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JAMAICA PLAIN, ROXBURY

## JPNC trying to prove it has right to sue city, developer over project at former Home for Little Wanderers site

Posted by Matt Rocheleau February 5, 2013 05:32 PM

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By Matt Rocheleau, Town Correspondent

The Jamaica Plain Neighborhood Council is arguing that it is a “municipal board” and thus has the right to continue with its attempt to sue the city’s Zoning Board of Appeals and a local developer over a project that would raze the Home for Little Wanderers complex along South Huntington Avenue to build housing.

The lawsuit filed in Suffolk County Superior Court on Dec. 19 alleges that Boston Residential Group did not provide sufficient evidence to obtain zoning variances from the city for its project proposed for 161 South Huntington Ave.

The complaint also says that the city’s seven-member zoning board “exceeded its authority” and “acted with gross negligence, bad faith, or malice,” when it granted the four variances to the developer at a public hearing in mid-November.

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The defendants in the case, the city's zoning board and the developer, submitted a [motion](#) on Jan. 8 asking that the case be dismissed because the neighborhood council is not a municipal board.

In matters of zoning, only certain entities have legal standing to bring such a case forward, said Jeffrey Wiesner, an attorney at Stern Shapiro Weissberg & Garin LLP and a member of the neighborhood council who is representing the group in the lawsuit.

Typically, someone closely impacted by a project, like a direct abutter, could file such a lawsuit, he said. A municipal board or officer could also file such a complaint.

In a response to the defendants' motion, the neighborhood council argues that it is a "municipal board" and, thus, its lawsuit has legal standing and should be allowed to continue.

"[The] defendants make this argument even though the JPNC's duties and responsibilities concerning zoning matters are set forth in the [Boston Zoning] Code and despite the fact that for more than 30 years, the JPNC has performed, and continues to perform, a regular and integral role in the City of Boston's zoning appeal process for the Jamaica Plain Neighborhood District," said the [response](#) submitted on Jan. 22. "It is these factors that give the JPNC the status of a 'municipal board' within the meaning of the [Boston Zoning] Code and standing to bring this action."

Obtaining the zoning variances in November was the project's last permitting hurdle, clearing the way for the developer to construct an apartment building with 196 units and around 156 parking spaces.

The plans call for demolishing three buildings on the 3.5-acre site, including the 98-year-old [Knight Children's Center](#) special education school building, a well-known facility that the nonprofit Home for Little Wanderers recently vacated.

Construction on the project at 161 S. Huntington is scheduled to begin in April and the building should be ready for occupancy by spring 2014, officials have said. But, the ongoing litigation could delay progress on the project.

The lawsuit requests that, if the court agrees with the plaintiff, the variances granted by the zoning board be overturned at that the defendants cover the



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granted by the zoning board be overturned at that the defendants cover the plaintiff's legal costs.

Curtis Kemeny, president and CEO of the Boston Residential Group said in a statement that his company expects to win the legal battle.

"We have a strong case and a strong team, and have prepared a forceful response to the JPNC appeal," Kemeny said. "We expect to prevail in court."

The city declined to comment Tuesday.

"The city does not comment on pending litigation," spokesman John Guilfoil said.

But city officials said in December that they were confident that the zoning board's decision will be upheld in court.

"This \$75 million private investment in Jamaica Plain will add new housing opportunities for families, including 30 affordable units, and will add vitality to the area," city spokeswoman Susan Elsbree said in an e-mailed statement one day after the lawsuit was filed. "We hope the lawsuit is expeditiously resolved."

Boston Residential Group's project has been criticized by some neighbors whose concerns include that the development would be too large would have too few affordably priced units.

Similar concerns have been expressed over another nearby proposal for [105A S. Huntington](#), which is under city review and calls for clearing a 1.1.-acre wooded lot to build a 12-story, 195-unit building with a parking garage and retail.

Both of the proposed development sites are located along a stretch of South Huntington where other [recent changes and proposals](#) have stirred controversy between residents of JP and nearby Mission Hill.

Most opposition to the projects has come from Jamaica Plain residents, while most support has come from residents of Mission Hill.

The debate has led city redevelopment officials to launch [a study](#) of current and potential future uses for the area.

*E-mail Matt Rocheleau at [mrochele@gmail.com](mailto:mrochele@gmail.com)*

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