

LINCOLNVILLE PLANNING BOARD
MEETING MINUTES
January 8, 2014

The Town of Lincolnville Planning Board convened on Wednesday, January 4, 2014, at 7:00 PM in the Town Office Meeting Room.

PRESENT: Chairman: Lois Lyman; Vice Chair Scott Crockett; Members Ben Hoops and Shane Laprade; Alternate Member Jay Foster; and CEO Frank Therio
ABSENT: Member Paul Crowley

Mr. Foster will sit as a voting member for the evening's business.

MINUTES

December 11, 2013:

Page 1 Line 9 and 10: Mr. Foster was the Alternate member present; Mr. Hoops is a regular member

Page 9 Line 3: The word "are" was changed to the word "area"

Page 11 Line 9: "...that the ~~is~~ Application is complete."

MOTION by Mr. Crockett seconded by Mr. Hoops to approve the Minutes of December 11, 2013 as amended.

VOTE: 4-0-1 with Mr. Hoops abstaining because he was absent

COMMERCIAL SITE PLAN REVIEW

**1. Change in Use: Add a Brewery to Lobster Pound Restaurant
Richard McLaughlin: Map 1 Lot 38: 2521 Atlantic Highway**

Review for Approval

Mr. McLaughlin, owner of the Lobster Pound Restaurant, and Andy and Ben Hazen owners of Andrews Brewing Company, developers of the proposed Brew Pub and prospective partners in the restaurant, are before the Board seeking final approval to establish a Brew Pub within the existing restaurant.

The Application was found complete at the December 11, 2013, meeting. It was confirmed that the Applicants sent the required notification to abutters.

Public Informational Meeting

No one present came forward to speak either for or against the Application. The Chair read into the record a letter dated January 8, 2014, sent via email to Town Administrator David Kinney by Tom Stevens. Mr. Stevens had outlined six concerns that he wished presented to the Planning Board for consideration during review of this Application. He went on to say that he supports this effort. Ms. Lyman asked the Applicants to respond to those concerns that may not be addressed during the review of the standards:

1) “Extension of hours later into the evening will result in more crowding, noise and extra lighting that may disrupt the peace and quiet previously enjoyed by both local residents and visitors who enjoy sitting at or walking on the beach.”

These issues will be addressed during review of the standards, but Mr. McLaughlin noted that the Lobster Pound has been open as late as 9:30 pm in the past; the brew pub will be open no later than 10:30 – 11:00 -- the same as the Whales Tooth Pub next door. There will be no additional lighting.

2) Mr. Stevens’ parking concerns will be discussed during review.

3) “Will the brewery be able to sell packaged goods, etc., as opposed to selling just alcohol consumed with meals?”

Mr. McLaughlin replied that they will continue to sell packaged goods.

4) Impacts on water supplies, sewage treatment, the beach and seawater will be discussed during review.

5) Impact on the locale will be discussed during review of the Good Neighbor Standards of the Ordinance.

6) “Will it be possible in the future to restrict hours of operation and the days of operation of the Lobster Pound in the future if problems arise regarding such things as rowdiness, excessive noise or other undesirable conduct that may result from the proposed changes, including the addition of a brewery and extension of operating hours?”

The Chair noted that once the Planning Board has completed review, addressing complaints about the operations would not be within their purview. Mr. Stevens can go to the Board of Selectmen to complain about the operation of the pub, or to the Sheriff’s Department to complain of specific disruptive behavior.

Final Review of Site Plan for Approval

Mr. Foster asked Mr. Therio to clarify that the Board was reviewing a site that had not undergone Site Plan Review for a Change in Use, but because the business pre-dates the Land Use Ordinance, the existing conditions are grandfathered and would not be reviewed. Mr. Therio agreed, and the Chair noted that nothing on the exterior is changing. Members of the Board will decide which standards apply.

Section 11 Standards and Criteria: Wording for the criteria is not included here - please refer to the Ordinance.

11.1. Utilization of the Site:

✓ Not Applicable (N/A) - the site is not changing

11.2. Traffic Access and Parking:

Mr. Stevens had expressed concerns with parking in his letter:

2) “There may not be sufficient public parking in the area to accommodate the needs of Lobster Pound customers, staff, seasonal visitors and local residents who enjoy a late evening visit to the beach.”

Discussion:

Mr. McLaughlin stated that there will be the same parking situation that exists at the Lobster Pound currently: During summer days and evenings there isn't enough parking for everybody -- whether they are eating at the restaurant or visiting the beach and that won't change; the addition of the Brew Pub won't make any difference because the shortage of parking already exists. Over the past years the parking lots at the beach are nearly empty by 9:30 or 10 so there will be plenty of parking during any extended hours and night-time visitors to the beach will continue to find plenty of parking available.

Mr. Foster asked if there would be any change to the normal routine that exists today, and the Applicants replied there would not. The Brew Pub supplies will be delivered to the site from their brewery by the owners in a pickup – there will be no large delivery trucks making additional deliveries for the pub.

- a. Access to the site is from Route 1 which has adequate capacity to handle any extra traffic
- b. Access to the site is not being changed
- c. The entrance to the lot is not changing
- d. The internal circulation pattern is not changing:
 - ✓ The Lobster Pound owns all but about 6' of the entrance frontage along Route 1 for parking at the beach
 - ✓ The Fire Chief stated that there is ample room for emergency vehicle access
- e. The parking layout and design is not changing
 - ✓ The Brew Pub will not create a need for parking for oversized trucks, busses or RVs
 - ✓ The Brew Pub will not change the availability of public parking in the area during the extended hours they will be open: The Lobster Pound parking will be available, and there is already excess parking available at the beach during this time
- f. The improvements made by MDOT to pedestrian access and safety at the beach will not be impacted by the Brew Pub

11.3 Stormwater

- ✓ 1 – 7: Mr. McLaughlin provided information on stormwater flow, and stated that there will be no changes made to the drainage off their property. There is an adequate system designed by MDOT to handle the existing flow

14.4 Erosion Control

- ✓ There will be no changes made to the site during construction of the Pub

Mr. Stevens had asked impacts to water, etc: 4) “What impact will the addition of the brewery cause to local water supplies, sewage treatment, the beach and seawater?”

11.5 Water Supply

- ✓ There is a private well about ¼ mile away that can provides ample water for the restaurant and Pub

11.6 Sewage/Wastewater Disposal

- ✓ Even during the times when the Lobster Pound was open from 6:30 am to 9:30 pm they never exceeded their daily sewer allotment of 5000 gallons
- ✓ The average daily use in the summer is 3500 gallons
- ✓ The addition of the Pub's business and the brewing system will not cause them to exceed the Restaurant's allotment: Each brew uses 500 gallons of water, 250 of which are re-claimed as potable water that will be used for the next brew as well as for purposes other than drinking, and will not added to the sewer plant
- ✓ Cleaning solutions are put into the sewer system – all are food safe. That system is monitored for Ph levels, and Applicants will make adjustments as needed to ensure compliance
- ✓ The Applicants confirmed that no other chemicals will be flushed down the drain

11.7 Utilities

- ✓ The current utilities are adequate for the use, and there will be no new additions to the utilities on site – they already have a propane supply and the Pub won't require an upgrade in electrical service. There is a generator on site but not large enough to handle the brewing system should they lose power during a brew; the Hazens will replace the existing generator with one large enough for their purpose.

11.8 Natural Features

- ✓ There are no changes planned to landscaping but Mr. McLaughlin indicated they may want to add additional plantings even though none are required.

11.9 Groundwater Protection

The Board will rely on the record of information provided by the Applicants at the previous meeting. In addition:

- ✓ Water supplies to the restaurant and pub will continue to meet Public Drinking Water Standards
- ✓ There is no site development that would impact groundwater – all changes are internal
- ✓ The Pub will have a drain in the floor intended to take any overflow or spills – this floor drain does not come to ground or go to sea
- ✓ All chemicals used in the cleaning of the brewing system are food safe and will be disposed of in the sewer system.
- ✓ The restaurant currently meets EPA and Fire Marshall standards and nothing is being changed that will affect compliance
- ✓ The project does not require a DEP Storm Water Permit

11.10 Hazardous, Special, and Radioactive Materials

- ✓ The Applicants use no hazardous materials in the production of beer. Cleaning agents are all food safe; all are handled according to label; and Material Safety Data Sheets for all chemicals used are kept on site.

11.11 Shoreland Relationship

- ✓ There are no changes being made to the site and the Shoreland relationship will not change

11.12 Solid Waste Management

- ✓ The only byproduct of the brew is food-grade spent grains which will be taken off site immediately following each brew
- ✓ None of the materials used in the brewing process require a license to haul or for disposal
- ✓ Regular trash from the business will be taken to the MCSWRC in Rockport

11.13 Historic and Archaeological Resources

- ✓ There are no known historic or archaeological sites on the property

11.14 Floodplain Management

- ✓ The entire property is within the flood plain and the buildings are in grandfathered condition; no changes are being made that would cause requirements of the Flood Plain Ordinance to kick in
- ✓ The property is currently within compliance with the criteria of the AE Zone

11.14 General Fire Protection Provisions

- ✓ The building is – and will continued to be – monitored by Sea Coast Securities for fire
- ✓ Ben Hazen, co-owner of the Brew Pub, is Lincolnville Fire Chief and has access to the premises at all times
- ✓ All restaurant fire codes will continue to be met

MOTION by Ms. Lyman seconded by Mr. Foster that Items 11.1 though 11.12 have been reviewed for a Change of Use to a non-approved Site Plan and all relevant criteria have been met.

VOTE: 5-0-0

Section 12 Good Neighbor Standards:

12.1 Exterior Lighting:

a – d:

- ✓ The Applicants have stated that there are no changes being made to the exterior lighting
- ✓ Exterior lighting will remain on longer in the evening but no longer than other surrounding businesses
- ✓ The existing lighting has served to keep restaurant patrons safe in the past and will continue to do so for the additional pub patrons
- ✓ There are street lights which help light the entire parking area and sidewalks

12.2 Buffering:

a – d:

- ✓ There will be no storage, loading or service areas
- ✓ There is no exterior change to the building triggering buffering requirements

12.3 Noise:

a - b:

- ✓ Noise has not been a problem in the past and the Applicants do not anticipate that will change with the addition of the pub
- ✓ There will be no outdoor music

- ✓ Indoor entertainment will require a Special Amusement Permit from the Selectmen to be renewed annually. If there are complaints of noise or rowdy behavior the Selectmen have the option of not renewing the license
- ✓ The CEO can address sound if it becomes a nuisance and the Sheriff's Office can deal with individual problems that occur

12.3 Storage of Materials:

- ✓ The propane tanks and dumpsters are screened behind hedges and a stockade fence – nothing new will be added

MOTION by Ms. Lyman seconded by Mr. Laprade that the relevant sections of Section 12, Good Neighbor Standards, have been met.

VOTE: 5-0-0

Section 13 Design Standards:

MOTION by Ms. Lyman seconded by Mr. Foster that Section 13 does not apply because the grandfathered building already exists and nothing on the site is being changed.

VOTE: 5-0-0

Mr. Foster suggested the Board review Mr. Stevens's letter to make sure all his concerns had been addressed:

- ♦ He asked the Applicants to clarify what they meant when they said that "packaged goods" would be sold:

Mr. McLaughlin replied they have a retail license and can now, and will continue to sell take out items and items from the gift store. Because they have a separate entrance for retail customers they can also sell beer and wine; when the pub opens they will also sell growlers and mini-kegs.

- ♦ No place in the Site Plan Ordinance is smell addressed, and because it has been discussed during review, Mr. Foster suggested a discussion regarding odors be included in the approval record:

Mr. McLaughlin had done research on mitigating smells as the Board suggested and found the following:

John Root, CEO in Rockland where there are several brew pubs, said that people in Rockland were apprehensive at first about possible odors, but there have been no complaints; operators of those pubs confirmed this adding that they had not directly received complaints either.

Mr. Hazen spoke with other brewers who suggested that adding non-toxic orange-scented oil during the exhaust kills odors. But he and Ben had done some research at their brewery and found that the smell had totally dissipated at a distance of 25' from the boiler. The closest Mr. Hazen can come to describing the smell is like that of baking bread.

Their brews will begin at 5:30am or so; the boiler vessel is running between 7 and 8:30am, and any smell will be gone by 1 or 2pm; this will take place 2 to 3 and then, perhaps 4 times a week depending on business.

- ✓ They are not worried that the odor will cause problems, but are prepared to deal with it if a problem arises.

MOTION by Mr. Foster seconded by Mr. Crockett that after a full review under the relevant standards the Applicants' request for a Brew Pub to be established within the Lobster Pound Restaurant is approved.

VOTE: 5-0-0

The members of the Board signed the Site Plan.

SHORELAND APPLICATION

2. Addition and Renovation to a Non-Conforming Structure

Alan and Elizabeth Oak: Map 3 Lot 23: 12 Billings Point Road: Norton Pond

Mr. Oak appeared before the Board as the Owner/Applicant, accompanied by Bryant Butterfield, Contractor for the project, seeking permission to 1) Add a second story to the cottage; 2) Reconfigure the interior; and 3) Update the kitchen and bathroom.

CEO's Presentation

Mr. Therio informed the Board that they should substitute the calculations he prepared on a sheet dated 1/8/14 titled Alan Oak, for those provided on Sheet A1 of the plans prepared by Priestly Associates Architects and dated 12/17/2013. The CEO's calculations are done in a format familiar to the Board, and use outside measurements instead of the interior measurements used by Priestly.

- ✓ There is no SF change -- no SF expansion will remain
- ✓ According to the CEO's figures, 1.8% of the volume expansion remains, and a Note on the Plan states that it is understood that no further expansion can occur
- ✓ The CEO can find no record in the files for the property (as far back as the file exists) that shows any of the expansion credits have been taken previously
- ✓ Sheet A-3 shows the new design -- there is no point at which the height of the building exceeds 30'
- ✓ The estimated cost of the project is \$80,000

Questions from the Board

Mr. Crockett: He asked if the projected cost of \$80K trips the Board's charge to further scrutinize the Application when the cost of the project exceeds 50% of the fair market value of the property; that value was unknown this evening. The DEP regulations require that in these cases Planning Boards *must* consider whether or not it is practical to relocate the structure so that it is less non-conforming with regard to set back from the water – this cottage is 50' from Norton Pond.

Mr. Therio explained that the term “fair market value” has one meaning as used by the DEP in the Ordinance, and another resulting from court decisions. The courts have said that in order to determine fair market value in situations like this, a Planning Board must require that the Applicant provides an appraisal from a certified appraiser, and not rely on recent sales figures or town evaluations. If there is nothing else in the review that indicates that moving the house back need not be addressed, then the Board will need that appraised value to proceed.

If the house is within the 100' buffer area the DEP enforces the “as much as reasonable” policy; if a house is within the flood zone their position is make it comply with the regulations or move it out of the zone. This means the Board can consider what is reasonable in this case. The relevant Section of the Ordinance says, in part, that in considering whether or not a building relocation meets the setback to the “greatest practical extent”, the Planning Board shall consider the location of the septic system, the well, the grade, whether or not multiple trees must be removed that would cause the tree coverage on the lot to drop below optimal levels, and the type and amount of vegetation to be removed to accomplish the relocation.

Mr. Therio suggests the Board can find that the septic tank is located 8' behind the house and the leach field is across the road, they could then determine that it would not be practical to require that the Applicants re-locate the tank so the house can be moved further back from the pond – the DEP would agree. If the tank is an obstacle to relocation, the 50% threshold can be overlooked.

MOTION by Mr. Crockett seconded by Mr. Hoops that given the location of the septic tank, trying to relocate the cottage out of the 100' buffer would create an unreasonable burden to the Applicant.

VOTE: 5-0-0

MOTION by Mr. Crockett seconded by Ms. Lyman that based on the information provided by the Applicant and the CEO the Board approves the Application as submitted.

VOTE: 5-0-0

Other Business

3. Other Business: Members expressed concerned about the continued absence of a regular member; he has been out of Town on work for months and those absences have been overlooked. Now that he is home and is still not attending meetings, members they are wondering if he is still interested in remaining on the Board. There is still one Alternate Member position open, and because having a quorum at meetings can be a concern when Mr. Foster is away, the Chair will put the word out that there is a seat open and see if there is any response.

2013-2014 Election of Officers: This was not discussed.

There being no further business before the Board they adjourned at 9:10 pm.

Respectfully Submitted,
Jeanne Hollingsworth, Recording Secretary