

PLANNING BOARD MEETING OF July 27, 2010

Place: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairman Hayward – Opened the meeting at 6:32 PM

A. Quorum/Attendance

Members Present: Chairman Wayne Hayward, Albert Borges, Joseph Morra, Gary Staffon, Albert Silva Raymond Fleurent and Peter Nopper. Quorum being present was acknowledged by Joseph Morra.

Planning Director William Roth was also in attendance.

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B. Acceptance of Minutes –

The Acceptance of Minutes of July 13, 2010 were addressed. Revisions and corrections on page two and three were addressed and changed. Motion by Albert Silva and seconded by Joseph Morra to accept the minutes with revisions. The vote was unanimous. The motion passed.

C. Planning Board Bills - None.

D. Discussion on Community Preservation Committee (CPC) Appointment -

The Chairman noted the Planning Board's representative to the CPC was Mr. Vander Pol and since he has resigned from the Planning Board there is also a vacancy on the CPC. It was discussed that it is the Chairman's prerogative to appoint someone to the CPC.

Albert Borges – Recommend that the Board wait until the Planning Board vacancy is filled, before the CPC position is filled. He also asked if there was a meeting scheduled with the Selectmen to appoint a new Planning Board member.

William Roth: It is my understanding that the Selectmen plan to meet August 9, 2010. However, the Selectmen's Office will be sending out a notice on the meeting. If someone is appointed, it may be possible to be sworn in and the next day and attend the August 10, 2010 meeting.

II. CURRENT PLANNING

A. Receipt of Plans – None.

B. Approval of Plans - None.

III. LONG RANGE PLANNING – None.

IV. PUBLIC HEARING – None.

V. OTHER BUSINESS – None.

1) Special Permit Discussion – Francis Budryk – 1 Main Street – continued from 7/13/10.

Chairman Hayward – Opened up the continued discussion. The Planning Board members were introduced. It was noted that there had been three public hearings from May 11, 2010 to June 8, 2010. As of June 22, 2010, the discussions were closed to the public. The purpose of the discussion was to review draft conditions of approval and vote. The document “DRAFT – Rev. 7-13-10” was reviewed as it contains twenty-six (26) conditions as to the Special Permit. All Board members were mailed a copy of the document to review and it was now opened to the Board to discuss the draft document.

Richard Urban (Attorney for Mr. Budryk) – My client has a few words to say to the board.

Mr. Budryk – I would like to withdraw my application for a Special Permit.

Attorney Urban - Mr. Budryk does not want to be subjected to the watering of plants, planting certain type of shrubs and a curfew. Now he has no curfew on his property. At the last discussion Mr. Budryk was willing to the conditions, but now after thinking about what was said as far as nuisance, Mr. Budryk sees nothing in this for him as a businessman. Mr. Budryk wants to continue with the building permit for the kitchen and bath. When a vote was taken last meeting the mention of nuisance was brought up.

Chairman Hayward – There was no vote taken. The Board was polled as to how they felt. You cannot withdraw you application once a hearing has taken place. Only a vote of the Board to allow you to withdraw can happen.

Attorney Urban – Since last time, there are five new conditions. As to a cost benefit analysis, there is no benefit for Mr. Budryk. The Special Permit gives him nothing in his conclusion as there are no conditions on his property now. Under the law he has the right to have an event. This process is not going to benefit the property and Mr. Budryk.

Chairman Hayward – There are the same number of conditions as the previous draft and in fact several conditions have been deleted such as, the fencing requirement. Adding onto the building, there are triggers, such as five or more parking spaces, which will trigger a need for a special permit, so you may be back here.

Attorney Urban – I disagree. Building permit covered by the Building Commissioner. He may need a variance from the Zoning Board. The Special Permit is for events. Neighbors are unhappy. The Planning Board has gone all through this. Since the last discussion, Mr. Budryk thought about all this and there is no benefit. The Special Permit does not control the property, the Building Permit does.

Chairman Hayward – Use variances are not allowed in the Town, so I do not know what type of variance he may need. Please remember that the zoning is Mixed-Use and the Planning Board is the Special Permit Granting Authority in that zone, so you may be back before us in the future.

Attorney Urban – It has come to a business decision.

Chairman Hayward – There are 26 conditions, some dropped and added is my understanding.

Attorney Urban - Yes. The comment last time regarding nuisance, really was too much.

Chairman Hayward – Making a finding as to nuisance is one of the approval criteria.

Attorney Urban – I’m withdrawing on my client’s behalf. You have done a wonderful job. In two weeks Mr. Budryk has been talking with people and has come to the conclusion the 26 conditions would have to be carried with the deed and have to be registered with the Registry of Deeds. The word “nuisance” and knowing he is allowing 26 conditions – this is not a process he wants to continue. There is no animosity.

There is a limit.

Chairman Hayward – We had three meetings open to the public. As I mentioned earlier we, the Board, have the decision to withdraw your application. Once the hearing is opened, the applicant loses the right to withdraw an application. Mr. Budryk's right is gone. If the Board allows Mr. Budryk's request to withdraw, we can vote with or without prejudice to have Special Permit withdrawn.

Attorney Urban – I understand. Returning here today and thinking that this does not add up to allowing 26 conditions. We are talk about things you normally do like have tea and cake. From a business stand point, what does Mr. Budryk get in return? He has to spend for more parking, shrubs, lighting, watering plants.

Chairman Hayward – These are standard conditions.

Mr. Budryk – It is imposed on me.

Chairman Hayward – I can tell you that we have done these conditions for many Special Permits in the past.

Attorney Budryk – He was willing to comply. He wanted to be a good neighbor. He has had an architect, engineer and there is no end to the costs.

Chairman Hayward – M.G.L. c. 40A, Section 16 sited. We can deny Mr. Budryk's right to withdraw. We could Motion to withdraw with prejudice or without.

Attorney Urban – Vote. He doesn't care any way.

William Roth – You may, as to the building plans. If he needs five spaces or more on the site plan for parking – it will be reviewed. The Special Permit trigger is new construction and/or, new demand of five or more parking spaces. If you trigger that requirement then you are back here for a Special Permit.

Attorney Urban - It will not be a new demand. He needs the bathroom.

William Roth – Quoted the Zoning Bylaw Chapter 198.29.A with regards to Special Permit triggers and five or more spaces.

Attorney Urban – The neighbors cannot take over.

Chairman Hayward – We have heard your request. We've got a situation where that is unexpected. A lot of work has gone on between the Board, Town Planner, engineer and architect, and now at the eleventh hour, you want to withdraw!

Raymond Fleurent – Any specific disagreement?

Attorney Urban – It's beyond that question. He does not want to get involved in any conditions.

William Roth – The shrubs and watering are standard conditions that have been in place for many years.

Attorney Urban – Not going to argue.

Raymond Fleurent – Motion to allow the withdrawal the Special Permit of Mr. Budryk without prejudice. Gary Staffon second motion.

Albert Silva – We spent too much time to throw without prejudice for this specific use away.

Attorney Urban – The conclusion is that the Special Permit is not good with all the conditions.

Raymond Fleurent – Let's withdraw and get it over.

Chairman Hayward – Motion to withdraw Special Permit without prejudice has been seconded. The Vote was unanimous. Motion passed.

Gary Staffon - motioned to adjourn. Chairman Hayward seconded. The vote was unanimous in favor. Motion passed. The meeting was adjourned at 7:25 pm.

Respectfully submitted,

Shirley Monte,

Recording Secretary