

Minutes
Town of Waldoboro
Planning Board Meeting
April 14, 2021

Roll Call

The virtual Planning Board meeting was called to order by chairman Scott Simpson at 6:17 p.m. using Zoom. Other Planning Board members present were Barbara Boardman, Jeffrey Erskine, Sara Hotchkiss and Jim Russo. A quorum was present throughout. Planning and Development Director Max Johnstone was present. Applicants and their representatives included Erica-Jo Hincks, surveyor Allen Mathieson, and Michelle Rolerson, for a proposed subdivision amendment at Apple Barn subdivision; and Jennifer Hayes for a change of use to retail at 722 Atlantic Highway. Fire Chief Paul Smeltzer had planned to be present, but was unable to attend. There was no audience. The Town Office was temporarily closed, due to presence the previous day of a person with covid, so the Planning Board meeting was conducted entirely remotely.

1. Adjustments to the Agenda - none
2. Citizen Comments unrelated to tonight's agenda- none
3. Old Business - none
4. New Business
- 4a. Amendment to Apple Barn Subdivision, Apple Barn Lane off Friendship Rd. (Tax Map R8 Lot 2)

The Apple Barn subdivision, created by Fred Bess, currently consists of six parcels with access over a dead-end subdivision road, Apple Barn Lane, off Rt. 220 in south Waldoboro. Erica-Jo Hincks wants to buy a 12.4-acre lot at the east end of Apple Barn Lane and use the subdivision road for access. The new lot is proposed to be added to the Apple Barn subdivision. Hincks plans to subdivide the lot into three approximately four-acre parcels, all using Apple Barn Lane for road access. A 50' easement would be reserved for access to other Bess land to the east.

Hincks was present at tonight's meeting, along with Allen Mathieson of Coastal Land Surveying, who has done a survey of the parcel. Two of the three new lots would be owned by Hincks and Michelle Rolerson, who was also present at the meeting. Russo asked that Hincks's right to subdivide the 12.4-acre lot be made explicit, and be made known to the owners of the original six lots in the Apple Barn subdivision, who do not have the right to subdivide their smaller lots.

Simpson said that the original six lots in the Apple Barn subdivision were created from a single parcel conveyed to Fred Bess in 1989 by McLoon Commercial Properties. Bess subdivided this parcel into six lots to create the Apple Barn subdivision, which was approved by the Waldoboro Planning Board in 1989. McLoon also sold a lot to the east of the subdivision; this lot was later bought by the Tripps.

The land to the east of Lots 3 and 6 of the existing Apple Barn Subdivision was conveyed to Fred Bess in 1994 by First National Bank. The 12.4-acre parcel proposed for purchase by Hincks is labeled "Proposed Lot #7" on Mathieson's survey dated 3/1/21 titled "Amendment to Apple Barn Subdivision". This survey shows another lot just south of the 12.4-acre parcel, that is labeled "Property now or formerly of Matthew and Lacey Tripp". The Mathieson survey shows a 50' easement across "proposed lot 7" for access to land of Bess to the east. Bess owns the land east of a pond or wetland that lies along the east boundary of the lot proposed for purchase by Hincks. Mathieson said that he can correct the survey to show Erica-Jo Hincks's lot as "proposed Lot 8" rather than "proposed Lot 7".

There was a question tonight as to whether the lot covenants on Lots 1 - 6 of the Apple Barn Subdivision apply also to any additional lots added to the subdivision now or in the future. Mathieson said that Bess's intent was for the covenants to apply only to Lots 1 - 6. A Planning Board member thought that the covenants should apply equally to any future lots added to the subdivision. A legal opinion is needed. Mathieson offered to consult Waldoboro's Town Attorney. Simpson said it would also be advisable to consult with the owners of Lots 1 - 6, the present members of the Apple Barn Subdivision Association.

Johnstone will send a letter about this to the owners of Lots 1 - 6. Simpson asked for confirmation as to whether the owner(s) of the proposed new lot being discussed tonight will be considered members of the Apple Barn Subdivision Association. He asked Johnstone to verify this. Russo noted that covenant #4 gives lot owners the right to use Apple

Barn Lane for access. If the new lot being discussed tonight is not subject to the lot covenants on Lots 1 - 6, does it follow that that the new lot does not have the right to use Apple Barn Lane for access?

Simpson asked Mathieson whether Planning Board members who have questions about the proposed subdivision amendment can communicate with Mathieson between now and the next Planning Board meeting at which the subdivision amendment is on the agenda. Johnstone will try to provide a summary in the next two days. Simpson said that he and secretary Alexander will work together on a summary statement.

The Rev. Dr. Jon Vermilion owns Lot 3 of the Apple Barn Subdivision, 90 Apple Barn Lane (Tax Map R8 Lot 2-3), which is the furthest east of the three lots on the north side of the subdivision road. Vermilion says he was under the impression that the property abutting the marsh was not to be developed. He wants an increased vegetative buffer between Lot 3 and the lot proposed to be sold to Hincks. Mathieson said that some towns require a 25' vegetated buffer to be maintained. He offered to include on the final version of the amended subdivision plan an increased buffer between Lot 3 and the new lot. Russo suggested that Hincks might be able to indicate the future division of the lot, which could be a help to Mathieson in laying out the buffer.

Boardman asked for the amended subdivision plan to show a T turn-around for fire trucks and emergency vehicles at the end of the subdivision road. Perhaps the owners of the proposed new lot could include a T turn-around as part of their driveway design. Mathieson thought that the best location for the turn-around would be on Lot 6, where the road is already improved. He might be able to offer two designs, one for a turn-around on Lot 6 and one with the turn-around on the proposed new lot. Johnstone volunteered to see whether Fire Chief Smeltzer can visit the site before the next Planning Board meeting at which the Apple Barn subdivision amendment is on the agenda, and advise about design and location of the turn-round.

Johnstone's summary notes about the subdivision amendment, sent to Planning Board members before tonight's meeting, state that a resident of the Apple Barn subdivision called him to say that he was under the impression that no more lots were to be created in the subdivision. Johnstone could not verify this from his files because the Town Office is closed today on account of covid. He will check on this to see if it is true, if it is binding, or whether the existing subdivision can be amended to add more lots.

4 b. Change of Use to Retail, 722 Atlantic Hwy. (Tax Map R4 Lot 21) - Jennifer Hayes, Crave Nutrition

Jennifer Hayes owns Coastal Nutrition and Energy on Academy Hill in Newcastle, which sells protein shakes and energy teas. She plans to buy the former crematorium property at 722 Atlantic Highway and operate it as a retail outlet called Crave Nutrition, selling shakes, teas, and iced coffee on a take-out basis. It will be a store, not a restaurant. The main issues are parking and MDOT approval of the highway entrance/exit. The building already has power and water. Results of a water test are expected in two days. No structural changes to the building are planned. There is plenty of flat open land around the building for parking. The lot has an existing highway entrance. Hayes expects to close on the purchase in two weeks, and would like to open the store in a month. Planning Board approval of the change of use would be conditional upon receipt of a valid MDOT entrance permit.

Boardman asked Hayes if she plans to have picnic tables outside, and if so, at what point would her take-out business become a "restaurant". Hayes does not expect this to happen. She has a table outside her Newcastle location, but no one uses it. Johnstone said the operation would become a "restaurant" if it had a kitchen. Hayes said that she uses powders to prepare the shakes and teas. There is no kitchen waste. The health inspector took two minutes to inspect the premises.

On motion of Russo/Boardman, Planning Board members voted unanimously to approve Hayes's application for a change of use to retail at 722 Atlantic Highway, conditional upon approval of the highway entrance/exit by the Maine Dept. of Transportation.

5. Approval of Minutes of March 10, 2021

Erskine confirmed that he was present at the March 10 Planning Board meeting. On motion of Russo/Boardman, Planning Board members voted unanimously to accept the minutes of the March 10, 2021 meeting, after deleting the italicized words "verify" in lines 2 and 6 at the top of p. 1.

6. Discussion of Documents Sent by Town Planner Johnstone

6 a. Site Plan Review Guidance Documents

Johnstone has updated the draft checklist to reflect changes to various sections of the Land Use Ordinance. The new Submission Checklist form is intended as an aid to applicants, detailing what information or material needs to be submitted. He has also created a two-page document, "Application Review Information" that goes through the site plan approval process. Copies of both documents were given to Planning Board members in advance of tonight's meeting. Johnstone asked for input/suggestions for improvement.

Simpson suggested changing the second line at the top of the first page of the Submission Checklist form to "Site Application Review".

On page 2 of the Submission Checklist, in the section titled "Article 3 - Additional Application Review, Documents only for Planning Board Review", Boardman suggested replacing the heading "Structural drawings" with "Blueprints/floorplans". The column heading "Location in Application" is intended to provide the page or pages in the application that pertain to each listed item. Add the word "Pages", in parentheses, to the heading, after "Location"?

In the two-page handout "Application Review Information", it was suggested to change the title of Article 9 on page 2 to "Road Access and Parking". (Doing so might also involve changing the title of Article 9 on the third page of the Submission Checklist to "Road Access and Parking", for consistency.)

Simpson encouraged all Planning Board members to look over the handouts and make constructive suggestions for changes. This is a work in progress.

6 b. Discussion on "Commercial Fisheries/Maritime Activities" in Shoreland Zone

Johnstone said that loopholes need to be created to allow uses in the Shoreland Zone that lack direct connection to the water. He will talk with Colin Clark at DEP to get examples of industrial uses permitted in the Shoreland Zone.

An act pending before the 130th Maine Legislature would add marina-based restaurants in the Shoreland Zone to the list of "functionally water-dependent uses", and include a definition of "Marina-based restaurant": a restaurant as defined by Title 28-A, section 2, subsection 15, paragraph Q, located on the premises of a marina and that is an accessory use to the primary use of the premises as a marina.

8. Next Planning Board Meeting – Wednesday, May 12

Adjournment: The meeting was adjourned at 8:04 p.m., with thanks to all for participating.

Respectfully submitted,

Susan S. R. Alexander

Action Items (revised list from Simpson)

Johnstone:

Check Planning Board files from 1989 to verify whether the original approved subdivision plan for Apple Barn subdivision prohibits addition of new lots.

Examine Town records to understand the creation of the Tripp lot and its relationship to the Apple Barn Association.

Get legal opinion whether the lot covenants on Lots 1 - 6 of Apple Barn subdivision apply also to Lot 7 and any future lots added to the subdivision. Does this also apply to the Tripp lot? Is there a mechanism for new lots to be added to the Apple Barn Subdivision Association, and does that require the approval of the current members? Everyone should be aware of the possibility of additional subdivision of the Bess property, assuming it is legally viable for him to do so.

Send information letter to owners of Lots 1 - 6; consult with lot owners.

Verify whether owners of new Lot 7 will be considered members of the Apple Barn Subdivision Association. How will this happen?

Verify whether Lot 7 can have legal access over Apple Barn Lane if Lot 7 is not part of the subdivision.

Arrange for Fire Chief Smeltzer to visit the subdivision; get his input on location and design of T turn-around for emergency vehicles.

Provide follow-up item list to Planning Board members.

Mathieson

Add a mandatory vegetative buffer between Lot 3 and the proposed new lot, as requested by Rev. Vermilion, owner of Lot 3.

Confirm if the deed for the new proposed lot reflects the restrictions of the Apple Barn Subdivision, and which ones.