

NOTES OF MAY 14, 2013 RYE PLANNING BOARD MEETING

Final Revision B – Provided by the Rye Civic League

Present: Bill Epperson, Mel Low, Priscilla Jenness, Ray Tweedie, Phil Winslow, Jerry Gittlein, Curtis Boivin

Also present: Kim Reed, planning administrator, Michael Donovan, Town Attorney

Editor's note: For ease in finding particular sections using the archived video and audio on the Town website, the times associated with each section are indicated. These coincide with the times appearing in the black bar at the top of the screen.

Appointment of alternates (07:00:35 p.m.)

Chairman Epperson announced that, since a quorum was present, no alternates needed to be seated. However, there were two persons seeking appointments as alternates: Anne Crotty and Jeff Quinn. Each discussed their qualifications and were then unanimously appointed as alternates. Kim Reed then swore them in. Each was asked to sign a yellow conflict of interest form.

Approval of minutes (07:11:55 p.m.)

The minutes of the April 19, 2013 meeting were unanimously approved with changes.

Site Development Plan for President Waterscapes, 137 Lafayette Rd. (07:19:10 p.m.)

Mr. Campbell addressed the requested site development plan. The business currently has a site in Atkinson. They are looking to establish a presence on the Seacoast, not primarily as a landscape supply yard, but as a designer and installer of landscaping. There will be a need to unload material and store equipment on site, however.

Chairman Epperson asked whether Mr. Campbell had read the zoning ordinance and whether he believed that the business would fit within the category of lumberyard and building supply outlet. Mr. Campbell replied in the negative. Mr. Epperson stated that these were permitted uses. Other uses are not. A special exception from the Zoning Board of Adjustment would be needed if the use is not a permitted one. Mr. Tweedie stated that he thinks that the business falls in the building materials category. However, he has some concerns, including operation in the morning, handicapped parking, and replacement of vegetation with crushed stone. Gravel becomes impervious when it is driven over.

There were then questions about the storage of equipment, security for a propane tank and the traffic pattern.

After further discussion, all were in favor of a motion to recognize a permitted use in the lumberyard and building supply outlet category.

A site walk was scheduled for May 22 at 6:00 p.m.

Attorney Donovan raised issues with regard to whether the aquifer protection district requirements could legally be waived. It was also evident that the impervious coverage would be increasing from that allowed in a 2008 approval for the site which was already beyond the limit. Professional help would be needed to demonstrate that a further increase in the impervious coverage would not be detrimental.

The motion to continue the matter to the site walk, and then to the June meeting, carried unanimously.

Lot line adjustment and voluntary lot merger, several lots in Myrica-by-the-Sea development (8:13:40 p.m.)

John Chagnon, representing the applicant, spoke to the issue. The applicant is seeking to merge two substandard lots and adjust a lot line.

Mr. Winslow asked whether Brown Court, adjacent to the area, was a Town road. Mr. Chagnon replied that he believed so, since it is plowed. Mr. Epperson commented that that did not mean much. Town Attorney Donovan raised his eyebrows. *Editor's note: This issue came up in the case of Gordon v. Town of Rye, in which Attorney Donovan represented the Town. Although the Town had been plowing the road, it subsequently declined to continue to do so after issues arose with the plows turning around. The Town then argued that the road was in fact private. The case was litigated all of the way to the New Hampshire Supreme Court, which, on June 15, 2011, determined that the Board of Selectmen did not have the authority to make land ownership determinations as they had done. The authority to do that rested with the Superior Court. Ultimately, the Superior Court determined that the road was private.*

Discussion ensued regarding the need for a variance as well. Mr. Chagnon stated that the lot would be 8430 sq. ft., which is more than the 7000 sq. ft. for the coastal overlay district. Attorney Donovan stated, however, that this was still a substandard size lot because the requirements of the district also apply.

Discussion then ensued about Brown Court and its substandard width. Current width is 14 feet, according to Chairman Epperson. Mr. Chagnon proposed extending the road and making it one way. Ms. Reed stated that the Board of Selectmen would have jurisdiction over extending the road. Mr. Chagnon stated that some driveway permit issues were within the jurisdiction of the Planning Board.

Attorney Donovan at first stated that the Planning Board must approve a voluntary merger unless there is some violation. He then noted that a new street constitutes a major subdivision so different requirements might apply.

Mr. Low stated that he had a problem with the substandard road. These roads were created before planning and zoning. Mr. Epperson stated that, having lived in the neighborhood for a number of years, it is congested. It's gradually being cleaned up. Selectman Jenness expressed concerns relating to the Fire Department. What about the gridlock if someone comes up behind an ambulance and they can't get people out?

Attorney Donovan stated that the voluntary merger must be approved unless there is a violation of a current ordinance. The plan is a good one. There is a reduction from 4 lots to at most 3. There are no subdivision issues with that. The driveway is a separate issue that will come up when there is a need to build on the new lot. One of the drawings will also require major subdivision approval.

The motions to accept jurisdiction and to approve the lot line adjustment carried. Approval was unanimous except that Mr. Low voted against approval of the lot line adjustment and voluntary merger.

Attorney Donovan then provided further details on why a variance for the lot size would be needed, referring to section 304.3. It is suggested that it may be all right if the lot size is compatible with others in the neighborhood, but a variance is still required.

Interventional Spinal Medicine, 270 Lafayette Rd. (8:48:58 p.m.)

Eric Weinreib of Altus Engineering and two other persons addressed the application. He explained that approval had been obtained in 2008, however they are now looking to add ambulatory surgery. Changes are mostly to the interior. HVAC would be added, along with a standby generator, a propane tank for the generator and medical gases (oxygen). No expansion of the intensity of use or number of doctors would occur.

Bob Raymond, the applicant, indicated that there will be very few drugs on site. These are schedule two drugs contained in a box in a locked room. These are exactly the same as before. There have been no break ins. The oxygen tank is 50 pounds, located 25 feet from the pavement.

Paul and Kathy Goldman stated that they are abutters. Mr. Goldman stated that he serves on the Zoning Board of Adjustment and would need to recuse himself if the applicant comes before the ZBA. Ms. Reed explained that the only reason that it is before the Planning Board as a change of use is that there was a condition made at the time of approval in 2008. Mr. Goldman asked whether there was any change in the footprint, the parking lot or the lights. He stated that there is no noise from the business, they are good neighbors.

Mr. Raymond explained that the reason for the change to include ambulatory surgery is reimbursement. They are allowed to bill differently if the procedure is considered ambulatory surgery.

The motion to approve the change of use carried unanimously with the conditions that (1) the propane tanks be shown on the drawing, (2) the oxygen tanks and structure be shown on the drawing, (3) the connection to the generator be shown on the drawing and (4) the application is approved by the Fire Marshall.

Jenness Beach Pizza and Summer Sessions, 2281 Ocean Blvd. (9:17:30 p.m.)

Editor's note: These applications are for two different business operating at the same address. The landlord of the two businesses owns the parking lot in front of the businesses. The tenants do not lease the parking lot, however, their customers are permitted to use the parking lot, which is also apparently used for valet parking for beachgoers during the summer. The tenants want to provide outdoor seating and displays of merchandise within the parking lot. See notes of April 9, 2013 Planning Board meeting. Strictly speaking, Mr. Leary, the landlord and owner of the property, should be filing the application, however, the two businesses have been in conversation with him and state that they have received his concurrence with the plan that they are presenting. The major issues are (1) access for pedestrians through the parking area,

which is between the businesses and Route 1A, (2) display of merchandise and tables for customers eating food outside, (3) return procedures for surf boards and wet suits, and (4) loading and unloading of the bus used by Summer Sessions. During 2012, bollards were installed, at the request of the Building Inspector, between the buildings and the parking lot.

Mark Lipoma, owner of Jenness Beach Pizza noted that a cease and desist order had been issued last year. They had received notification of the need for a site plan.

The proposal is for a 6 foot wide pedestrian walkway, 60 feet from the back of Jenness Beach Pizza to Route 1A. From the existing bollards, there would be a 3 foot wide pedestrian walkway in front of the building and a 5 foot wide walkway to the crosswalk across Route 1A. Activity in these areas, to be denoted by painting on the pavement, would be limited to walking.

Attorney Donovan stated that the walkway in front of the building really needed to be 4 ½ feet to account for a bumper overhang of 18 inches beyond the curb stops and still provide room for pedestrians to pass.

There was further discussion about the tables. It was also agreed that the existing wheel stops and those to be installed would be fastened to the ground.

In response to a question from Mr. Winslow, Mr. Lipoma stated that, during the summer, cars are parked by a valet, who controls parking on the site. In response to a question from Selectman Jenness, Mr. Lipoma stated that they do not charge for parking (implying that the valet does). There are spots for Jenness Beach Pizza and Summer Sessions. Those coming to buy are not charged for parking. During the day, many of the customers are pedestrians. However, by 4:00, the place clears out and more customers arrive by car.

Chairman Epperson referred to an e-mail from Mr. Baghdadi, Mr. Leary's attorney saying that Mr. Leary was opposed to cross hatching. Mr. Epperson stated that he believed that this was referring to designation of parking spaces with lines, not to cross hatching areas reserved for pedestrians.

Attorney Donovan stated that he could understand Mr. Leary's concern if he's charging for parking. *Editor's note: Apparently, by not establishing lines for parking spaces it's possible to fit more cars in the lot.* Spaces designated for the individual business should appear on the site plan, he said.

It was revealed that Mr. Baghdadi had indicated that Mr. Leary was on medication and unable to focus on the issues. *Editor's note: This statement could be construed as providing a way for Mr. Leary to deny that he ever agreed to this plan.*

Chairman Epperson stated that the plan, as presented, was probably as good as they would get. His fear is that Mr. Leary would say that it is not OK. That's sticky.

Attorney Donovan explained what would happen then. You (meaning Jenness Beach Pizza), not Mr. Leary, would be in violation if Mr. Leary wouldn't agree. It would then be up to the Town to enforce the cease and desist order prohibiting outside activities.

Mr. Tweedie stated that most of what they had asked for had been done, minus some details. An additional foot for safety was the only issue. He hoped that the plan would be approved with conditions.

Mark Crotty, an abutter at 12 Perkins, then spoke in opposition. While he recognizes the desire to support the two businesses, the plan does not address an out of control situation. There are up to 100 cars parked in the rear lot. The site doesn't work.

It's a safety hazard. The parking ordinance has specifications as to the number of spaces required. There's no handicapped parking. He does not understand how this can be approved. The applicants and Mr. Leary are failing. Also, camping out back is tolerated.

Mr. Gittlein asked whether the police had been notified about this.

Chairman Epperson asked for the historical basis from the Board of Selectmen. Selectman Jenness responded that there was some concern that a high rise hotel would be built on the site.

Attorney Donovan commented about a case. A Mr. O'Brien had been running the parking lot for Mr. Leary. The Town took him to court, and it was determined that the parking was illegal in a residential area. However, Mr. O'Brien then went to the Zoning Board of Adjustment and got permission for the parking.

With regard to some of Mr. Crotty's objections, Attorney Donovan responded that there is a lot of history. It is asserted that much of the activity is grandfathered. It's a real gray area as to how much the Planning Board can retrofit when there is a change of use.

Chairman Epperson stated that they are trying to get some sort of control as opposed to putting the two stores out of business. If they had complete control they would insist that the property be paved and striped. But, it's been there "forever."

Mr. Boivin asked whether the crosswalk to Perkins made the site less safe.

Mr. Low commented that more and more people are walking down Perkins. There used to be police outside on Saturday and Sunday.

Chairman Epperson said that he agreed with Mr. Crotty on the back parking. Perhaps rules and regulations can take care of this. Mr. Crotty commented that he thought that the Planning Board controlled driveways.

The discussion then moved on to the Summer Sessions portion of the plan. Ryan McGill addressed this. A tent would replace the tables when sales are ongoing. This would be within the bollards.

Further discussion about separation of the two businesses took place. Ryan McGill stated that surf boards would no longer be brought through the building. They would be returned in the back, and there would be signs so requiring.

Tyler McGill stated that he agreed with Mr. Lipoma regarding the 3 ½ to 4 foot walkway in front of the business. He believes Mr. Leary will consider that. But they want something concrete to take to him. That's better than punting again. Chairman Epperson indicated that the board might not require a walkway to Perkins Rd., suggesting that that would create more area to make up to that lost to the expanded walkway out front.

Further discussion regarding a bench and its possible use for placing wet suits, and the location of the bus during loading and unloading arose.

Chairman Epperson stated that the Board agreed that 3 ½ feet was not wide enough.

Attorney Donovan suggested that, since the lot is 74 feet wide and parking spots are supposed to be 10 ½ feet wide, it should be stipulated that no more than 7 wheel stops be installed.

Tyler McGill stated that he thought that they had a plan that Mr. Leary would approve. He asked what would happen if he says no. Chairman Epperson stated that they would then be in violation of the conditions of the site plan and the Building

Inspector could issue a cease and desist order. Attorney Donovan indicated that an alternative would be that they could come back in with an amendment.

Mr. Crotty stated that he wanted to go on the record as objecting to the opening up of the back area for retail. Chairman Epperson stated that there had been no retail transactions for a year. Mr. Crotty referred to camping and boat storage in back.

The motion to accept jurisdiction was approved unanimously.

Mr. Tweedie then read a lengthy proposed set of conditions. There was then further discussion about the distance between the bollards and the curb stops. Mr. Boivin thought that 6 feet should be required. Chairman Epperson responded that Mr. Leary would push back against this. Mr. Tweedie agreed that 4 feet was reasonable.

The agreed conditions are contained in the official minutes. The plans of Jenness Beach Pizza and Summer Sessions were approved subject to these conditions.

Payment of escrow, Sanctuary Care, postponement of Long Range Planning meeting (10:59:40 p.m.)

The payment from the escrow fund was unanimously approved.

Ms. Reed indicated that there was a pending application by the Wentworth-by-the-Sea Country Club for a wedding tent.

Mr. Low indicated that the Long Range Planning meeting for the following night should be postponed for a week.

It was noted that the Chairman of the Rules and Regulations committee was absent.

Mr. Winslow suggested that the mission statement be tabled. Mr. Low responded that the entire statement should be “canned.” It was a legal paper that someone could use to take them to court. Chairman Epperson suggested that it be put on the agenda for the next meeting. Mr. Low responded that they could, but that he would not forget it.

Adjournment (11:04:00 p.m.)

Whereupon the motion to adjourn the meeting was approved unanimously.