

PLANNING BOARD MEETING of August 27, 2013: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairperson, Wayne Hayward - Opened the meeting at 6:30pm

Quorum/Attendance

Members Present – Chairperson, Wayne Hayward, Francis Budryk, Kaisa Cripps (arrived at 6:40pm), John Farrell Jr., Rene Fleurent Jr., Jeffrey Lucas and Peter Nopper.

Absent: Gary Staffon

Planning Director William Roth was in attendance.

Francis Budryk made a motion to accept the minutes of August 13, 2013 and was seconded by Jeffrey Lucas. The motion passed unanimously.

Planning Board Bills:

1. **GCG, Associates** – Melanson-EJ's Diner - \$420.00

Jeffrey Lucas made a motion to pay GCG Associates in the amount of \$420.00 for Melanson-EJ's Diner and was seconded by Francis Budryk. The motion passed unanimously.

II. CURRENT PLANNING:

Receipt of Plans:

None

Approval of Plans:

Form A – Re-Sign Mylar – **Alan Ewing** – New Boston Road-Land Court Plan was damaged

William Roth explained to the Board that GAF Engineers had called that the Mylar had been smudged and land court was asking for it to be resigned.

Jeffrey Lucas made a motion to re-sign the Mylar and was seconded by Francis Budryk. The motion passed unanimously.

Lot Releases:

None

III. PUBLIC HEARING:

1. Def Subdivisions – **Mary Vander Pol** – Earle Street (con't from 7/9/13)

William Roth said he has not received any revised plans to date and he wasn't sure if there would be enough time to review any updated plans in time for the September 10, 2013 meeting.

Engineer, Ken Ferreira was present and said that he would be willing to continue it to September 24, 2013 if that fit into the schedule better.

William Roth again stated that he hadn't received any updated plans for this project.

Wayne Hayward said that he wants the Board members to be in the loop with reviewing updated plans.

Again, William Roth asked Mr. Ferreira if he is going to have anything available for them to review.

Mr. Ferreira said that he would, and he would like to personally continue the hearing to the 24th of September.

Jeffrey Lucas said it was unfair to continue meeting to meeting and he agreed it made sense to move to the 24th of September.

Kaisa Cripps made a motion to continue the Public Hearing to September 24, 2013, pending a written continuance to William Roth and was seconded by Jeffrey Lucas. The motion passed unanimously.

Wayne Hayward stated, in his opinion, that with no continued input from the Board that issues were going to just continue to get harder.

There was some brief banter between a resident and Mr. Ferreira. The resident asked Mr. Ferreira if they had filed with Conservation Commission as of yet. Mr. Ferreira stated they had not, but they were going to and tried to tell the resident that he would be notified when they did.

2. Special Permit – **Melanson – EJ's Brooklyne Diner** – 111 Huttleston Avenue

Wayne Hayward opened the Public Hearing re-introducing the Board, and noted that Gary Staffon was absent. Mr. Hayward also said they had only received today's update to the plans about three hours ago.

William Roth said that as of August 23, 2013 no additional updated plans had been received. He said he received the plans this afternoon, the 27th. Mr. Roth informed the Board that he and Engineer from GCG Associates, Mike Carter had met with the Applicant and their Engineer and had a very productive meeting. Mr. Roth continued on with a review of his Memorandum #2. In regards to the parking, he stated that the applicant was going to eliminate the outdoor restaurant seating in its entirety and they were going to reduce the outdoor ice cream picnic seating area to 30 seats. Reading from the memorandum, Mr. Roth stated that the revised request would be a waiver of 10 spaces.

William Roth reviewed the comments/concerns from the GCG Engineer, Mike Carter. Mr. Roth stated that the BPW had a flurry of emails with him back and forth, because they couldn't read the emailed pdf files of the plans.

Ken Ferreira started to address some of the concerns as reported by GCG Engineer. He first addressed the waterlines, that they thought had been capped but apparently were disconnected but not abandoned. He said the waterlines were the last comment/condition from BPW, and they would be addressed during construction.

Mr. Ferreira stated that he felt the big issues were all addressed; and that they had removed 30 seats from the ice cream picnic area.

Wayne Hayward asked about the water tie-in.

William Roth stated that water to the former Holcomb Street house wasn't properly capped.

Wayne Hayward asked if that was on the plans, to which Mr. Ferreira said it was not as of yet.

Wayne Hayward asked about the First Flush calculations that GCG had brought up in their report. He asked, is it .35 or .5?

Mr. Ferreira stated he didn't know if that was a typo and that they could handle 1/2". This was something they needed to address.

Wayne Hayward reiterated they just received the plans this afternoon and no one has really had a chance to review them.

Jeffrey Lucas asked about the removal of storm water.

Mr. Ferreira stated that basically there were three parking lots: one off Bridge Street, one off Holcomb Street, and one between Emma Jean's and EJ's Diner. He said there were catch basins and a manhole with a storm sceptor. He explained emergency plan if catch basins overflow.

Jeffrey Lucas asked if there was any elevation change being made that would affect abutters.

Mr. Ferreira stated there was no grading that would affect abutters. He said the parking lot were designed to have all of the water flow internal to the site.

Kaisa Cripps asked if all three properties had to be involved for proper drainage?

Mr. Ferreira said, Yes.

Wayne Hayward said because the plans were just received today he wasn't sure he had a lot of comments.

There was a brief discussion on 100 year storm and drainage.

Wayne Hayward then brought up the topic of Parking, he noted they did do some reductions.

Mr. Ferreira said they did completely remove the patio, and that it would just be lawn/grass. He also stated that the picnic area would be reduced to 30 seats.

Wayne Hayward said if they were looking for a patio in the future that would require a Special Permit. Mr. Hayward asked if the parking space was the traditional 9x20?

William Roth stated it was, except where there is overhang, and that is 18'.

Brief discussion on handicap parking.

John Farrell, Jr. asked Mr. Ferreira a question on the plan specifically, and it was answered.

Jeffrey Lucas as about lighting around the building, is it going to be wall mounted?

Mr. Ferreira said it would be sconces along the walk way; and in parking lot the traditional face down lights.

Wayne Hayward said that originally there was a concern with parking use, concerning take out and parking.

Mr. Ferreira said that they would be using two spaces for customer convience near the vestibule as 'take out spaces.'

Wayne Hayward asked about the curb cut in front of the building.

Mr. Ferreira said they still have to discuss with the State to petition a closure but they won't talk to them until there's an approval in place.

Kaisa Cripps said that her concern has been the future sale of any or all of the properties. Ms. Cripps said there was discussion about a blanket easement, and wanted more information about it.

Mr. Ferreira stated that the blanket easement would be done by Attorney John Markey and would be a recorded document for the use/maintenance of all three properties. The three properties would be dividing up the maintenance costs, crossover access, etc. He also stated that the residence on the property would not share in any of the repair/maintenance cost.

William Roth stated that would be a standard condition of the Special Permit. Mr. Roth said that the special condition would be that the easement would need to be reviewed and approved by the Town Attorney prior to start of construction.

Kaisa Cripps asked if they could reject their decision, if they didn't agree with the easement.

Wayne Hayward said that's why he was hoping that it would be part of the plan.

Wayne Hayward then asked if there was anything written formally with Sovereign Bank about overflowing parking.

Mr. Ferreira said there wasn't in writing, but it was an informal conversation.

Rene Fleurent, Jr. said so it's not in writing.

Mr. Ferreira said 'no.'

Wayne Hayward turned it over to any comments from the public.

Resident, Doug Barissa of 20 Rogers Street asked about if the easement including parking.

William Roth explained it was a crossover easement; use, maintenance, access and parking for the businesses but would not allow the residence at 140 Bridge Street to use as parking to meet any need that property would or could have in the future..

Mr. Barissa explained that his biggest concern was the parking overspill. He was also concerned about the parking spaces for the house (140 Bridge St.) on the property.

William Roth explained that the house on the property has enough parking for two spaces currently.

Mr. Barrisa asked if the house on the property were to sell in the future and a new business were to come in there, would it be able to park anywhere on the property under this crossover easement.

William Roth explained that if the residence/home was to be sold in the future and a business to purchase it, any additional parking they would want need would have to be provided in addition to the proposed parking. This is because the Planning Board decision will be very specific on the uses, seating and square footage and since the house is not included, it would not be included in the future.

There was discussion on the home on the property being part of the easement, but Mr. Roth explained that it was part of the easement to allow parking on the property but not for any future use of the residence; even though it is zoned as business, it is a Residential home with its own two parking spaces currently. The home is for residential use.

Mr. Ferreira said the home would not be part of the maintenance/repair cost that the three entities would be sharing under the easement.

Wayne Hayward cautioned the Board that some uses in business, perhaps lawyers or doctors wouldn't need five or more parking spaces, which is the trigger for Special Permit review, at the residence 'home' that could be sold in the future and started as a business.

Mr. Barrissa said that the crossover easement confuses him.

Again, Mr. Roth explained the crossover easement and how it would work. And it would be something that's recorded at Registry of Deeds.

Mr. Barrissa asked if the Board had any discussions with the Police or Fire Department in regards to overspill of parking on the side streets.

Mr. Roth said that the plans were routed to both the Police & Fire Departments and they did not have any comment regarding overspill parking.

Kaisa Cripps asked if currently 140 Bridge Street is a residence?

William Roth said it is a residence and is assessed as a residence, but zoned business.

Resident, Charlene Conway asked if hypothetically she were to buy that residence and turn it into a business in years to come, that she would just get rid of the yard in the back for the parking spaces needed for her business.

Wayne Hayward said, like any other project they would need to submit plans if they wanted more than 5 parking spaces it would require a Special Permit but if it was under 5 spaces it would be reviewed by the Building Commissioner for compliance with the code.

Resident, Charlie Cabral of 4 Rogers Street, asked as long as the businesses can provide parking for all their customers, you approve?

Wayne Hayward said that the Boards regulations are requiring 101 parking spaces, and they are proposing 91 and asking for a waiver of 10 spaces.

William Roth stated that employees are accounted for in those counts.

Kenneth Ferreira asked Mr. Hayward if he would poll the Board, in regard to parking and the reduction of ten spaces is accepted.

Kaisa Cripps said she just had a few more questions on the hand out of 'hours of operation.' Ms. Cripps said that after reading the sheet, she felt there was quite a bit of overlap in the peak hours.

"Seven hours," she said. Ms. Cripps said she had some concerns over the parking issues.

Wayne Hayward asked Ms. Cripps what hours she felt were an overlap.

Ms. Cripps answered 11 a.m. to 12:00 ish, and 4-9 p.m.

Kenneth Ferreira said that peak hours don't mean it's going to be jammed.

Kaisa Cripps said that from a Planning Board perspective, she believed it was going to have an impact on traffic in that area, and parking.

Resident, Jeff Antil of 7 Brown Street said that he wrote the hours as the General Manager. He said that in the course of one day he believes that it would clearly not be seven hours, but ½ hour to an hour tops for full stream, complete hours.

Kaisa Cripps said she was taking into consideration total complete hours.

John Farrell, Jr. asked Mr. Antil how he was coming to that ½ hour?

Mr. Antil said that peak hours for the cupcake store would be 5 to 10 minutes, the butcher shop, perhaps another 10 minutes for the "housewife" to run in and out for meats. Mr. Antil stated that in his opinion he felt that the Town goes overboard with parking and in running his own business, you become a good neighbor and things work themselves out.

Francis Budryk said in the last meeting, Mr. Roth pointed out that the Town was excessive with parking. He said that Ms. Melanson made some accommodations with the parking since the last meeting, and the Board should meet her half way.

Wayne Hayward said he did believe that they were working with us.

John Farrell, Jr. asked Ms. Melanson if she was going to continue with the outside entertainment once the new establishment was up.

Kathy Melanson said probably not because now she has the room, and she won't have that once the new restaurant goes up. She said, "maybe", but no plans to do so at this time.

Rene Fleurent, Jr. said that he has seen that they have made changes, but he was sure that more changes could be made; and that he was not comfortable with the plans as is.

A resident asked for a copy of the plans, to which Mr. Roth stated he'd be happy to email them to him.

Ms. Melanson spoke for a few minutes. She said that she has drastically made cuts on the seating to accommodate parking. She said she is only asking for a waiver for ten spaces. She noted other businesses in Town they may/may not have enough parking available. She referenced that some people have already have their minds made up prior to coming to the meeting. "I'm not asking for a lot," she said.

Resident, Andy Sievers of 19 Summer Street said that new businesses helps and affects the Town in a positive way with employment and other. Mr. Sievers pointed out to Board member, Rene Fleurent, saying that he thought he had made up his mind prior to even entering the meeting; and felt that Mr. Fleurent was a bit offensive in the beginning of the meeting.

There was a little banter between Mr. Sievers and Mr. Fleurent, until Wayne Hayward called the meeting back to order.

Wayne Hayward said the Board is trying to do their job, and this is how the process works. He reminded everyone that this was only the second meeting they've had on this matter, and they just received the updated plans today. "We're not business un-friendly," Mr. Hayward said. He reminded the applicant that this was a Special Permit that required 2/3 vote to approve.

Wayne Hayward said that he was not able to review the plans.

Kaisa Cripps said she had just received the information today at 2:30p.m.

Rene Fleurent, Jr. said he saw a deficiency and has strong reservations regarding the parking.

Wayne Hayward said they would be applying their code to this project and they are going to need more time to review the plans.

Kenneth Ferreira said that he would like to request a continuance to the September 10, 2013 meeting.

William Roth stated that he will route two sets of plans to BPW for review, he will have two sets of plans available in the office, or he can email to any Board member upon request.

Jeffrey Lucas asked if they go to the September 10th meeting date, would a new set of plans be available with minor changes?

William Roth said, 'no.' The minor changes on the plans would just be the number of parking table (reading from 103 to 101).

Jeffrey Lucas asked the information from the Engineer wouldn't change the plans?

William Roth stated it would not.

Wayne Hayward asked the Board for a straw vote regarding parking.

Rene Fleurent, Jr. said that he made clear his position.

William Roth thru the Chairperson asked Mr. Fleurent where he sees other options for parking?

Wayne Hayward ruled him out of order, stating that he was not allowing that a Board member be drilled.

William Roth stated he was just asking him a question, because he doesn't see where else there could be room for parking and as Staff to the Board he wants to know what direction to advise the applicant.

Rene Fleurent, Jr. thanked the Chair, and then said to Mr. Roth he didn't think it was fair for him to challenge him.

William Roth stated he was not challenging him, but wanted clarification.

Wayne Hayward asked for a sense of the Board on waiving the parking. With a hand count, there were three people out of seven that would be in favor of waiving it as of tonight. (Jeffrey Lucas, John Farrell, Jr. and Francis Budryk).

Wayne Hayward said to Mr. Ferreira, there you have the sense of the Board. Out of seven, three would be in favor.

Jeffrey Lucas made a motion to continue the public hearing with written notification from Mr. Ferreira to Mr. Roth for the continuance to September 10, 2013 and was seconded by Rene Fleurent, Jr. The motion passed unanimously.

IV. LONG RANGE PLANNING:

1. Zoning Reform Bill

William Roth advised the Board there was nothing new on the Zoning Reform Bill, that it is a long process thru the State. He is just keeping it under Long Range Planning.

2. Medical Marijuana Law

William Roth stated that he gave the Board members tremendous amounts of literature to begin reading. He went over his handout to the Board; and also let them know that he, Pat Fowler, Wayne Hayward, and Wayne Fostin met with "Compassionate Care Clinics" on August 22, 2013 as they are thinking of bringing a Medical Marijuana Dispenser business into Fairhaven.

Kaisa Cripps asked a question regarding the packed from Compassionate Care Clinics. She said that on page 9, under "Conditions", it read that the "lease subject to zoning approval by Town of Fairhaven to be performed by Tenant no later than December 31, 2013." Ms. Cripps asked if there had been a request from zoning for an approval.

Wayne Hayward said that he too was confused by that condition as it read.

Brief discussion ensued.

William Roth stated that this would be extremely regulated by the State.

Kaisa Cripps believed that should do a moratorium for a year as she didn't believe they had enough time for regulations. She felt they should be proactive on this.

There was a discussion on the Moratorium Warrant.

Kaisa Cripps made a motion that William Roth draft a moratorium warrant article for Medical Marijuana Dispensing and was seconded by Jeffrey Lucas.

On the question, Wayne Hayward said that a moratorium is not a ban.

William Roth said that he can hopefully do a draft by September 10th, and that currently there is no formal call for a fall Town Meeting. He said that once they advertise a hearing, there is a six month window to bring an article before Town Meeting.

The motion passed unanimously.

V. CORRESPONDENCE:

NONE

VI. OTHER BUSINESS:

Jeffrey Lucas made a motion to adjourn and was seconded by Kaisa Cripps. The motion passed unanimously.

Meeting adjourned at 8:34 p.m.

Next meeting on Tuesday, September 10, 2013.

Respectively submitted,

Patricia A. Pacella
Recording Secretary