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Judge to hear request by city, developer to toss JPNC lawsuit over housing project

Posted by Matt Rocheleau March 19, 2013 03:56 PM

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By Matt Rocheleau, Town Correspondent

A judge will hear arguments in Suffolk County Superior Court next month for a motion to throw out a lawsuit over a project that would raze the Home for Little Wanderers complex along South Huntington Avenue to build housing.

The motion to dismiss the case is scheduled to be heard April 10, according to online court filings. It will be the lawsuit's first court date.

The ongoing litigation could delay the project at 161 S. Huntington. Officials have said previously they planned for construction to start in April and to open the building by spring 2014.

The lawsuit was filed on Dec. 19 and alleges that the developer, Boston Residential Group, did not provide sufficient evidence to obtain zoning variances from the city for its project proposed.

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

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granted the four variances to the developer at a [public hearing](#) in mid-November.

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

Following the defendants' motion asking that the case be dismissed, the neighborhood council has [tried to argue](#) in court documents that it is a "municipal board" and thus has the right to continue with its attempt to sue.

Curtis Kemeny, president and CEO of the Boston Residential Group, has said his company expects to win the legal battle. In December, city officials said that they, too, were confident that the zoning board's decision will be upheld in court. But, more recently, city officials have declined to comment.

The lawsuit requests that, if the court agrees with the plaintiff, the zoning variances granted by the city be overturned at that the defendants cover the plaintiff's legal costs.

Obtaining the zoning variances, which were granted in November, was the project's last permitting.

The project calls for constructing an apartment building with 196 units and around 156 parking spaces by first 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 vacated in the fall.

The plans have been criticized by some neighbors who have said the existing buildings should be preserved and that the new development would be too large and would have too few affordably priced units.

Concerns about building size and housing affordability have been expressed



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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.

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