

MINUTES
PLANNING BOARD
TOWN OF DAMARISCOTTA
DECEMBER 4, 2017
7:00 PM

MEMBERS PRESENT: Jonathan Eaton, Shari Sage, Neil Genthner, Adam Maltese, and Wilder Hunt. Alternate members Dana Orenstein and Jenny Begin were also present.

STAFF PRESENT: Anthony Dater, Town Planner; Matt Lutkus, Town Manager.

PUBLIC PRESENT: Jim Katsiaficas, Attorney for the Town; Chris Chase, Coastal Journal; Charles Utter, citizen; Jim Campbell, citizen; Andrea Keushquerian, citizen; Ronn Orenstein, Selectman; Ann Pinkham, citizen; Nancy Bailey, citizen; Josh Pinkham, citizen; John Roberts, Fire Chief, Damariscotta; Lucy Harrington, Appeals Board alternate; Haas Tobey, citizen; Bill Crocker, citizen; Scott Gray, representative Zander Lee; Mary Gaul, citizen; Dave Hungerford, Lincoln County Rifle Club member; Gina Hamilton, Wiscasset Newspaper; Gabe Shadis, Stepping Stone Housing, Inc (SSHI) abutter; Ann Jackson, citizen; Amy Lalime, SSHI neighborhood; Patricia Shadis, SSHI neighbor; Hylie West, representative Lincoln County Rifle Club; Dan Catlin, 435 Main St., LLC developer; Susan McAlister, SSHI neighbor; Marilee Harris, SSHI representative; Maia Zewart, LCN; Scott Abbotoni, citizen; Andrew Sturgeon, engineer 435 Main St., LLC; Shawn Tobey, engineer 435 Main St., LLC; Tom Quaranto, interested party; Laurie Green, PAC member; Adam Nelson, PAC member.

CALL TO ORDER: The Chairman called the meeting to order at 7:00 pm.

The Chairman requested that the Pledge of Allegiance be recited.

PUBLIC HEARING:

A. PROPOSED AMENDMENT TO FLOODPLAIN ORDINANCE FOR PUBLIC RESTROOMS AT THE MUNICIPAL PARKING LOT AND FOR OTHER PUBLIC FACILITY INSTALLATIONS.

The specific wording for the amendment is attached (A)

Dater explained the changes are necessary to allow for the construction of public restrooms in the downtown area. The shorefront planning calls for public restrooms and the current ordinance calls for 3 feet above the base flood elevation or 100-year storm. The restroom construction cannot meet ADA requirements and the existing ordinance, it would be approximately 5 – 6 feet above the parking lot, with an ADA ramp that would take up several parking spaces. The proposed amendment is to change the 3-foot requirement to be 1-foot above the base flood elevation. Dater told the room that he's checked with the State Planning Office and they are ok with the changes, for just these types of structures. If approved tonight it will be voted on by the townspeople in June at the annual Town Meeting.

Sage asked if this change would affect any funding opportunities the Town may have.

Town Manager, Matt Lutkus told her no it would not.

Resident Dick McLean spoke from the audience in favor of the changes to allow for the much-needed public restrooms.

Chairman Eaton closed the public hearing portion of the meeting at 7:06pm

REGULAR MONTHLY MEETING FOR DECEMBER 2017:

A. MINUTES:

August 7, 2017

On motion Hunt / Genthner to approve the minutes of the August 7, 2017 Planning Board meeting as written.

VOTE: 5-0 IN FAVOR

B. OLD BUSINESS:

1. AMENDMENT TO FLOODPLAIN ORDINANCE – AMEND ORDINANCE TO ALLOW FOR PUBLIC RESTROOMS IN THE MUNICIPAL HARBOR PARKING LOT TO BE ELEVATED ONE FOOT ABOVE THE 100-YEAR FLOOD LEVEL INSTEAD OF THREE FEET. IF APPROVED, FORWARDING TO SELECTMEN FOR A TOWN MEETING WARRANT.

On motion Hunt/Maltese to approve the suggested amendments to the floodplain ordinance as suggested.

VOTE: 5-0 IN FAVOR

2. STEPPING STONE HOUSING, INC. (SSHI): PLEASANT AND HODGDON STREETS – MAP 7 LOT 041-001-RESIDENTIAL DISTRICT-REMANDED SITE PLAN FROM THE BOARD OF APPEALS FOR FINDINGS OF FACTS ON LEGALLY NONCONFORMING DWELLINGS AS OF MARCH 23, 1998. DISCUSSION WITH TOWN ATTORNEY.

Attorney Jim Katsiaficas was present to guide the Board for this topic.

Eaton explained that they originally made their decision based on a 1995 survey done by Rory Craib. Since that time, they have received tax information on the properties in question proving that the taxes have remained consistently paid on those properties.

Katsiaficas explained that this matter has been remanded back to the Planning Board by the Appeals Board for further findings and conclusions to support the decision to grandfather 7 non-conforming dwelling units, that have existed since before the enactment of the ordinances.

Katsiaficas noted the following items as part of the record:

The 1995 survey mentioned above, that shows the location of 7 dwelling units on the property.

The CEO opinion / recommendation that 7 dwelling units were lawfully non-conforming on site.

The Assessor's information, including assessor's property cards, and tax records showing continuous payment of taxes, and a google picture showing the structures on the property.

Dater explained that for tax/assessing purposes BH4 Blue Haven 4 which is the old Andrews house and accessory apartment on Map 7-41. BH 5 is Blue Haven 5 which is the other 5 units on Map 7-41-001.

Hunt added that there is a letter from Great Salt Bay Sanitary District indicating they had 7 users at that location, 6 legal.

Sage asked if grandfathering had anything to do with occupancy, or was it just the structures.

Katsiaficas told her it depended on what was being looked at as being grandfathered. In this case the abandonment argument doesn't really apply because the grandfathering is for the non-conforming structures, not the use. The residential use has been legal all along. He went on to explain that abandonment is more than just not using it. There has to be the intent to abandon property and if someone is making a claim of abandonment, the person making that claim has the burden of proof to show there was intent to abandon the structure. Simply saying it is not lived in is not enough.

Maltese clarified that there were 2 lots here. He then asked how many units were allowed on a lot.

Katsiaficas answered- telling him that it's between the 2 lots, they are being considered one parcel as both lots are one common ownership. Under town ordinances now, the 30,000 sqft parcel (at 1 unit per 10,000 sqft) is allowed 3 dwelling units – those units could be duplexes or 3 single family dwellings.

Maltese explained that he was trying to determine at what point, if any does the use no longer fall under residential use and become something commercial (rentals).

Katsiaficas told him they could review the ordinance to see if it makes that distinction, but he didn't believe it does – it's a dwelling so it's residential.

Dater agreed, stating that he didn't believe there was any distinction between ownership and rental in the ordinance. He clarified that a multi-unit is defined as 3 or more dwellings or any kind, with a maximum of 10.

Katsiaficas asked if there were new Board members present since the decision made in April 2017.

Eaton told him they did have 2 new members.

Katsiaficas asked if the new members had reviewed all of the information in the record.

Both Genthner & Maltese stated that they had not reviewed everything yet due to the volume of information.

Katsiaficas asked if a record had been established on this matter.

Dater told him that it had – a complete file was supplied to the Board of Appeals.

Katsiaficas told the Board that there is not harm in people who where absent acting on an application. The best thing for the 2 new members to do is to review the available information to bring themselves up to speed.

Katsiaficas suggested that he can draw up a draft of findings for the Board to review at their next meeting.

Hunt told Katsiaficas that the Board went to the site, sometime after the Andrews house & apartment were torn down, so that they were able to actually see the buildings that were there.

Eaton stated that the 2 dwelling units in the house were confirmed by the CEO prior to their removal.

Katsiaficas asked what structures did they find on site.

Eaton stated there were 4 originals and one newer tiny house, that replaced another existing structure.

Sage stated that it was confirmed that one of the buildings was either on or over the property line.

Eaton told her that would require a survey to verify that information.

The abutting property owner stated from the audience that it has been surveyed and it is right on the line.

Begin referenced an earlier memo from the Town Attorney, Jenny Villeneuve where she outlines grandfathering. She mentioned that a discontinued use for over a year could create a presumption that the use has been extinguished or abandoned. She further stated that she thinks that memo is really important for the Board to re-review.

Katsiaficas reiterated that the Board is viewing the Assessor's record as proof that there was no intent to abandon the dwelling because the taxes remained paid to date.

Eaton told him that was correct.

Sage stated that she did not agree with that statement, it was not a unanimous vote in the past.

Katsiaficas told the Board that he will prepare his draft findings to reflect how the majority of the Board feels. It will be up to the Board to review and act accordingly.

Gabe Shadis stated that the Appeals Board sent this back to the Planning Board for findings of fact to address the abandonment issue, to show how the Planning Board came to their conclusion that the property had not been abandoned.

Pat Shadis then stated that she believes the Planning Board was considering dwellings not structures, for example, John Andrews' house was one structure, but 2 dwellings. If a structure was licensed as a daycare in 2009 and then never used again as a dwelling, making that dwelling abandoned. She didn't believe the Board was looking at structures.

Eaton stated he still doesn't see abandonment. He then asked Attorney Katsiaficas if he could answer that.

Katsiaficas stated that he understood that the Board was attempting to determine the total number of dwelling units, not necessarily number of structures.

Pat Shadis stated that the abandonment issued goes to dwelling units, not structures.

Katsiaficas stated that the person claiming abandonment has the burden of proof in this case. Non-occupied doesn't always mean abandonment, there must be an intent to abandon.

Lalime asked if the Assessor's information was in record at the time this Board made its decision.

Dater told her it was not in the file, but as public record contained at the town office it is available to all.

Maltese stated that Jenny Villeneuve told them that because tax records are public information they can be used.

Eaton agreed with this statement. It was discussed, the tax records existed, just not in hand at the time.

Pat Shadis told the Board that there was a lot of discussion on the abandonment issue that did not end up in the record so they asked the Appeals Board if specific information about each structure included in their appeal was part of the record and they were told yes. She asked how information is communicated back to this Board.

Eaton told her the Appeals Board takes the written facts and reviews it and listens to the appellant to make a ruling. He went on to tell her that the Planning Board and the Appeals Board are two separate entities.

Continued to the January 8th meeting.

3. DAMARISCOTTA MAIN STREET, LLC: 435 MAIN STREET (GUN CLUB ENTRANCE) MAP 1 LOT 056-001 – HIGHWAY COMMERCIAL DISTRICT – REVIEW OF PRELIMINARY PLAN FOR THREE RETAIL/PROFESSIONAL/COMMERICAL BUILDINGS.

Andrew Sturgeon, Shawn Tobey, and Dan Catlin were present representing this project.

Dater told the Board that there was a report from the Planning Advisory Committee dated November 29, 2017 that relates to this application. Board members received copies just prior to this meeting.

Hunt stated that the report he received is addressed to the Board of Selectmen, not the Planning Board. The Planning Board is CC'd on the memo and they've received and acknowledge receiving a copy but the Selectmen need to see it first and react to it.

Dater told the Board that there is a memo from the Planner also in their packet outlining important actions for the Board to consider on this application regarding waiver requests and reviewing section 12 of the ordinance.

Dater also pointed out that there is an email from Jenny Begin on the importance of managing stormwater appropriately for the health of the Damariscotta River.

The Board reviewed the latest site plan submitted by the applicant. Tobey indicated that they were hard copies of the version that was previously emailed to the Board.

Dater told the Board it was important to note that sheet C5 of the new site plan still shows the layout that the applicant is requesting in their waiver, but has not yet been approved by the Board – parking in front of the 3-bay building and the bank.

Dater also told the applicant that the 50-foot set back is a requirement. 50 feet needs to be measured from the edge of the travel way.

Tobey told Dater that the set back is shown. It's actually 52.3 feet.

Sturgeon told the Board it was the same setback as they've submitted in the previous 7 or 8 meetings, that hasn't changed.

Sturgeon expressed frustration with the process, stating that each meeting feels like they go one step forward, two steps backward. Some of the comments and questions brought up, including tonight, are issues already addressed at previous meetings.

Eaton stated that they did a nice job with the berm & landscaping plan to screen.

Maltese stated that his biggest concern is section 12 - it is very specific about parking being to the side and rear of a building.

Begin brought up the memo from PAC to the Board of Selectmen again & attempted to read a portion of it.

Hunt stated that he felt it was out of line to discuss a memo sent to the Board of Selectmen before they've had a chance to see it. At this point, without direction from the Select board, it's just a piece of paper.

Begin told him that she thought it was an error to send it to the Selectmen, she was not on the PAC, but she felt their directive was to send the memo to the Planning Board members.

Dater agreed with Begin.

Begin went on to say that the memo cc's the Planning Board and she believes the intent at the PAC meeting was that the memo be given to the Planning Board at this meeting.

Hunt told them that he received a memo addressed to the Selectmen, they should review it, act on it if they so desire, and go forward as they direct. He went on to say that it was unfair to this Board, after they've been deliberating on this application for 7 months, to give them a memo an hour before the meeting.

Sage stated that the Town Planner says there was an error. It was cc'd to the Planning Board; the memo asks the Planning Board to take direct action on it. She stated that she didn't feel that a technicality should negate the blatant directive in the memo.

At the applicant's request, Eaton provided them with a copy of the memo.

Dater confirmed that the PAC wanted the memo to go to the Planning Board today.

Sturgeon stated that they have a complete application before the Board at this point and he's not sure the memo is even relevant to their process. He's having a hard time understanding why they want to go backward in the process.

Eaton agreed with him, stating that he is having a hard time with it as well.

Begin told them about a presentation by Jane Lefluer. The specifics in the ordinance was an attempt to repair the pattern of development in the commercial district. She pointed out that there are places, like Rising Tide, that have been successful with parking on the side and back of the building.

Genthner stated that Rising Tide's parking is there because they had no other options, their building was pre-existing in it's current location, there was no room to put parking anywhere else. He stated that the other example given was the Cheney Insurance building – When he drove by this evening, there were so many cars parked on the side of Main Street, that there couldn't be 2-way traffic.

Josh Pinkham spoke from the audience. He said as a former Selectman for the Town of Damariscotta, he wanted to confirm what Hunt is saying. He went on to say that when the Select Board gives a charge to a committee, the committee reports back to the Selectmen. There is a process that must be followed; the committee makes a final report to the Selectmen; the Selectmen decide what to do with the information in the report and where to go from there. Hunt is correct, the Selectmen have not giving this Board a directive yet. The Selectmen aren't scheduled to discuss this memo until their regular meeting, Wednesday night.

Maltese found the passage he wanted to read in section 12 section H. parking & circulation (author's note: the information read aloud is actually contained in section 11.H parking & circulation.3 off-street surface parking lot placement):

“...in no case shall parking lots be located between the front façade of the principal building and the primary abutting streets unless the Planning Board grants a waiver and both the building and parking area are screened from view from the frontage street...”

Tobey told him that the principal building is the 22,000 sqft building located at the rear of the property, and the parking is screened by the berm and trees at the front.

Eaton stated that they've placed the smaller buildings in front of the larger one by design, it's a form of infill.

Adam Nelson, a member of the PAC stated that he had sketched out a possible 3rd option for development infill that they feel is a good mix of both worlds and they hope it will protect everyone's investment and he'd be happy to present.

Eaton granted permission to present his idea, but asked him to be quick.

Resident Jim Campbell asked the Board what they were trying to accomplish. He stated that this applicant has bent over backwards for this project, it's time to move on with the process.

Nelson showed a rough sketch of the idea. Basically, it calls for them to push the front building back 30 feet or more, leaving developable space in front for future endeavors, possibly 2-story multi-unit buildings. The PAC feels this would more closely mimic what is in the downtown area, which is what a lot of people would like to see. He told the Board that the PAC had also discussed possible infill in front of other commercial entities along that section of Main St. It's more forward thinking, looking further down the road into the future.

Sturgeon stated that there would be a concern for fire safety as well as pedestrian / vehicular safety. That section of Main Street carries a much higher speed limit than the downtown area, so the zero set back would never be approved by the State.

Nelson told him that speed limits can change over time.

Hunt stated that the C2 district goes from the Baptist Church all the way out to U.S Route 1. There are plenty of lots available for future development. He stated that he sees no reason to change this design to make that area denser. They want this development to be successful, the tenants in the front building are there for a reason, they want to be in the front and will pay the price to be there.

Resident Ann Jackson stated that she is not in any way against this development but she feels that a very unfortunate precedent has been set by not following the codes the Town has, and she would ask the Board to please follow the codes and not grant as many waivers as they have in the past.

Eaton invited her to come up to the table and view the latest site plan with the berm & screening.

Jackson declined, stating that she had seen it.

Eaton recognized Damariscotta Fire Chief, John Roberts from the audience.

Roberts stood and spoke. He told the room that the Town Manager had asked him to come to the meeting and speak about fire safety & site access.

Roberts stated that the way downtown set up is very difficult to get a ladder truck to 2nd & 3rd floors for any type of rescue situation primarily due to the location of the 3-phase electric service from Main Street. He told the Board it's far more important to him to have adequate hard space in front of the building for fire truck access.

Sturgeon stated that waivers are not bad or illegal. Waivers are part of the Town's codes. They are allowable as long as they keep with the intent of the regulations. They are not wrong as long as they make sense when granted.

Hunt seconded that statement.

Hunt stated that safety should be first priority when considering these applications and in his opinion, it makes it safer to have the parking where the applicant has shown it, for fire truck access. He is not in favor of jeopardizing safety to appease aesthetics.

Sage stated that in all of the elevations, she hasn't seen any electrical lines on the site.

Catlin stated all of the onsite electrical is underground from the street.

Hunt asked Maltese if he'd had time to review the plans & make a decision.

Maltese stated that the applicant has done a great job with the berm, but it's the statement "screened from view.." that gives him pause. Screened from view implies to him dense vegetation.

Eaton stated that he felt they had a dense screen in there now.

Tobey told him that between the berm and the shrubbery it will be tough to see the bottom half of the vehicles in the parking lot.

Maltese stated that the ordinances specify the number of plantings required in the buffer.

There was discussion about which building is the principal building. Tobey stated that the regs state that the 22,000 sqft building is the principal building.

Tobey read from the ordinance that it says smaller buildings, under a certain size, can be used to screen the principal building. He went on to say that the two smaller buildings meet the size specification in the ordinances and they definitely screen the back building. So, in his mind the only screening is for the parking lot of the middle building and they feel they've adequately screened the parking from view.

Dater told him that it has to be under 7,500 sqft and both of the other buildings in their project are over that so in his opinion all three buildings are principal buildings.

Sturgeon told him that he disagreed with that assessment.

Maltese told the applicant that his concerns could be resolved by planting within the ordinance requirements of 1 tree of 1 ½ caliper at 6 feet tall every 300 sqft.

Sturgeon stated that he can't count the pavement in the square footage, you can't plant trees in pavement.

Maltese said he was counting the buffer, a green buffer.

Tobey stated that a portion of that buffer is State right of way, and you can't plant trees in the State right of way – they don't own the property. In lieu of that they have implemented the berm.

Maltese asked if they could get a second row of trees then.

Catlin expressed concern about their viability if he over planted like that – there has to be space for the canopy at maturity or they will die.

Genthner clarified that the ordinance reads screened from view, not blocked from view. He said you can see through a screen. He feels they are screening it from view.

Audience member Amy Lalime stated that the applicants don't live here and it's not in the best interest of the town to rush a decision that will affect the residents for the rest of their lives.

Eaton told her that they've been through 8 meetings, that's hardly rushing.

Lalime stated that she has also been through those 8 meetings with him. SHE lives here and pays taxes.

Catlin told the Board that they really feel like they've met the rules and made several changes in response to the community concerns.

The Board did a calculation under Maltese's argument on the number of trees and came up with a number of 16.666 trees required.

Tobey reminded the Board that part of that square footage used in the calculations is owned by the State and not an option for them to use like that, which is why they implemented the berm, to offset the almost half of the buffer that isn't theirs. Tobey explained that between the 4 foot berm and the 2 foot shrubs on the berm, that's 6 feet of screening at the onset, the shrubs will continue to grow and ultimately screen an entire vehicle from view.

The Board discussed what happens if the trees & plantings die.

Eaton stated that he believes it's in the ordinance that they have to be replaced if that happens within the first year.

Tobey stated that the plans guarantee them for 1 year.

Maltese stated that he'd like to see a stipulation that they be guaranteed for longer, maybe 5 years.

Eaton said or for perpetuity.

Sturgeon stated that in his experience if they are tended to in the first year they will usually make it, that's why they've included the 1-year guarantee.

Dater told the applicant that he owed them an apology – the ordinance DOES say that outbuildings under 7,500 sqft can be used as screening to the primary building and the two front buildings ARE both under 7,500 sqft and can be used as such.

Sage told the Applicant that there isn't a lot of spontaneous shopping in this area, once they get in there, people will know they are there and will come.

Hunt stated that unless there was any new information, he for one was ready to act on the waiver request before them.

Sage asked if they should wait until they hear back from the Selectmen.

Eaton didn't think so.

Hunt stated that if there are to be ordinance changes, that's months away and they can't make this applicant wait months, there's a process to follow.

On motion Hunt / Genthner to grant the waiver request, as submitted, to allow the parking as shown on the site plan.

Discussion: Dater read from the ordinance ... "developments consisting of out buildings (less than 7,500 sqft) and placement of 6 foot walls, singly or together may be used to screen parking areas."

**VOTE: 3-2 IN FAVOR
(SAGE, MALTESE)**

Dater asked the Board if they wished to review the application under section 12.A building appearance of the Site Review Ordinance.

Sturgeon stated that they feel that they have met the specifications in that section of the ordinance. He told the Board that he feels they've already been through this section.

Catlin showed the renderings where they started and one with the changes incorporated; pitched rooves, clapboard siding and masonry details on the columns they added to break up the long façade, as required in the ordinance.

Dater read aloud from the ordinance, Section 12.A.2.b:

"... facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less that 50% of their horizontal length."

And section 12.A.9:

"the integration of windows into the building design is required and shall be transparent glass between 3 – 8 feet above the walkway along any façade facing a public street..."

Eaton stated that technically, with the exception of the 5,500 sqft building in the waiver, the buildings don't face a public street, they face their own access road.

Orenstein spoke about the presentation given recently by Bob Faunce on what the Town ordinances actually look like.

Dater told her that he had not seen it, but could send it to the Board.

Orenstein felt it would be helpful to the Board in making their decision to review that information.

Catlin again reviewed the drawings of the buildings, calling attention to the elements Dater had read about that they've included in their design, per town ordinance and community feedback.

Orenstein felt the Board could hold off on further discussion on the building aesthetics until they've seen the Faunce info.

Eaton stated that he supposes they could.

Sturgeon told the Board that they are looking for final approval on this. They are 8 meetings in, they've jumped through all of the ordinance hoops and more, submitted everything requested and have a complete application before the Board. He told them that they felt like they had a moving target.

Tobey updated the Board on the DEP process to date. He told the Board that the DEP has completed their technical review, the application is now going through the State administrative process now.

Dater told him that the Town would like to have a copy of the actual DEP permit once received.

Tobey told him that it would be forwarded as soon as received.

The applicants stated that they understand that other than as built changes, any major changes that may happen to the design as the project moves forward, will need to go to the CEO for review and possibly come back to the Board.

Maltese asked about the ability of the Town to require that a 3rd party be employed to oversee the project to ensure that the Board's requirements are being met.

Dater told him that they could, if the Town had a concern, it's in the ordinance and the applicant would be required to pay for that.

Eaton told him that role is generally filled by the Town CEO.

Dater agreed that the "clerk of the works" for any Town is the CEO.

Dater asked the applicant if they were putting any fencing around the pond.

The applicant told him no.

Hylie West, a board member with Lincoln County Rifle Club requested that the Board add a condition of approval that the applicant reach a suitable agreement with the club on their right of way. West submitted suggested wording for the condition that met what the club is trying to accomplish:

"applicant reach mutual agreement with the Lincoln County Rifle Club on the relocation of the right of way to the Lincoln County Rifle Club property including for utilities by easement deed."

The Board agreed to include this condition of approval.

Eaton further review the plan containing the pond specifications & details.

Genthner stated that the DEP has far more knowledge than he on these things and he feels that the Board needs to rely on their expertise in their permitting process.

On motion Hunt / Genthner to approve the application as submitted / presented with the following conditions:

- 1) Receipt of the State of Maine DEP permit
- 2) Mutually agreeable relocation of the Right of Way for Lincoln County Rifle Club (specific wording submitted by representative Hylie West to be included in the NOD)
- 3) Receipt of the State of Maine DOT traffic movement permit

VOTE: 5-0 IN FAVOR

C. NEW BUSINESS:

1. ZANDER LEE CONSTRUCTION – NISSEN FARM ROAD (EXTENDED)- LOT 4/31-RURAL DISTRICT-REVISED PRELIMINARY PLAN APPLICATION FOR PROPOSED NINE LOT SUBDIVISION ON EXTENDED NISSEN FARM ROAD.

Scott Gray was present representing the applicant.

He told the Board that the property is located on Back Meadow Road and is approximately 41 acres. The plan continues to evolve. They are now submitting for 9 lots, down from the 14 previously requested.

Eaton asked about the right of way to this property.

Gray told him that Lee had a deeded right of way to his property, from Back Meadow Road, through the existing subdivision road.

An audience member and property owner in the existing subdivision spoke. She told the Board that their initial concern was the number of lots originally proposed and the covenants allowing multi-family dwellings. She went on to say that one of their concerns is the covenants for the existing subdivision are much more restrictive and don't allow any multi-family units.

Gray confirmed that the covenants and restrictions on the 41-acre piece Lee just bought do say that he can have multi-family dwellings. Those covenants were put in place before Zander Lee purchased the property from Mark Hanley.

Maltese asked if there was any connection between the covenants and the use of the road.

Eaton said not really.

The audience member told the Board that there are fairly expensive homes in the existing subdivision and they are concerned that the values on those homes will be brought down if the covenants are different.

Maltese then asked if it was legal to have one subdivision have 2 different sets of covenants.

Dater stated he would have to get a legal opinion from Maine Municipal Association. It all depends on whether this will be considered an extension of a subdivision, therefore being one; or if it will be considered 2 separate subdivisions with a road in common and a road association agreement.

Gray stated that he didn't know if there was any law that says they can't have a different set of covenants. He agreed with Dater that a road association agreement would be required.

Maltese asked if the existing road association would have to accept the new road members.

Dater asked the audience member if the Board could have a copy of the existing road agreement. She agreed to bring it to the Town Office.

The Board reviewed the application packet submitted.

Hunt asked if there was a subdivision checklist.

Dater stated that there was and retrieved one.

The Board discussed some lot and road size specifics

Genthner felt the Board should wait for the Maine Municipal Association's legal opinion on the different covenants before they went too far in the review process.

Dater agreed to disseminate the information when received, hopefully before the next meeting.

Item will be placed on the January 8, 2018 agenda.

D. OTHER:

1. QUESTIONS FROM THE PUBLIC

None

2. PLANNER'S REPORTS

None

3. HOUSEKEEPING ITEMS

Genthner recommended that the Board consider starting the meetings earlier, due in part to the length of past meetings. He suggested a 6pm start time.

The Board seemed generally in favor of this idea.

On motion Genthner / Maltese to change the start time of future Planning Board meetings to 6pm beginning with the January 8th meeting.

VOTE: 5-0 IN FAVOR

87 12/4

E. ADJOURNMENT

On motion Hunt / Genthner to adjourn the meeting at 9:50 pm.


VOTE: 5-0 IN FAVOR

Respectfully submitted by:

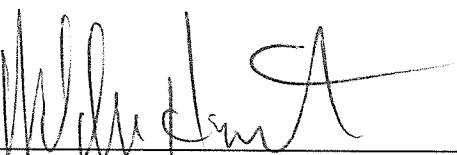


Rebecca J. Bartolotta, Deputy Clerk


We, the undersigned, do hereby approve the minutes of the December 4, 2017 Planning Board meeting:




Jonathan Eaton, Chairman



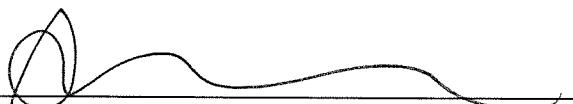
Wilder Hunt, Vice – Chairman



Neil Genthner



Shari Sage



Adam Maltese

Dated: 02/05/18

DAMARISCOTTA FLOODPLAIN ORDINANCE

Article VI – DEVELOPMENT STANDARDS

G. Non Residential - New construction of any non-residential structure located within:

1. Tidal water:

- a. Zone AE shall have the lowest floor (including basement) elevated to at least three feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - (1) be floodproofed to at least three feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water; except,
 - (2) governmental, institutional or public utility structures, including but not limited to public restrooms, that accommodate temporary human foot traffic may have the lowest floor one foot above the Base Flood Elevation (100 –year flood level).
 - (3) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - (4) be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
- b. Zone A shall have the lowest floor (including basement) elevated to at least three feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D., or
 - (1) together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
- c. Substantial improvement of any non-residential structure located within Zones AE and A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or to the elevation of the existing lowest floor, whichever is higher, utilizing information pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D or together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

2018 TOWN MEETING LAND USE WARRANT ARTICLES:

Approved by Planning Board on December 4, 2017 after a public hearing.

ARTICLE ?. Shall the Town vote to enact changes to the existing Floodplain Management Ordinance of November 16, 2016? The changes are to correct the elevation within the flood zones AE and A of governmental, institutional or public utility structures, including but not limited to public restrooms that accommodate temporary foot traffic (not full time habitation) to one foot above the base (100-year) flood elevation in tidal water. (The existing ordinance requires a three foot elevation above the base flood.) A copy of this proposed ordinance is on file with the Town Clerk and posted with this warrant as Attachment #? at Town Hall.

TO: Planning Board
FROM: Planner
DATE: 12/4/17
FOR: Board Meeting – Dec. 4, 2017
SUBJECT: 435 Main Application for Preliminary Plan status

Votes on Waiver Requests -- SITE PLAN ORDINANCE

1. Sect 11.H.3.a: Applicant seeks parking in front of the three-bay commercial building and the bank building. The Section prohibits such parking unless a waiver for good cause is approved by the Board.
2. Sect 12.A: Recommend reading with the applicant all the paragraphs from A.1 to A.11 to get applicant's answers on how the development will meet the ordinance's 'building appearance' requirements.

Vote on Preliminary Plan Status

The Board may conclude that the application is complete with the its vote on all requested waivers and on all the applicable requirements of Section 12.

Final Plan Review

1. The Board could set a public hearing on the final plan. The Board could also set another site visit on the final plan.
2. The board should ask itself if it has any substantive issues at this point. One member has brought up the effect of larger and more frequent precipitation events from climate change. Should the Board ask DEP if the 25 year storm is suitable for design for stormwater going into the prime oyster growing river in Maine? Could the Town request the DEP to require, or at least request, 50 year storm calculations for the design of the 435 Main stormwater quality control measures?
3. Does the Board wish to allow the public to air any of further concerns in a public hearing on the final plan configuration of the 435 Main application?

MEMORANDUM

To: The Damariscotta Board of Selectmen

From: Robin Mayer, Chairperson, Planning Advisory Committee

Subject: Planning Advisory Committee Final Recommendations,

Date: November 29, 2017

The Planning Advisory Committee (PAC) met for its final meeting on Tuesday, November 28, 2017 from 5 pm to 6:30 pm at the Damariscotta Town Hall. In response to its charge to have a recommendation for the Board of Selectmen for their first meeting in December, the PAC unanimously agreed with the following three step recommendation:

1. First, immediately, the PAC asks that the current Planning Board decline to make any waivers of Town ordinances with respect to applications made for the C-1 and C-2 zones of the town. The Committee believes that prior waivers have undermined the clear intent of the Site Plan Review Ordinance as it was approved at Town Meeting and that the waiver currently being requested by the developer of the 435 Main Development would, if approved by the Planning Board, permit exceptions to the Ordinance that conflict with essential requirements in the Ordinance. The PAC believes that waivers should only be granted in cases of extreme hardship or when there is a clear community benefit to waiving legal requirements. To do otherwise on any pending or future project would continue an unfortunate precedent that undercuts the direction clearly articulated in the Town's Site Plan Review Ordinance.
2. Second, the PAC recommends that the current Land Use Committee be charged with preparing a draft ordinance for review by the Planning Board and the Board of Selectmen within a timeline that allows for the voters' consideration at the June, 2018 Town Meeting. The Land Use Committee would be charged with providing one or more amendments that clarify the language of the Site Plan Review Ordinance and other Town ordinances, as deemed necessary, to codify this policy: that the term 'waivers' should be replaced by a term such as 'variance' or 'conditional exception' and that any such requests for 'variances' etc. be due to circumstances beyond the control of the applicant (such as a prior non-conforming site). Several of the members of the PAC are very interested in being appointed to the Land Use Committee.
3. Third, the PAC recommends that the Board of Selectmen ask the Land Use Committee to review existing Town ordinances and processes with a view to recommending longer term ordinance improvements that align these with Damariscotta community values, as documented in the Heart and Soul Report. These improvements may include an overlay ordinance for the C-1 and C-2 zones that incorporates elements of form-based code and provide a process for engaging the public in the review process to ensure all community stakeholders have an opportunity to participate in this process.

The goals adopted by the PAC that would guide this review include:

- * Improving Current Ordinances.
- * Developing Guidelines for Developers and Property Owners, including preparing a manual with photographs illustrating the standards and expectations contained in Town ordinances.
- * Educating the public on our planning process and providing for improved public input on that process.
- * Empowering the Planning Board by tightening existing requirements, requiring use of the escrow accounts to further enable the Planning Board to obtain independent evaluation of projects, etc.

Cc: Planning Board Members

Rebecca Bartolotta

From: Anthony Dater
Sent: Monday, January 29, 2018 10:42 AM
To: Rebecca Bartolotta
Cc: Anthony Dater
Subject: FW: Jenny B's ltr to PB re: 435 Main

Becky,
Here is Jenny's Dec 4th letter to PB.
T.

From: jenny begin [mailto:jbegin17@gmail.com]
Sent: Monday, December 04, 2017 4:32 PM
To: Anthony Dater
Subject: notes

5 December 2017
Dear Planning Board:

At a recent Planning Advisory meeting, Jane Lafleur, a consultant for the town during the Heart and Soul planning process spoke to the reasoning behind the provision in the current ordinance that requires parking for new development in the commercial zone to be located to the side and back of new buildings. The regulations were adopted to change and REPAIR or improve past patterns of development in response to voter sentiment after an exhaustive public process. Waivers should not be granted unless there is extreme hardship (as opposed to lack of imagination). The Rising Tide Coop site is a great example of appropriate parking location.

Would the 435 Main St. developers please present a plan that adheres to our ordinances as written including the incorporation of traditional New England building elements? Two or three story pitch roofed buildings with room for offices or apartments above the commercial space?

On another note, I remain concerned about the concentration of all the stormwater from flat roofs and parking lots into the rear detention pond. The inadequacy of the systems installed by the Dollar Store/Sherwin Williams development to handle stormwater generated by the few minor storm events recently, should give us pause as we consider this much larger project. Randall Arendt, an internationally recognized planner who lives in Brunswick, shared some innovative solutions with the town to deal with stormwater on-site as opposed to funneling it into a big pond at the headwaters of Castner Brook. In particular, parking islands with crushed stone boundaries instead of granite curbs that act as local sinks (parking lot planters) and vegetated swales could be incorporated into the landscape design. Crushed stone sinks at the edges of the pavement would help filter water as well. (The Rising Tide development handles stormwater successfully with crushed rock areas—very little is funneled into the rear detention basin.)

We are talking about a lot of water potentially. Over the period from 1981 to 2010, Newcastle/Damariscotta had an average of 139 days each year with measurable precipitation totaling on the average 48.2 inches per year. This development has a bit less than 3 acres of impervious surface. A rain of 1-inch on 3 acres would provide 10,890 gallons of stormwater.
*(1 acre foot of water (an acre covered with a foot of water) is 43,560 cu ft of water or 325,850 gallons.)

Jenny Begin

Condition of approval:

Applicant reaching mutual agreement with the Lincoln County Rifle Club on the relocation of the right of way to the Lincoln County Rifle Club property including for utilities by easement deed.

