



GOVERNMENT OF BERMUDA

Department of Planning

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Development Applications Board Minutes

Minutes of a meeting held on Monday, 21 December, 2020, at 8:45 AM, held Virtually via WebEx.

PRESENT:

Dexter Johnston	Denis de Frias	Malik Richards
Victoria Pereira (Director)	Paul McDonald	Larry Williams (Assistant Director)
Wayne Dill (Deputy Chair)	Dolores Vazquez	Wendy Dunne
Cheryl Packwood	David Astwood	Alice Lightbourne (Chair)

APOLOGIES: Jamal Albuoy

ISSUES AND ACTIONS FROM PREVIOUS MEETING: None

APPLICATIONS:

1. PLAN-0474-20

Applicant: Ministry of Public Works

Location: 18 Quarry Road
Hamilton, BM CR04

Description of Proposal: Dismantle Team Artemis Building at Morgan's Point and Construct Two Metal Clad Buildings to Provide Storage, Offices, Respite Facilities for Workers and a Heavy Vehicle Workshop at the Government Quarry using Existing Steel, Site Excavation and Grading, New Exterior Slabs for Slate Storage and Vehicular Wash Down, Extension to Existing Security Fence and External Bung for Secure Storage of Motor Fluids. (Final Approval)

Planner: Dolores B. Vazquez

Discussion:

The technical officer presented the application with a recommendation to refuse.

The Board queried whether any measures had or will be imposed on the applicant given the retroactive nature of the application.

The technical officer confirmed that an additional application fee of some \$8,000 had been charged.

The Board resolved to refuse the application, as received October 26, 2020, for the following reason:

1. The applicant has failed to demonstrate to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control as required under Section 20 (2A) of the Development and Planning Act 1974.

2. PLAN-0380-20

Applicant: Newstead

Location: 37 Harbour Road
Paget, BM PG02

Description of Proposal: Proposed New Concrete Block Laundry to Replace Existing Wooden Laundry and 3 Foot High Fence on Top of Existing 5 Foot High Wall

Planner: Malik Richards

Discussion:

The technical officer presented the application with a recommendation to refuse. No questions or comments were posed by the Board.

The Board resolved to refuse the application, as received September 22, 2020, for the following reason:

1. The applicant has failed to demonstrate to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control as required under Section 20 (2A) of the Development and Planning Act 1974.

3. PLAN-0124-19

Applicant: MacLellan & Associates

Location: Southlands Park, Area West of 60 South Road, Warwick

Description of Proposal: Proposed Events Lawn with Accessible Washroom Facilities, Store and Utilities Rooms, Soak Away, Moongate, 6 ft. High Chain Link Fence with Privacy Screening and Access Gate, 4 ft. High Safety Chain link fence Along Events Lawn Cliff Edge, associated Landscaping. Proposed Public Parking Amenity with Access onto South Road and Associated Works and Landscaping.

Planner: Paul McDonald

Discussion:

The technical officer presented the application with a recommendation to refuse.

The Board noted its position that Woodland Reserve Conservation Areas should be preserved wherever possible and noted that, if the adjacent Bermudiana Beach Resort development proves to be unsuccessful, the proposed clearance would be in vain. The Board further noted that the proposal provides an opportunity for the historic gun battery which exists on the site to be featured, which does not appear to have been considered in this submission.

The Board recommended that consideration be given to siting the proposed development to the east of the Bermudiana Beach Resort site which, whilst privately owned and currently in a state of disrepair, does not contain any Conservation Area and is more suitably zoned for the proposed development.

The Board resolved to refuse the application, as received November 19, 2019, for the following reasons:

1. The proposal is in conflict with policy WDR.3 of the Draft Bermuda Plan 2018 given that the Board has no discretion to approve such a form of development within a Woodland Reserve Conservation Area.

2. The proposal is in conflict with policy PAR.4 of the Draft Bermuda Plan 2018 given that the Board has no discretion to approve an application within a Park Conservation Zone to which an objection has been made by the National Parks Commission, the proposed events lawn and associated development is not essential to the maintenance, conservation, enhancement or enjoyment of the Park and there would be a net loss in the conservation value of the site and wider Southlands Park.

4. PLAN-0419-20

Applicant: Castile Holdings Ltd

Location: Lot 1A Riddell's bay Road/ Fairways Road, Warwick

Description of Proposal: Proposed Dock (approx 40 ft. by 15 ft.)

Planner: Malik Richards

Discussion:

The technical officer presented the application with a recommendation to refuse.

The Board noted that there is an existing substantial dock near to that proposed.

The technical officer advised that this existing dock serves a private residence and the proposed dock is intended to serve multiple residential properties which are due to be constructed on the adjacent former golf course site.

The Board raised a general concern over the apparent increasing number of applications proposing development which would pose adverse environmental impacts.

Technical officers advised that the Board is duty bound to consider all applications but, in order to identify and address such impacts, developers are encouraged to engage in pre-consultation discussions with the Department of Planning as well as other Government departments and, in the case of docks in particular, it is typically recommended that pre-consultations be held with the Marine Conservation Section of the Department of Environment and Natural Resources as well as the Estates Section of the Ministry of Public Works and the Department of Marine and Ports Services of the Ministry of Transport.

The Board resolved to refuse the application, as received September 29, 2020, for the following reason:

1. The proposed dock would cause harm to features of ecological importance, including species protected under the Protected Species Act 2003, through disturbance caused by the generation of marine traffic and construction works and the creation of an impenetrable surface which would not allow sunlight to reach the seabed, contrary to policies COA.6 and COA.7 of the Draft Bermuda Plan 2018.

ANY OTHER BUSINESS:

The following points were discussed in light of the Board's observations over the past calendar year.

1. The Board raised concerns over current procedures for processing retroactive planning applications, noting that, realistically, the Board has no discretion on these matters, all such applications appear to be approved by the Minister on appeal and, as such, apart from the additional application fee, there is no penalty imposed on developers who submit such applications. Technical officers noted such concerns and advised that an option for the Director to impose civil penalties on such developers is in place, however legislative change is needed to allow such penalties to be imposed effectively and efficiently.
2. The Board raised concerns over the lack of discretion afforded to the Board, particularly for proposals which pose no notable negative impacts, and the apparent increase in the number of applications which proposed development which would pose a negative impact on the environment. Technical officers advised that the Department wishes to recommend legislative change to afford the Board more discretionary powers and that the feedback of the Board is welcome to help achieve this aim. Whilst concerns over proposals which would negatively affect the environment were noted, technical officers advised that developers have the right to submit any application and the Board may decide to refuse planning permission in such instances.
3. The Board raised concerns over the significant proportion of appeal decisions which have been made by the Minister this year against the decision of the Board. Technical officers noted that current legislation affords the Minister the authority to determine appeals in any way he sees fit, but encouraged the Board to share its concerns which can be forwarded to the Minister.



Chairman of the Development Applications Board

Date 22 December 2020