

PLANNING BOARD MEETING of September 10, 2013: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairperson, Wayne Hayward - Opened the meeting at 6:30pm and notified the audience that the meeting was being recorded on cable access TV.

Quorum/Attendance

Members Present – Chairperson, Wayne Hayward, Vice Chairperson, Gary Staffon, Francis Budryk, Kaisa Cripps, John Farrell Jr., Rene Fleurent Jr., Jeffrey Lucas, and Peter Nopper.

Planning Director William Roth was in attendance.

Gary Staffon made a motion to accept the minutes of August 27, 2013, and was seconded by Francis Budryk. The motion passed unanimously.

Planning Board Bills:

None

II. CURRENT PLANNING:

Receipt of Plans:

None

Approval of Plans:

None

Lot Releases:

None

III. PUBLIC HEARING:

1. Special Permit – **Brahmin Leather Works** – 77 Alden Road (con't from 8/13/13)

William Roth stated he did not see the Engineer in attendance as of yet, so Wayne Hayward moved on to the second Public Hearing.

2. Special Permit – **Melanson – EJ's Brooklyne Diner** – 111 Huttleston Avenue (con't from 8/27/13)

Wayne Hayward opened the Public Hearing. Mr. Hayward notified the Board that he had spoken to Mr. Staffon about his participation in the meeting and per MGL Ch. 39, Section 23D (Mullen Rule), Mr. Staffon has submitted letter certifying that he has reviewed all materials, the minutes and video of the last meeting to bring him up to date. Mr. Hayward moved for Mr. Staffon to be a part of this hearing.

Wayne Hayward advised the Board of the new plans that were before them.

Engineer, Ken Ferreira reported that Mrs. Melanson was away on business, and that Mr. Melanson should be arriving by 7pm. He also advised that the manager, Jeff Antil was in attendance.

Wayne Hayward did a quick review of the last meeting and the parking issues.

William Roth reviewed his recommendations to the Board. He stated that the revised plans indicate 98 parking spaces on site, with 101 spaces that are required. Mr. Roth believed the reduction of three spaces is acceptable. Mr. Roth recommended approval from the Board with the Special Conditions he has outlined. He also said he was very specific with a few of the conditions, example being Special

Condition number four, which lists the square feet and the number of seats; therefore, if in the future the applicant wanted to change anything, they would have to return to the Board. Also, Mr. Roth stated that Special Condition #6 was very specific as well to the blanket easements.

Ken Ferreira asked if Mr. Roth had received a draft copy of the blanket easement that was sent by their attorney John Markey.

Mr. Roth he did receive it later in the day, and had not had an opportunity to review it.

Ken Ferreira agreed with the Special Conditions, but had one amendment to number five, that it should read 18" of cover, vs. 3 feet. Mr. Roth agreed.

There was a brief discussion around the 100 year storm, and the catch basins.

Mr. Ferreira did state that stormceptors for each individual parking lot was added.

Gary Staffon asked if Condition #6 would be held up to Mr. Roth to confirm, or Mr. Hayward.

William Roth said that he would be reviewing the easement with the Town Attorney.

Kaisa Cripps said she had a concern on the blanket easement, and was not comfortable approving the project without that information in front of her.

William Roth stated that the final easements are/has always been done after an approval takes place.

Kaisa Cripps said that personally she would like to have everything in front of her in order to approve and historically because it was done one way or the other, doesn't mean it necessarily has to continue to be like that.

Gary Staffon said and we are not Attorneys and that's why we have a Town Attorney to review it.

There was a brief discussion the blanket easement, and the timing of days to appeal and sign.

Wayne Hayward referred the conversation back to the parking and stated that a waiver was required for the three spaces.

Ken Ferreira said they reduced the outdoor seating of the ice cream parlor from 50 to 30.

Gary Staffon said when the building was just the candy factory that there was always ample parking except on Valentine's Day or other holidays. He said, "I hope there is a parking problem". Referring to that he hoped the business was successful.

Jeffrey Lucas asked Mr. Roth if on condition #4, they could add the number of seats that represent the square footage.

Mr. Roth said that would show the three spaces shy.

Rene Fleurent, Jr. said that he still had reservations about the parking reductions. Referring to what Mr. Staffon said, Mr. Fleurent, Jr. said that he was not hoping that there would be a "parking problem". He said that's a congested part of Fairhaven with Holcomb Street, Rt. 6, and Bridge Street and he didn't want to see it unsafe.

Francis Budryk said in the big picture this is a new place in Town that will bring people to Fairhaven, and it will bring in jobs. "We're talking about 3 spaces," he said. He said the last time they were here it was 10 spaces, and they've done some cuts and brought it down to 3. Mr. Budryk said he was comfortable voting for the waiver of 3 spaces.

Gary Staffon said that in reference to Mr. Fleurent's comments the safety is the site-circulation; and the site circulation looks good.

Mr. Fleurent said, the site circulation does look adequate, but he was still uncomfortable with it.

John Farrell, Jr. said that he believes Mr. Roth and Mr. Ferreira did a good job squeezing more parking.

Wayne Hayward said as long as the Fire Chief was okay with the employee parking near the building that was ok. Mr. Hayward said could they squeeze more parking spaces, he wasn't so sure. The easement issue, he said it's hard to have faith without it in front of us.

John Farrell, Jr. asked Mr. Roth who reviews the easement.

William Roth stated that he would review the easement and then review it with the Town Attorney.

Ken Ferreira said that it sometimes takes awhile at the New Bedford Registry of Deeds, but that Special Condition #6 says they have to have a recorded copy prior to receiving the building permit. Therefore the easement has to be recorded first.

Francis Budryk said that he had thorough confidence in Mr. Roth in following through.

Kaisa Cripps said that she feels they are an elected Board and that they need to make sure things are done correctly. In regards to the easement, she said that she is just uncomfortable approving the project without the necessary paperwork in front of them.

Jeffrey Lucas went back to the packet of information and referring to BPW asked if everything that is on there had been completed.

Mr. Roth said that Condition #9 references a pre-construction conference with BPW.

Resident, Vincent Garcia of 134 Bridge Street was in the audience and stated that if the applicant needs additional parking they could use his property.

Wayne Hayward said that the applicant would have to do some sort of a lease in writing with him.

Kaisa Cripps asked Mr. Garcia to clarify something in his letter to the Board that he was in favor of the restaurant. (Apparently, the letter didn't read that.)

Mr. Garcia confirmed, "Yes, I do not" have any objections to the restaurant.

Resident, Ann Richard was also present to speak. Ms. Richard said that she has no association with the applicant. She was just a Town resident and she has watched the previous meeting and read the minutes. She said it sounded like a wonderful business was coming to Town and that it should be appreciated. She said she thought it would be too bad if it was held up again, and she really hoped the Board would approve it.

Rene Fleurent, Jr. said that he is not opposed to any new businesses coming to Fairhaven. He said, "I'm pro-business." But that his main concern is parking and he thinks it could be scaled back a little more.

Wayne Hayward said that it just sounds like the Board needs to cross their t's and dot their l's. He said the plans are complicated, and they just need to feel comfortable approving. He advised Mr. Ferreira and his client that they need 2/3 vote of the Board, and if it fails they would have to wait two years to reapply.

Ken Ferreira said in reference to the Easement that it usually happens after a plan approval.

Kaisa Cripps said that the easement has been spoken about at previous meetings, and that the applicants have had more than enough time to bring the easement in for the Board's review, and it's still not available.

Gary Staffon said he was confident that Attorney Crotty or someone in his office will review the Easement. He said they don't have issues with documents like this, Mr. Roth gives it to Atty. Crotty and they review it. "I'm confident that it'll work out," he said.

Wayne Hayward said that in the past it has been finalized and recorded after an approval, however, Ms. Cripps may have a point that our Attorney still has not reviewed it.

Kaisa Cripps said again that she was not comfortable with approving the project without the easement information in front of them. She said they have discussed it for four weeks and still don't have the information.

Ken Ferreira said it wasn't a difficult easement. He said all three entities are owned by the same people.

Kaisa Cripps said but legally all three are separate entities.

Jeffrey Lucas said he was comfortable with the plans as they are with the Special Conditions as listed.

John Farrell, Jr. asked the Board why they weren't comfortable with Special Condition #6. Mr. Roth has stated that the applicant will not get the building permit without the easement being recorded. He said that he was comfortable with what has been presented and the conditions that will go with an approval.

Wayne Hayward asked Mr. Ferreira what he would like to as far as taking the vote tonight or postponing another two weeks.

Mr. Ferreira referred to his client, Mr. Melanson who was present.

Mr. Melanson asked if he could request a poll from the Board.

Wayne Hayward said that wasn't really practice of the Board.

"Then I'd like to just put it to vote," Mr. Melanson said.

Jeffrey Lucas asked Mr. Ferreira if he wanted to confer with his client.

Mr. Ferreira said, "He's the boss and he just said yes."

Wayne Hayward said that he doesn't like that some people are saying that the Board is holding it up, he said this is a big project and the first date was August 5, 2013. It's really not been that long, he said.

Ken Ferreira said that the Easement has to be approved by the Town's counsel before they can get a building permit; he said that is a special condition.

Gary Staffon made a motion to approve the project with the 22 Special Conditions as stated with an amendment on Special Condition #5 to read 18" instead of 3', and was seconded by Jeffrey Lucas. The motion passed with 6 in favor (Jeffrey Lucas, Francis Budryk, Gary Staffon, Wayne Hayward, Peter Nopper, and John Farrell, Jr.), and 2 oppose (Kaisa Cripps and Rene Fleurent, Jr.).

The Engineer for the Brahmin Leather Works Special Permit was now present and Wayne Hayward opened up that Public Hearing.

1. Special Permit – **Brahmin Leather Works** – 77 Alden Road (con't from 8/13/13)

Engineer, John Keegan said they have gone to Conservation Commission, and their representative wanted them to do soils. He said they have since delineated the wetlands and recreated a site to create a wet meadow. He said they are going back to the ConCom on September 23, 2013. Mr. Keegan then reviewed the plans with the Board. He said the only change is the wet meadow.

Jeffrey Lucas asked if the lower part is existing parking spaces, which Mr. Keegan replied it was.

Gary Staffon said the issue is between the two sites, Brahmin and the old Standard Times building (which is now Brahmin). Mr. Staffon asked if the grass in front of the old Standard Times building is where the soil tests were done.

Mr. Keegan referred him to page 4 for the existing conditions.

Kaisa Cripps asked if 77 Alden Road and acquired 245 Bridge Street are combined in one?

William Roth stated a Crossover Easement is required and he would advise them to be specific with the language and bring it to the Board for review.

Mr. Roth also stated that the layout has not changed. The layout is fine. Site circulation is fine. There were a lot of drainage comments to the wetland issues, but he thought the project was fine. Mr. Roth also said that they need to address the easement and the consulting engineer needs to review.

A brief discussion on the curb cuts were heard.

Wayne Hayward asked if this was excessive parking for Brahmin.

William Roth stated it was not, because they have expanded.

Gary Staffon asked if on the crossover easement, would be reviewed by the Town Attorney before it came back to the Board.

William Roth stated that they did not collect any fee from the applicant to go to the Attorney.

Gary Staffon said that maybe the Town Counsel could review it before they make a final decision on the easement.

William Roth said he would review it and then have the Board review it; and then again, add a condition to it. He reiterated if the Board wanted Town Counsel to review it, it's a cost to the applicant.

Wayne Hayward said to Mr. Keegan that it would be something the Board would want to review and Mr. Keegan was fine with that.

Mr. Keegan asked for a continuance to the next meeting, September 24, 2013.

Gary Staffon made a motion to continue the Brahmin Leather Works Special Permit hearing to September 24, 2013, per the applicant's request and was seconded by Kaisa Cripps. 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 through the State. He is just keeping it under Long Range Planning.

2. Medical Marijuana Law

William Roth stated that he has drafted a Zoning Article for a Medical Marijuana Moratorium.

Kaisa Cripps commended Mr. Roth for getting this out to them in their packet for review before the meeting. Ms. Cripps asked if the effective date on the moratorium could be changed from June 30, 2014 to August 30, 2014.

William Roth stated that it could not. He said that the State Attorney General has only approved them to the June 30th date.

William Roth said that Town Meeting will be in May and that a Fall Town Meeting is "highly likely" as far as he can see and they would need to get moving on a by-law for the May 2014 Town Meeting.

Gary Staffon asked about the Fall Meeting?

William Roth said the Moratorium would be for a possible Fall Meeting and a proposed by-law for the May 2014 Town Meeting.

Wayne Hayward said that he would've liked to see hand-in-hand moratorium and then by-law.

William Roth explained the process to forward this to the Selectman.

Gary Staffon asked if Town Counsel has reviewed it. Mr. Roth said that he has not.

Wayne Hayward said they he doesn't think the Fairhaven Planning Board should be in a position not to get Legal Counseling.

William Roth said they can get legal counseling they would just have to make a legal service request.

Resident, Ann Richard asked if there will be a conversation about why the Planning Board wants a Moratorium.

Kaisa Cripps said that a moratorium just gives them time to gather information.

Wayne Hayward said that the Board would do a Public Hearing on the Moratorium and then a Public Hearing on the By-Law.

Gary Staffon made a motion to send a draft Moratorium to the Selectman and to make a legal service request to review the document and was seconded by Jeffrey Lucas.

On the question, Rene Fleurent, Jr. asked why send it twice to legal counsel?

William Roth said that if there were to be any amendments made to it that could be done at Town Meeting floor only.

Kaisa Cripps asked William Roth where he got the draft Moratorium language from?

William Roth said that he used the "Kopelman & Paige" draft.

In other business, Kaisa Cripps said that she would feel more comfortable in the future if they could request to see draft easements prior to their approvals.

Gary Staffon said they could see draft easements, but the Town Attorney is looking out for the best interest of the Town and they should trust him on that.

Wayne Hayward said they could've asked for a bond.

More discussion ensued.

John Farrell, Jr. reiterated in asking the question why the Board wasn't confident in the Special Condition #6 that Mr. Roth wrote in.

Wayne Hayward said if the Attorney comes back and says that the easement is not going to accomplish what the Planning Board thought then it could be a problem.

William Roth said that in the future he will tell the applicant that a draft easement is needed for the Board to review, and then it will be finalized and forwarded to Town Counsel.

More discussion ensued.

Gary Staffon made a motion to adjourn at 8:06 p.m., and was seconded by Jeffrey Lucas. The motion passed unanimously.

The next meeting is scheduled September 24, 2013.

Respectively submitted,

Patricia A. Pacella
Recording Secretary