**PLANNING BOARD**

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Monday, November 5, 2018

 BUSINESS MEETING MINUTES

**Call to Order**

Chairwoman Jessica Larson called the meeting to order at 6:28 p.m.

Present: Jessica Larson, Eve Bergstrom, Ken Hall, Emily Ward, Nancy Perkins Sandra Watts, Code Enforcement Officer Wes Sunderland, Recorder Desirae Bachelder.

Absent: Stephanie Smith

Guests Present: John Watts, Debra Furlong, Denise Benton, Billy & Chris Anastasiadis, Diann Perkins, Angel Eastman, Steve Smith, +1

**New Business:**

1. **Jess Larson designated Sandra Watts as a voting member in Stephanie Smith’s absence.**
2. **SMPDC – Selectmen’s response 10/17/2018 Meeting**

The board met with the selectmen on October 17, 2018. The selectmen have voted to hold a public hearing on Wednesday, November 28, 2018 at 6:00 pm at the town office regarding information about the proposal from Southern Maine Planning and Development Commission. A special town meeting will follow at 6:30 pm regarding the request to appropriate funds not to exceed $7,000.00 from surplus to pay for the updates to the Cornish Land Use Ordinance.

1. **Debra Furlong – Subdivision Pre-Application – R08-039B**

Ms. Furlong started by reminding the board members that she has received prior approval for the first two duplexes. Jess Larson stated that review of meeting minutes and the copy of the approval letter did indicate this approval with the condition that the third split or duplex would not be constructed until the 5 year wait was complete. Ms. Furlong asked why she hadn’t been made aware of the section of ordinances that refers to the fact that a subdivision can only have two driveways with access to a state or town road. Jess Larson explained that if Ms. Furlong were to wait the 5 year period it would be a nonissue, but because she wants to move ahead and make the property a subdivision Wes, as CEO, should have informed her about that part of the ordinance. Jess also noted that the minutes reflected that there was no formal meeting about Ms. Furlong splitting her property, only if she could purchase the property because of the proximity of the aquifer.

Jess presented and read aloud the responses from the Maine Municipal Association lawyers. (**Note**: A copy of the responses will be filed with these minutes.)

It was their findings that “According to the ordinances Section 8, Subdivisions, J (3) (b)(v), after consultation with several colleagues, it is my opinion that the provision should be interpreted to mean that a subdivision may only access a state or local road through two lots. In other words, where a subdivision is created, the intent of the provision is to require the creation of an internal road network with access to a public road permitted only from two subdivision lots. Thus, in the question you present below, if the proposed division occurs, the third lot will need to connect to the existing driveway that now exists on the seven-acre parcel. The proposed lot, if created, will not be permitted to connect directly to the Joe Berry Road; it will only have access through the existing driveway now in place on the seven-acre lot.”

Jess explained that Wes had also contacted MMA; she read aloud that response as well.

(**Note**: A copy of the responses will be filed with these minutes.)

“The basic answer to your question of why not now is because the ordinance in question prohibits more than two lots in a subdivision from having access on a state or local road. Application of 30-A M.R.S. § 4401(4) (A) leads to the conclusion that the dividing of one of the two lots previously divided will create a third lot; subdivision review will be required. While only the third lot will be subject to review, all three lots will be subject to evaluation, per §4401(4) (B). The ordinance in question does not indicate whether it applies only to the third lot that provokes review, or whether it applies to all three lots. My opinion is that the limitation on access to a public road would prevent the third lot from having direct access to Joe Berry Road. This understanding is consistent with the plain reading of the ordinance. The ordinance language does not specify that the lots in the subdivision that are not subject to review under 30-A M.R.S. §4401(4) (B) are not to be considered for purposes of Section 8, Subdivisions, J (3) (b) (v). Further, that section speaks about “a subdivision” 30-A M.R.S. § 4401(4) (A) makes clear that the second dividing creates the subdivision unless an exemption applies. In the case before the board, the third dividing will create a subdivision. It is at this point, in my view, that Section 8 (J) (3) (b) (v) applies. Thus, as I indicated in my previous opinion, the third lot will need to connect to one of the two existing roads. To understand the ordinance otherwise is, in my view, to ignore the plain reading and intent of the ordinance limitation.”

Jess Larson stated that according to the Cornish Land Use Ordinances Article II Section 8 (J)(3)(b)(v) “No more than two lots in any subdivision may access directly onto an existing State or Town road.”

Wes Sunderland presented his interpretation of this ordinance and referenced Section 8(J) (3)(e) “The land uses in the development shall be consistent with permitted land uses in the district in which it is located.” Wes presented Map R05, Lot 029 which was split seven times to make a subdivision. All the driveways in said subdivision access the existing town roads, which does not follow Article II Section 8(J)(3)(b)(v).

Denise Benton stated that there are subdivisions in Limerick that have many lots that have road frontage and have driveways on town roads.

Nancy Perkins made a motion that the board tables this item until more research about this subject can be done.

Ms. Furlong stated that she has submitted an application to the board and she wants the application reviewed and voted on, and if the board does not approve the application, she will appeal their decision.

Jess Larson explained the process that a Site Plan Review application needs to go through. First there is a pre-application meeting which was conducted at the October 1, 2018 business meeting. The formal application is given to the board. The board then reviews the application for completeness. If the board deems the application complete the board then has sixty (60) days to schedule a public hearing and vote to approve or deny the application.

Ken Hall asked what is needed to resolve the issue now and suggested reviewing the application before moving forward. Emily Ward stated the question or issue is that the ordinances state how many driveway entrances are allowed for a subdivision on a town road (Joe Berry Road), the ordinance says only two driveways are allowed. This question has gone to the lawyers at Maine Municipal Association (MMA) and they agree that it does not matter how many lots are in the subdivision, if there are three or more lots only two driveways can access the town road. Another question is if the subdivision on Map R05, Lot 029 is precedent setting legally. Ken asked the other board members if the applicant made adjustments allowing only two driveways onto Joe Berry Road would that be sufficient to allow further discussion.

Ms. Furlong asked if any of the board members have been to the property. Jess, Eve, Nancy and Ken are familiar with the property. Ms. Furlong then asked if the board has looked at the tax maps, she stated that she has 1,250 feet of road frontage; she explained that she would need to block off a driveway that is already in existence and build a long driveway to connect two of the proposed driveways. Jess confirmed that this lot is in the Agricultural District which requires a minimum of three acres per lot.

Emily noted that the board has sixty (60) days from the time that the application is accepted as complete to make a decision. She suggested that the board review the application for completeness and use the next sixty (60) days to answer the questions and concerns raised at this meeting.

Nancy Perkins withdrew the earlier motion to table this discussion.

The board discussed each section of the Site Plan Review Application for completeness.

Jess Larson made a motion to approve the application as complete as presented. It was seconded by Ken Hall. Motion carried with all in favor.

1. **Billy Anastasiadis – Fairgrounds Restaurant Expansion – U01-020 – Public Hearing**

The Anastasiadis are proposing a 1,400 square foot expansion, 41 by 34 feet, which requires a Site Plan Review application. This will raise the seating capacity from 92 to 160 seats. This will require a new, larger septic system and more parking. A minimum of 77 parking spaces are required for the proposed 160 seats.

The board discussed each section of the Site Plan Review Application for completeness. A site walk took place today Monday, November 5, 2018 at 3:00 pm.

Emily Ward made a motion to accept the application as complete as presented. It was seconded by Ken Hall. Motion carried with all in favor.

Mr. Anastasiadis has already paid $200.00 for the Site Plan Review and will need to pay the remaining $400.00 that is required for a Site Plan that is greater than 1,000 square feet and less than 2,000 square feet. The board began to discuss Ordinance requirements. Table 2 of the Land Use District Dimensional Requirements states that 15,000 square feet is the maximum amount of floor area for commercial use. The existing buildings total 5,650 square feet along with the proposed development is 1,400 square feet is a total of 7,050 square feet. The maximum total for impervious surface area is 60 percent. The total amount allowed for impervious area is 26,136 square feet. Currently Mr. Anastasiadis has 22,000 square feet of impervious surface area, surfaces that the water cannot penetrate, adding in the walkways and the parking lot the square footage changes is approximately 27,000.

The deed states that owners of Fairgrounds Restaurant have “The right and use to the premises above described is for the placing, maintenance, repair and replacement of a septic tank drainage field for use with premises adjoining and Easterly thereof, together with the right to landscape said premises and to use the same for parking purposes.” The septic tanks will be place on the restaurant property the existing drainage will be expanded to accommodate the larger tanks. Jess stated that MMA was contacted with the question of impervious area and if the two lots, the restaurant and the easement should be considered one lot. The response was that they should be treated as the two separate lots that they are. Mr. Anastasiadis plans to replace the existing leech field with concrete chambers. There are 55 existing parking spaces and 25 proposed parking spaces that will be built on the easement lot on top of the concrete chambers. The board questioned how much weight the concrete chambers would hold.

Jess asked Emily to read Land Use Ordinance Article III, Section 8 A. “Aesthetic, Cultural and Natural Values. The proposed activity will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.”

Land Use Ordinance Article III, Section 8 K. Neighborhood Compatibility. 1. The proposed activity will be compatible and sensitive to the character of the site and neighborhood relative to land uses; scale, bulk and building height; neighborhood identity and historical character; and orientation on lot. 2. The proposed activity maximizes the opportunity for privacy by the residents of the immediate area. 3. The proposed activity ensures safe and healthful conditions within the neighborhood. 4. The proposed activity will minimize any detrimental effects on the value of adjacent properties.

Jess stated that the planning board cannot stipulate anything about the Fairgrounds track fence. Jess explained that there needs to be a ten foot buffer between the Fairgrounds track and the restaurant parking, she suggested that Mr. Anastasiadis plant arborvitae, trees or shrubs that grow fast to help buffer the proposed parking lot. Land Use Ordinance Article II, Section 6. M. 3. b. Interior Vehicular Circulation i. “Major interior travel lanes shall be designed to allow continuous and uninterrupted traffic movement.” Section 6. M. 3. c. iii. “All parking spaces and access drives shall be at least ten (10) feet from any side or rear lot line, except for the additional requirements regarding residential buffering yards in Article II, Section 6, Subsection E(2a).” The proposed parking spaces are 9 feet by 18 feet, and the thruway is 24 feet wide which is the requirement. Section 6. M. 3. c. vi. “In unpaved parking areas, provisions shall be made to delineate the parking spaces.” Section 6. M. 3. c. viii. “Bumpers and/or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.” Jess asked if there is only one entrance/exit into this parking lot. Mr. Anastasiadis confirmed that there will only be the one entrance/exit. Jess asked if the fence along Route 25 will be remaining, Mr. Anastasiadis stated that his plan is to remove the fence from Route 25 and replace it along the Fairgrounds track. He will need to place bumper stops or vegetation along Route 25 so that customers can only exit onto Route 25 through the existing parking lot.

Nancy and Jess clarified that the planning board is only looking at the aesthetics, buffering, and parking design, the fence needs to be worked out with the town. Eve suggested that Mr. Anastasiadis and the town (selectmen) should discuss snow removal and liability.

The board reviewed the conditions that have been discussed. First, the remaining $400.00 for the Site Plan Review application needs to be paid. No further impervious additions can be made to Map U01-020. Shrubs (arborvitae) need to be placed as a buffer along the fences. Bumper stops need to be place at each parking spot. Large rock like formations needs to be placed along Route 25 if the fence is removed.

Jess noted that any property disputes or abutter issues are not planning board issues and need to be addressed by the property owners, in this case the town selectmen and Mr. Anastasiadis.

Emily Ward made a motion approve the application as presented with the following conditions

* That the planning board receive the remaining $400.00.
* No further impervious additions will be added to the property.
* That along the track edge of the property there will be a line of arborvitae type greenery in the ten-foot buffer area.
* That there will be bumper stops to designate parking spaces.
* There will be large rock like formations along Route 25 to protect the street from the parking area.

The motion was seconded by Jess Larson. Motion carried with all in favor.

Mr. Hall stated that at the site walk today he felt that the general dimensions of the easement parcel should have been staked out for view. He asked if another site walk is needed. Jess stated that another site walk is not needed the application is complete.

**Communications Received/Sent:**

1. Isabella Lafforgue CUP mailed (10-01-18)
2. Meeting w/ Selectman 5pm SMPD proposal (10-17-18)
3. MMA legal response(s)

R08-039B Subdivision (10/19/18 & 10/16/18)

U01-020 Fairgrounds Easement (10/10/18)

1. U01-020

Selectmen’s Meeting (10/5/18)

Abutter’s letters mailed (10/18/18)

1. U03-005 Dunbar & Sons
2. R02-030 SRCC permit application
3. Poter PB Request

**Adjournment:**

Emily Ward motioned to adjourn the business meeting at 8:30 p.m. It was seconded by Ken Hall. Motion carried with all in favor.

Respectfully Submitted,



Desirae Bachelder

CPB Secretary