

Minutes
Town of Waldoboro
Planning Board Meeting
May 8, 2019

Roll Call

The meeting was called to order by chairman Scott Simpson at 6:02 p.m. in the meeting room at the Municipal Building. Other members present were Barbara Boardman, John Kasnow, Jim Russo and Ted Wooster. A quorum was present throughout. Planning and Development Director Max Johnstone was present. The audience included Daniel Beck, John Lawrence and Melvin Williams, as well as applicants George and Nonnie Frelinghuysen and Josh and Sarah Pike.

Kasnow has just been appointed to the Planning Board. He is a Portland native, a registered respiratory therapist who has worked at Maine Medical Center and Miles Memorial Hospital. He is a member of the Sylvania Task Force.

1. Minutes of April 10, 2019

On motion of Russo/Boardman the Board voted 3-0-2 (Krasnow and Wooster abstaining) to approve the minutes of April 10, 2019 with two proofreading corrections: 1) on p. 2, line 6, to change “Pike’s” to “Pikes”, and 2) on p. 4 under Action Items, Johnstone, item 3, to change the next-to-last word in the line “Consult Economic Development Committee”, to “Board”. The three votes in favor were a majority of the quorum present at tonight’s meeting.

2. New Business

2.1 Approval of Permanent Private Pier, Frelinghuysen, 289 Spruce Lane (Tax Map R7 Lot 31)

George and Alice Cooney Frelinghuysen seek a permit to build a 166’ pier supported by three granite crib structures, with a seasonal 3’ x 50’ aluminum ramp and a 16’ x 26’ seasonal float, on their residential property, as a replacement for a former pier and dock. Mrs. Frelinghuysen said that her grandfather built the original pier when the house was built, in 1927, or shortly thereafter. The new float will have 12” to 18” of water at low tide. No part of the permanent structure extends beyond low water, so they will not have to lease land from the State. There will be low-level lights on posts. The plan calls for replacement of the existing stairs with new stairs onto the pier, and new stairs to the beach from the pier. The original pier had four cribs. Engineer Will Gartley of Gartley & Dorsky Engineering and Surveying in Camden was present to review details of the plan. The pier will be built over sand and gravel, not existing or potential mudflats. It will be in compliance with local Land Use Ordinance Article 7 Shoreland Zoning F. Land Use Standards 3, which covers piers, docks and other structures extending over or beyond the normal high water line, and prohibits building private recreational docks over mudflats that are active or potential shellfish harvesting areas (p. 7-7). The permanent pier requires Planning Board approval, while the ramp and float require approval by the Code Enforcement Officer. The abutting property owner has been notified, along with the local Shellfish Committee. The abutter has no objections. Planner Johnstone has verified that there are no known historic or prehistoric sites on the property. VOTE: On motion of Wooster/Boardman, Planning Board members voted 5 - 0 to approve the pier application.

2.2 Approval of Nonresidential Expansion, Pike, Tops’l Farm, 365 Bremen Road (Tax Map R5 Lot 12)

Owners Joshua and Sarah Pike were in for review of their request to expand their event barn on the west side of Bremen Road by adding a 24’ x 40’ roofed extension (covered patio) onto the west side of the building. Because this will expand the building’s footprint by more than 500 s.f. within a five-year period, it requires Planning Board approval. The Pikes were in for preapplication review of the proposed addition at the April

10 Planning Board meeting. A change to the building is needed in order to meet the requirement of the State fire code for two exit doors at least 32.5 feet apart. The venue is already approved for a maximum of 15 mass gatherings per year, with 60 on-site parking spaces. Additional parking, if needed, must be arranged off-site. No changes are planned to the number or size of public events. The main season is mid-May through October, with a couple of winter events.

Pike said the noise level during events is likely to be reduced, because the new roof will be insulated, and tents will probably not be needed for most events. Traffic will be somewhat less, because of a lesser need for event tents to be delivered, set up and taken down.

Boardman asked about the maximum number of people expected per event (guests plus service personnel). Pike said 150 - 200 guests plus perhaps 12 staff, including caterers and waitstaff.

Wooster asked about the existing woods road between the farm and Route 1. He advised the Pikes to restrict use of the woods road to foot traffic, not motorized vehicles.

VOTE: On motion of Wooster/Russo, Planning Board members voted 5 - 0 to approve the request of Joshua and Sarah Pike to expand the event barn at Tops'1 Farm, 365 Bremen Road, by adding a 24' x 40' roof extension on the west side of the building in order to accommodate two new fire exits with the proper separation distance required by the State Fire Marshal.

2.3 Approval of Non-Customer Addition at Moody's Diner, 1885 Atlantic Hwy. (Tax Map U6 Lot 4)

Daniel Beck, President and General Manager of Moody's Diner, was in to discuss a proposed 30' x 19' two-story addition (1140 s.f. total) at the back of Moody's Diner, plus a separate one-story 10' x 14' walk-in cooler. The first floor of the addition will be used for storage of restaurant supplies, new employee bathrooms, and a new laundry area, while the second floor will house administrative offices. Expansion of an existing nonresidential building by more than 500 s.f. requires Planning Board review. These changes will improve the working environment for Moody's approximately 60 - 80 employees. Moody's is connected to the public sewer system, but has its own well.

A site evaluation by Gartley & Dorsky Engineering & Surveying of Camden is part of the application. A 7.5" x 11.5" site plan was attached to the application. Planning Board members asked if a larger-scale version was available, but it was not. Moody Family LLC, which owns Lot 4, proposes to purchase adjacent Lot 5 from Moody's Restaurant Inc., in order to combine existing lots 4 and 5 and enable the business to meet the 15' setback requirement for the Route 1 Commercial B land use district. The two legal entities are owned by the same individuals. The proposed work will not change the capacity of the restaurant, so review by the Maine Dept. of Transportation is not required.

Tony Lash Excavation will do the site work and pour the concrete. Beck's letter of April 22, 2019, states (p. 2) that there will be no impact on storm water drainage to the parking area or to Route 1. Drainage installed around buildings and from the roof will be diverted to existing gutter drains that discharge to storm drains that flow into a pond on the east end of the property. The catchment of water run-off from behind the building will be improved. The slope behind the building will retain its present appearance, just set back further, with an upper and a lower rip-rapped ditch. Slope runoff will drain to ditches and pipes already in place. Erosion control will be put in place at the start of the job and maintained throughout the job.

Beck hopes to start construction this spring and complete it before July 1, or else start in late September and complete work in October. Construction is anticipated to take three or four weeks.

Kasnow asked whether a site visit to the property is indicated. Russo said that the proposed plan has a lot of issues and very little space; it is worth thinking about a site visit. Simpson said that if any Planning Board members feel the need for a site visit, they should say so; it will delay action on the application. Moody's hopes to complete the work before July 1. Boardman and Wooster had no further questions. There were no questions or comments from the audience. VOTE: On motion of Wooster/Boardman, Planning Board

members voted 5 - 0 to approve the proposed new non-customer construction at the rear of Moody's Restaurant, contingent upon pending purchase of adjacent Lot 5 in order to meet the 15' minimum setback requirement from side and rear lot lines.

2.4 Restaurant/Food Wagon for Delano Seafood, 2090 Atlantic Hwy. (Tax Map U7 Lot 9A)

Owner Kendall Delano was in to discuss plans to add a food wagon on the grounds of Delano Seafood. The market has been open since 2009. They already sell frozen crabmeat rolls, but want to be able to offer more variety to customers. He proposes to add an 8.5' x 28' trailer selling sandwiches, hot dogs, deep-fried items, lobster rolls, crabmeat rolls, non-alcoholic beverages and ice cream. The truck is all kitchen, no eating area, and large enough for three people to work in at the same time. The existing market building would continue to sell fresh and frozen seafood. There will be two 200-gallon holding tanks, one for gray water and the other for a Porta-Potty, both of which to be pumped weekly. Another handicapped-accessible Porta-Potty located between the existing building and the food truck will be pumped monthly. The holding tanks will be located above grade, behind a wall, 100' from a brook. Electric service will come from a new power pole, for which he has a permit from the State. Wastewater and effluent from the two new holding tanks will go into the existing septic system serving the seafood market building, located on the other side of the property. The State will certify the operation once Kendall takes the required course. He will give Johnstone a copy of the certificate when received. He expects to be open all year, offering chowder in the winter and take-out items. They might add indoor seating inside the seafood market in future, to be able to accommodate more people. There is plenty of room for parking: 10 cars for the seafood market, 10 cars for the take-out, and capacity for 40 - 60 vehicles maximum. The lot is 3 acres with 225' of road frontage on Route One, and good sight lines. There are currently four picnic tables for outdoor seating, with six additional tables planned, for a total seating capacity of 40. Hours will be 9 a.m. to 5:30 p.m. year-round. He may add LED lights on new 25' power poles for additional lighting. If the food truck is used in the winter, it will be set on blocks so as not to ruin the tires. Next year it may sit on a slab.

Kosnow asked whether there is any ordinance limit on the number of food trucks in town. He was told there is no such limit in the Land Use Ordinance. Boardman asked why the application has to come before the Planning Board. She was told that it is a change of use of an existing property.

Abutter comment: Donald Grady and his wife own the abutting lot to the west of Delano Seafood, 141 Washington Road (tax map U7 Lot 9, 12 acres). His driveway is off Route 220, a quarter of a mile away. There are extensive wetlands between Grady's Washington Road frontage and the Delano property. Grady sent an e-mail dated May 8 objecting to having a food truck on the property next to his, because of potential noise and odor. He plans to build a residential structure on his property in future.

Discussion: Regarding the possible odor issue, Koslow said that a food truck would require State inspection and approval. There are no odors outside Delano Seafood now. Odor has not been a problem near Moody's. Koslow said the size of the kitchen in the lunch wagon is a quarter the size of Moody's kitchen. Delano said that the principal odor from cooking fried food in the lunch wagon would be from the propane.

VOTE: On motion of Wooster/Russo, Planning Board members voted 5 - 0 to approve Kendall Delano's request for a food wagon /restaurant at Delano Seafood, 2090 Atlantic Highway.

3. Planning Board Terms, Vacancy

June 30 is the end of the fiscal year, and the end of Ted Wooster's current term on the Planning Board. He is willing to continue on the Board as long as his health permits. The Board has six current members. The vacancy created by Tara Pelotte's resignation needs to be filled.

4. Comments from Planning Board Members

Land Use Ordinance Article 6 Site Plan and Subdivision Review needs updating. Simpson suggested working on this at an upcoming regular meeting that has no or few new site plans needing review. Johnstone

has not heard of any new site plan applications for June. Simpson asked Planning Board members to re-read Article 6 in preparation for discussion at the June 12 meeting, and asked Johnstone to let Planning Board members know if there will be regular agenda items in addition to reviewing Article 6. Johnstone will distribute the agenda and meeting materials on Friday, May 24. He will give a copy of the LUO to new member Kasnow.

Kasnow asked, in reviewing an application, whether Planning Board members consider only what the ordinance states, or also consider what common sense would indicate. Simpson replied that the Planning Board tries to find a nexus of common sense and the legal intent of the ordinance. We can be more restrictive than the local ordinance or State law, but not less restrictive. The Comprehensive Plan Committee is currently working on revisions to Waldoboro's Comprehensive Plan.

The recent Planning Board review of two applications for food wagons is an example. Food wagons are not addressed in the Land Use Ordinance. The Planning Board considered a food wagon a type of restaurant, and applied those criteria and standards in reviewing the applications for Ollie's and Delano's food wagons.

5. Medical Marijuana Caregivers - John Lawrence

Lawrence said he has lived on a dirt road in North Waldoboro for 12 years. He previously lived in Vermont and in the mountains of California. His home is located within one mile of a home-occupation violation. He has tried to bring this to the attention of local officials, without success. His neighbor's operation is no longer in active use. Waldoboro is now in a pivotal moment regarding registered medical marijuana caregivers. Johnstone said this is a zoning issue that must be reviewed by the Planning Board. Johnstone said that the current intention is to remove language about marijuana caregivers from the Land Use Ordinance and address marijuana in a separate ordinance. Johnstone said he is not sure whether marijuana caregivers will be covered in the Land Use Ordinance or in a separate ordinance.

Lawrence said he is not opposed to medical use of marijuana per se. He has issues with his neighbor's activities running a "grow-op". Cars have been speeding up and down his road at night, including out-of-state law enforcement vehicles. His house is right on the road. He wants new regulations regarding marijuana caregivers to be properly handled. He urges local officials to act to make the environment more fair and friendly in North Waldoboro. He asked where is the dividing line between law enforcement (Police) and zoning issues (code enforcement, Planning Board review). There are currently two registered growers on his road. Each can have 40 flowering cannabis plants and 80 immature plants.

Lawrence asked whether the Planning Board will get to review and give input to the revisions to the Comprehensive Plan currently being considered. Johnstone said that the 10-person revision committee includes two members of the Planning Board: Boardman and Hotchkiss. The Planning Board will hold a public hearing on the revised draft Comprehensive Plan at the end of the process. Townspeople will get to vote on the revised Comprehensive Plan. The ad hoc Marijuana Committee disbanded in February 2019.

Lawrence referred to the March 26, 2019 Select Board meeting, at which townspeople voted an immediate moratorium on medical marijuana dispensaries and cultivation facilities. A marijuana moratorium will be on the warrant for vote at June town meeting.

Highbrow is a registered marijuana caregiver store, one of three approved in Waldoboro before the current moratorium. The proprietors are approved for retail sale, and can meet with their private medical marijuana patients in offices in the back of the building. Simpson said he was a member of the Planning Board when Highbrow was approved in 2017. It met the requirements of the Land Use Ordinance, according to the Planning Board's understanding of the ordinance. There was no legal basis for rejecting the application. Kasnow said that others in town disagree, feeling that the application was only to operate a "glass shop" selling marijuana paraphernalia.

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Johnstone said that retail sales of marijuana products is now separate from operating a retail registered caregiver store. Highbrow could not expand or open a second store at another location in Waldoboro under current regulations.

6. Next Meeting: Wednesday, June 12, 6:00 p.m.

Adjournment: The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Susan S. R. Alexander

Action Items

Johnstone

Send Susan latest draft of April 10 PB minutes, so that she can make tonight's corrections on the file copy
Notify Planning Board members if there are site plans for review at the June 12 meeting

Planning Board members

Review Land Use Ordinance Art. 6 Site Plan and Subdivision Review, for discussion at the June 12 meeting

Kendall Delano

Give Johnstone a copy of your certificate after you have successfully completed the required course