSION

Minutes- Public Hearing December 7, 2015

Attendees: William Fazioli, Vice Chairman
Paul Moura, Secretary
Jay Kern
Luis Torrado
Peter Willey

Members absent: Steven Hardcastle
John Pesce
Jacob Harpootian

Staff: Roberta Groch, AICP- Interim Executive Director

The meeting was called to order at 6:40P

- 1. VOTE: Approval of Meeting Minutes-** A motion was made to approve the minutes from the November 19, 2015 Waterfront Commission meeting.

Fazioli AYE
Moura AYE
Kern AYE
Torrado AYE
Willey AYE

- 2. Old Business**

VOTE: Application for determination of zoning/request for conditional use.
Address: 310 Bourne Ave. Building #70
Assessors Map 203, Block 1, Parcel 3.0
Owner and Applicant: Bourne Holdings LLC
Zoning: Phillipsdale Sub-district

A summation of the application to-date was given by Mr. Dylan Conley, legal counsel from the Applicant. Mr. Preston Halperin, one of the principals of Bourne Holdings LLC (“the Applicant”), was also present. Mr. Conley then referred to his handout to the Commission that addressed each of the seven conditions that the Hearing Panel added to their memo of recommendation to the Waterfront Commission regarding the operations at Mattress Express (“the business”) at 310 Bourne Ave. (“the site”). The Hearing Panel voted 2-1 to recommend approval of the zoning request to the Waterfront Commission (“the Commission”) at their public hearing on November 16, 2015.

Mr. Conley reviewed each of the Applicant’s suggested changes. The conditions approved by the Hearing Panel are followed by the Applicant’s legal counsel’s suggested changes to the conditions.

- A. "The operations of the Business shall be limited solely to the interior of Building 70." The Applicant would like to add "Upcycling and the associated bundling and temporary storage of materials shall be limited solely to the interior of Building 70." The Applicant does not want the possibility of including deliveries and shipping as part of the original language, thereby rendering business operation impossible.
- B. "The site shall never become a municipal drop-off site and shall never accept the drop-off of mattresses from private citizens."- This is the jurisdiction of the City of East Providence and the RI Mattress Recycling Council, either of which can decide where municipal drop-off sites are located. Every other municipality in the State accepts mattress drop-offs from private citizens: four at one time, with no more than eight per household per year.
- C. "The number of mattresses processed per day at the site shall not exceed four hundred (400)." – The Applicant argued that this condition should be removed for being both arbitrary and capricious and constituted an exaction/regulatory taking. The Applicant also stated that the Hearing Panel found that the operation of the Business is not detrimental to the surrounding properties or streets and that the number of mattresses processed per day should not be limited.
- D. "There shall be no operations of business on the site on Sundays."- No changes.
- E. "The hours of operation at the site shall be limited to 6AM-3PM, Monday through Friday; 8AM-2PM on Saturday; and no operations on Sunday. The hours that deliveries can be made to the site shall be limited to 8:30AM-2:30PM, Monday through Friday: there shall be no deliveries to the site on Saturday and Sunday."
- The Applicant asked that this condition be changed to allow deliveries from 7AM-8PM, Monday through Saturday, stating that the Hearing Panel did not find that the use was detrimental to the surrounding properties and streets.
- F. "The Applicant will bring the Site into compliance with the Fire Marshal's safety plan."- No changes.
- G. "The business shall comply with all applicable environmental statutes and ordinances, and shall obtain all proper permitting."- No changes.
- H. "The business shall be in compliance with- and shall obtain- all applicable requirements, permits and approvals from all local, State, and Federal government entities."- No changes.

The public hearing was opened at 7:03PM. (A brief recess of the hearing was taken from 7:34P-7:36P).

Six people spoke in opposition to the zoning designation. Some of the comments included:

- The City Fire Marshall has still not received plans for Building 70;

- There are no State regulations for mattress recycling;
- The Applicants legal arguments are unsubstantiated;
- Goulin Trucking is the actual operator of the business, not Mattress Express;
- Trucks entering the site are uncovered;
- The business is already operating on Saturdays;
- There is the possibility of an enormous fire at the site;
- Mattress Express is a rogue company;
- The history of zoning enforcement for solid waste facilities in the City is awful.

Mr. Halperin responded to the comments by saying that the Phillipsdale mill has between fifteen and twenty loading docks, while the adjacent building (the former Al-Macs warehouse) has over forty loading docks, and can generate substantially more truck traffic.

The public hearing was closed at 7:50P.

Mr. Conley stated that a fire safety plan was submitted to the Fire Marshall two weeks ago and was being held up due to the delay in the sprinkler plan.

Mr. Fazioli asked the Commission for their thoughts on the testimony heard. Some of the questions and comments included how the extension of Waterfront Drive north to the site would affect Mr. Halperin's long-term plans for the complex: Mr. Halperin wants to see the road extended. There was also a comment about the special master for the GeoNova property adjacent to the site stating his concern with approval of the zoning request by the Applicant at a previous hearing.

Legal counsel for the Commission stated that the Commission has jurisdiction in the Waterfront District but an appeal to the Superior Court is not precluded. The zoning officer for the City can exercise his jurisdiction.

VOTE: Mr. Moura made the following motion:

"I make a motion to enter into the record the findings of fact and conditions of the Hearing Panel decision dated November 16, 2015."

Mr. Torrado seconded the motion: there was no discussion and the vote was approved unanimously.

Fazioli	AYE
Moura	AYE
Kern	AYE
Torrado	AYE
Willey	AYE

VOTE: Mr. Moura made the following motion: "I move to adopt the decision of the Interim Executive Director dated September 21, 2015 and the decision of the Hearing Panel dated

November 16, 2015, and all of the findings of fact and conditions contained therein.”

Mr. Moura amended his motion to eliminate Condition C of the Hearing Panel decision and to change Condition E to read “unlimited deliveries from Monday through Saturday during the hours of 7AM-4PM.”

Mr. Kern seconded the motion. Mr. Fazioli asked if the motion could be amended to include an additional condition stating that “no grinding, burning, shredding, chemical transformation or melting of the various components shall take place at the site.” Mr. Moura agreed to the amendment.

There was a discussion about limiting the number of deliveries and the difficulty of enforcing such a condition. Mr. Torrado asked Mr. Moura to amend his motion to add a limit to the number of mattresses that can be processed per day at the site: Mr. Moura refused this amendment.

The motion passed on a 3-2 vote:

Fazioli	AYE
Moura	AYE
Kern	AYE
Torrado	NO
Willey	NO

VOTE: Mr. Moura made the following motion:

“I move to adopt and enter into the record the following findings of fact:

1. The Applicant’s proposed use ensures the convenience and welfare of the public and does not substantially or permanently injure the value of neighboring property. The Applicant has shown, and the record supports, that neither the proposed use nor its location on the site would have a detrimental effect on the public health, safety, welfare or morals.
2. The Applicant’s use meets the purpose and objectives of Section 19-479 of the *Revised Ordinances of the City of East Providence*. In reviewing this application, the Commission considered, among other factors, the following factors listed in Section 19-479(g) of the Zoning Ordinance:
 - A. Protection of adjoining properties and other parcels in the Waterfront District from any detrimental use on the site.
 - B. Convenience and safety of vehicular and pedestrian movement within the site in relation to adjacent streets, properties, improvements and in conformance with the express design intent.
 - C. Adequacy of the methods of disposal for sewage, refuse and other wastes, and methods of drainage of surface waters.

- D. Provisions of off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses of the site.
 - E. Adequacy of all municipal facilities and services to meet the needs of the site.
 - F. Achievement of overall design objectives of the development plan.
3. Special conditions on the proposed use are necessary to maintain harmony with other parcels or subdivisions within the Waterfront District and to promote the objectives and intent of the Waterfront District zoning and development plan.

Mr. Kern seconded the motion: there was no discussion. The motion passed on a 4-1 vote:

Fazioli	AYE
Moura	AYE
Kern	AYE
Torrado	AYE
Wiley	NO

VOTE: Mr. Moura made the following motion:

“Based upon the testimony and supporting materials presented to the Waterfront Commission by the Applicant and the public; the decision and findings of fact of the Interim Executive Director, the Hearing Panel and the record before us: I move to approve the application of Bourne Holdings LLC for a conditional use as presented to the Commission and subject to the decision of the Hearing Panel, dated November 16, 2015 and as modified today and to the satisfaction of all conditions contained therein.

The Commission’s approval is subject to the Applicant’s satisfaction of the following conditions:

- A. All conditions of the Hearing Panel decision, dated November 16, 2015 and as modified today;
- B. All conditions imposed by this Commission at this hearing;
- C. The Applicant shall meet all applicable federal, State and local laws, statutes, ordinances and regulations, including all applicable environmental statutes and ordinances; and
- D. The Applicant shall obtain all applicable federal, State and municipal permits and approvals having jurisdiction.”

Mr. Kern seconded the motion: there was no discussion. The motion passed on a 3-2 vote:

Fazioli	AYE
Moura	AYE
Kern	AYE
Torrado	NO
Wiley	NO

3. Adjournment

VOTE: A motion was made to adjourn the meeting: the motion was seconded and approved

unanimously, without discussion.

Fazioli	AYE
Moura	AYE
Kern	AYE
Torrado	AYE
Willey	AYE

The meeting was adjourned at 8:06PM.

Respectfully submitted,

ROBERTA GROCH, AICP
Interim Executive Director

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