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Riverside neighbors head to court

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Neighbors have filed a lawsuit challenging the Newton Board of Aldermen’s approval of a \$350 million development near the MBTA’s Riverside Station, saying they were not given a chance to raise their concerns during a “fatally flawed” public hearing process.

They are seeking annulment of the special permit and site plan approval granted last month for the Station at Riverside, one of the largest developments the city has seen.

“This is not a group of plaintiffs who are saying ‘Don’t build a project.’ They’re saying, ‘Don’t build this project,’ ” said Brian C. Levey, a lawyer representing the neighbors. “They want to get it done correctly. Because of the way the process unfolded, the clients don’t feel that they really had the ability to make the input they needed to make.”

The complaint, filed Oct. 30 in the state Land Court, names the Board of Aldermen, the Massachusetts Bay Transportation Authority, and developer B.H. Normandy Riverside LLC as defendants.

A spokesman for the MBTA and lawyers for the city and the developer all said the hearing process had amply addressed neighborhood concerns.

“We’re disappointed, but not totally surprised that an appeal was filed,” said Stephen Buchbinder, a lawyer who represented the developer during the special permit process, but who will not handle the Land Court lawsuit. “We thought that the city conducted an exhaustive process, and fully considered all of the issues.”

The \$350 million project would bring 290 new apartments, a 10-story office building, a parking garage, retail space, and a community center to 11 acres of MBTA-owned land off Interstate 95 that currently are used for a train station and parking lot. Public hearings began last fall, and the Board of Aldermen voted unanimously on Oct. 7 to approve the special permit.

The lawsuit, filed on behalf of eight residents of the city’s Newton Lower Falls and Auburndale sections, and the Woodland Grove condominiums on Grove Street, alleges that residents were often prohibited from speaking to the board during public meetings about Riverside, reducing them to “mere spectators unable to provide meaningful and timely comments.”

If the project is built as it is currently proposed, the complaint contends, the surrounding neighborhood would be overwhelmed with traffic, and motorists competing for street parking.

The streets surrounding Riverside Station, the terminus for one branch of the MBTA’s Green Line, already serve as overflow parking on Red Sox game days, the complaint states, and the new project could increase the number of cars parking in the neighborhood from 75 to 260. The new figure would be “the equivalent of . . . one mile of parking on narrow side streets in thickly settled residential areas not designed or intended to serve as a commercial parking lot,” the complaint alleges.

But Alderman Ted Hess-Mahan, who as chairman of the board’s Land Use Committee oversaw the Riverside project’s movement through the special permit process, said it was thoroughly vetted, and pointed out that it won unanimous approval.

“We had four full nights of public hearings that were very lengthy, in which everyone who attended was given an opportunity to speak on the petitions,” said Hess-Mahan. “We also, throughout the process, invited and encouraged members of the public to submit their written comments so that the staff and the developers could address any questions they might have. I’m very confident that we provided the public an ample opportunity to participate.”

B.H. Normandy's lawyer said neighborhood concerns shaped the project throughout the process.

"I think the developer really furnished a significant mitigation as part of the project," Buchbinder said. "The original development plan called for approximately 875,000 square feet of development; the final plan was reduced to 580,000 square feet. Along the way, a second office building that had been planned was dropped from the proposal. We also agreed to fund a neighborhood improvement fund in the amount of \$2 million."

The developer's response to the Land Court lawsuit will be handled primarily by a Boston-based legal firm, Goodwin Procter LLP, Buchbinder said.

Newton's associate city solicitor, Ouida Young, said it is not uncommon in a project of this size to see an appeal from residents.

"Folks who feel that they are aggrieved by the decision of a permitting authority have a statutory right to appeal, and that's what's happened here," Young said.

MBTA spokesman Joe Pesaturo said transit authority staff participated in many project review meetings and hearings, and the authority is "confident that the City of Newton conducted a thorough and robust public permitting process regarding this important project."

The complaint asks the court to annul the board's decision, which it calls "arbitrary, capricious and legally untenable." It also asks that the board be ordered to reopen the public hearing, and cover the plaintiffs' costs in filing the lawsuit, including lawyers' fees.

Levey said that while his clients are definite about the project's problems, they are flexible in how those problems should be addressed.

"There are different ways of solving it," said Levey. "You could add more parking. You could build a smaller building. There are different ways to come at it, the client is open minded."

Buchbinder declined to comment on whether the developer would be willing to make any modifications to the plan.

Lawyers on all sides said it was difficult to predict how long the Land Court process might take, and what impact the lawsuit might have on the schedule of the project. Construction has been tentatively slated to begin in July 2015.

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