



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Jason Janvrin, Vice Chair; Roger Frazee; Francis Chase, Aboul Khan, Ex-Officio; Alternate; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Sue Foote, Alternate; Michael Lowry, Dennis Sweeney;

Hawkins opened the meeting at 6:35PM.

### **PLANNING BOARD ORGANIZATION**

Hawkins said that the first item would be the nomination of the Chair and Vice Chair; next a discussion of alternates. There being no other nominations or volunteers, the Board voted:

<b>MOTION:</b>	<b>Khan</b>	<b>to nominate Donald Hawkins as Chair of the Planning Board.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Khan, Chase, Janvrin, Frazee, Wood; Abstained: Hawkins;</b>

<b>MOTION:</b>	<b>Khan</b>	<b>to appoint Jason Janvrin as Vice Chair of the Planning Board.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Hawkins, Chase, Frazee, Khan, Wood; Abstained: Janvrin,</b>

Hawkins noted that Paula Wood and Sue Foote continue to serve as Board alternates. His preference was for anyone interested in serving to write to the Board through expressing their interest. He noted that the Board membership was generally attentive and there were six or seven members each meeting. He asked if anyone knew of potential participants. Khan asked how many alternates were allowed. Hawkins said up to five; there were two at present, noting that the terms should be staggered. Janvrin thought perhaps this information might be made available on Channel 22.

### **MINUTES OF MARCH 5, 2013**

Hawkins asked for comments, indicating that the actual date should be inserted into the extension motion of page 3.

<b>MOTION:</b>	<b>Chase</b>	<b>to accept the Minutes of March 5, 2013 with the date of September 5, 2014 inserted in then motion on page 3.</b>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: Hawkins, Chase, Janvrin, Frazee, Wood; Abstained: Khan;</b>



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

### **SECURITY REDUCTIONS, EXTENSIONS, ROADWAYS**

#### **Case #2001-13 920 Lafayette Road – Tim Johnson**

Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering;

Hawkins asked for Morgan's recommendation. Morgan called attention to Boyd's Millennium Engineering letter responding to Morgan and Garand's memorandum. Hawkins asked Boyd if there were a reason this could not be put off to the next meeting. Boyd said that Johnson was anxious to get this done. He said that everything had been done, and he had submitted an as-built. The only remaining item was that 3 rhododendrons were still to be planted.

Hawkins referenced the memorandum from Tom Morgan and Paul Garand as to what they considered open items. He noted that Boyd had responded to every comment, but the responses were not all what was expected. He thought the best way forward was for Morgan to cite any differences, noting that the first item was a berm installed not as on the plan. Janvrin commented that was part of the drainage. Hawkins asked Boyd if this were a different type of berm. Boyd said originally a California berm had been called for, but they did not feel it would be secure at the back edge of the grass pavers and wouldn't function as well as the existing grass berm. There was a long distance from the wetlands and the detention area. Boyd said a California berm had a flat face and was paved. It was better where there were not snow plows, and should be secured at the edge of a paved parking lot. Janvrin asked what was on the as-built. Boyd said a soil berm with loam and seed functioned better and were more secure; water flowed towards the detention pond. Janvrin asked if Garand had been out to the site since the installation. Garand said there was some wash-out which the owner should address; the detention pond was in place. Boyd said the slope naturally requires normal maintenance; the wash couldn't be repaired with the frost.

Janvrin asked if everything that was done was on the as-built. Boyd said it was. Janvrin asked about the outside smoking area. Boyd said that was after the drawing date. Janvrin noted there was a separate plan. Boyd commented that this was to complete what was supposed to be done in 2001. Hawkins pointed out that the rhododendrons needed to be planted. Boyd said Johnson would do that, and had already contacted the contractor. Boyd said Johnson could offer \$500 as security. Janvrin thought that Johnson was looking to close out the case.

Hawkins said another item from the Morgan/Garand memo was that there was no indication that the parking spaces complied with town specifications; Johnson should request a waiver for the parking dimensions or restripe the lot. Janvrin asked if currently they were 9 feet. Boyd said in some cases, but at the time much of the parking was herring-bone and never complied. He was pleased that the town now put parking in the hands of the Planning Board and considered narrower aisle widths. That would make the [Johnson] spaces more, but not fully, compliant. This now could be handled with a waiver, whereas originally there should have been a variance.

Janvrin asked if the spaces were ADA compliant and if not, would they be made compliant with the restriping. Garand said they were not, and further the striping was haphazard and minimal and did not match anything. Boyd said for this original site plan, the handicap spaces were in place and met the 2001 standards. Garand said that handicap parking had not been on the list when other cases on that property had been discussed. As the restriping occurs, the handicap spaces would be addressed, noting that the site still would be non-compliant.



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins asked about the differing catch basin elevations and grading. Boyd said the drainage functions well, although it was not installed as originally designed. A catch basin and swale were added on the southwesterly side of the building, which takes care of the runoff as well as what had been designed. It is sized correctly, functions well, and is in good shape. Chase thought the catch basin had been discussed before. Boyd said in the front of the building a catch basin that was to be removed was left so as not to interfere with an overhead doorway, but it was unlevel. When the dumpster pad and the fencing went in the structure was raised and works fine now. Hawkins asked about the lighting. Boyd said it was installed as called for. Janvrin said flood lighting was then allowed; the Board was addressing that as units came before it. Hawkins noted that no security had been provided, but if the work was done, that issue was moot.

Wood expressed concern about the pads and dumpsters, and the fencing, now between the buildings and the street, that block the fire lane. She was uncomfortable blocking the fire lane said the numerous, large, propane tanks. Boyd said he had advised Johnson to call the Fire Chief when the work was being done. He understood that the Fire Chief told Johnson it was ok. Wood said the Planning Board should consider the safety issue. Hawkins asked for Garand's view. Garand said currently it was open to the next door lot, but if something were built on that lot, there would not be access. Boyd said the problem could be glass bottles, but he did not think it was the dumpster. Wood said for a fire truck to go on the property it would have to go over a curb or take a quick right to try and get to the next door property when filling the tanks. Janvrin commented that the dumpsters had not been on any plan; they were placed there because of the breakfast shop having to meet health regulations.

Garand noted that the Board had already approved the placement, so the discussion was out of order. Boyd said the width was actually greater than required. Wood had observed the gas company filling the propane tanks from another property because they cannot get behind it. Boyd said Johnson had asked the Fire Department and was ok'd to finish up where they are. Boyd asked if the Fire Department had told Wood the trucks can go over items. Wood did not agree. Garand said that was the only area with propane. The new gym had natural gas that was brought in through the back side of the property.

Hawkins asked if they were adding to the open items or if there were conditions to consider in finalizing a decision. Morgan cited the rhododendrons and a parking waiver. Chase asked if the parking spaces were compliant when put in. Garand said that parking was added without approval; original plans showed parking in front of each unit; the overflow parking was where the gym was. He had not reviewed the records for the space requirements. Boyd said the parking at the gym was compliant. Parking was raised because people were coming to the Planning Board for new uses, and the parking issue had not been settled or approved by the Board. Janvrin noted that the travel lane was not sized as it should have been. Garand said if a waiver was granted, the parking should be made more compliant when a new unit comes before the Board. Wood noted the agreement in re parking by the property owners. The spaces should be shared and ADA compliant; Johnson should fix the holes in the parking lot. Boyd said Johnson would now pave the finish course and redo the striping, noting that many problems could be attributed to Johnson.

Chase asked about the waiver and the size of the spaces. Morgan said the request was to accept what's on the plan from 2001. Garand said that future changes would address more compliance. Chase wanted to know how handicap spaces would be incorporated into the plan. Garand said the Board's task was to close the case. Parking would again be addressed when a unit comes before the Board. Khan asked if Morgan had visited the site. He had as had Garand and



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins. Khan said this site had had extensive discussion. Hawkins thought that the owner had put a lot of time and effort in addressing the “punch list” from the last hearing. Khan agreed. Hawkins said a few rhododendrons and stripping would come later on; he wanted to close the case, even though much of the work was done 10 years late. . .

<b>MOTION:</b>	Janvrin	to waive the parking dimension requirements for Case #2001-13 in accordance with the as-built plan for 920 Lafayette Road presented and accepted on April 2, 2013, as requested by the Applicant.
<b>SECOND:</b>	Chase	Approved: Unanimous

<b>MOTION:</b>	Janvrin	to close case # 2001-13 – 920 Lafayette Road, Tim Johnson, owner.
<b>SECOND:</b>	Chase	Approved: Unanimous

### REAPPOINTMENT OF COMMISSIONERS ROCKINGHAM PLANNING COMMISSION

<b>MOTION:</b>	Wood	to recommend that the Board of Selectmen appoint Donald Hawkins as a Commissioner representing The Town of Seabrook on the Rockingham Planning Commission, and to reappoint Francis Chase and Jason Janvrin as Alternate Commissioners representing the Town of Seabrook on the Rockingham Planning Commission, all terms to expire in 2016.
<b>SECOND:</b>	Khan	Approved: Unanimous

### APPOINTMENT TO RECREATION COMMISSION

<b>MOTION:</b>	Khan	to reappoint Jason Janvrin to the Seabrook Recreation Commission as the Planning Board representative.
<b>SECOND:</b>	Chase	Approved: Unanimous

### CORRESPONDENCE

Hawkins called attention to **two letters provided by DPW Manager, John Starkey, written on behalf of the Town of Seabrook to the Environmental Protection Agency**. Starkey did a great job in extensively detailing the unfairness because Seabrook has been held to the new MS-4 standards at great cost, while Concord and other much larger communities had received waivers. The second letter details Seabrook’s request for a waiver. Hawkins said that Starkey and the



## **Town of Seabrook Planning Board Minutes**

Tuesday, April 2, 2013

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Conservation Commission did a great job in developing the summary and developing the waiver request submitted by the Town to the EPA. Hawkins urged the Members to read the two letters to learn about the MS-4 requirements. He had attended the hearing in Hampton where there were many very angry people. The cost is very high and there is no funding provided by the federal government. Khan added that the letters had been sent to the congressional delegation, the Governor, the state legislators and federal government officials.

### **ZONING BOARD OF ADJUSTMENT ADMINISTRATIVE APPEAL**

Hawkins reported that the administrative appeal of the Planning Board Zoning Interpretation had been continued again at the request of the Appeller, Charles Mabardy. Scott Mitchell thought that Mabardy had gone too far. He believed that there would never be a full ZBA Board to hear the appeal, as one member would have to step down because he works for Mabardy. Mitchell said that principals from Florida and Gilford, NH had traveled to three ZBA meetings that were not held, and that this would again delay returning to the Planning Board in re Case #2012-18. Hawkins commented that the ZBA did not have to accept the delay. Mitchell asked for another extension from the Planning Board. Kravitz said that Attorney Richard Uchida had been choosing the second meeting of the month; the extension currently is to April 30. Someone should write to the Planning Board and ask for an extension date or whatever is wanted. Mitchell said they would formally submit a written request.

### **PUBLIC HEARINGS**

Hawkins opened the Public Meeting at 7:35PM.

### **NEW CASES**

#### **Case #2013-06 – Proposal by Provident Holdings, LLC to expand the parking lot at 1 Provident Way, Tax Map 8, Lot 51-1, continued from March 19, 2013.**

Attending: Charles Withee, Provident Bank; Scott Mitchell, Seabrook Holdings;  
Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers;

Hawkins asked for the Applicant's description of the proposal. Morrill recalled the earlier lot-line adjustment plan working with DDR approved by the Board that gave a little space for parking lot expansion for the Bank. The lot would be squared off, increase in size, and decrease in impervious surface.

Withee said the Provident Bank Seabrook Branch had been very successful for the Bank and the Town. The Bank was seeking additional parking to continue its growth for customers and service to the community. They donate to the community based on their success. Withee said they are a Mutual Bank; the dividends become a donation to the community. Hawkins asked for the number of increased spaces. Morrill said 7. Mitchell said they would square off a triangular piece for Bank parking, noting that the Bank would do better with the Super Walmart and DDR shopping center. With 441,000 square feet going in they know the Banks will benefit. They will pave and restripe the entire parking area, and add landscaping to meet the current high standard. Khan asked if there would be another cross-connection with the DDR site. Mitchell said not yet, but DDR had been very cooperative. They intend to return to the Board in a short time with a site plan, as they



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

are buying the existing McDonald's site. Khan commented that every time Mitchell comes to the Board the talk is about cross-connections. Mitchell said cross-connections that keep cars off Route 1 make sense. They want to assist their customers and the town.

Hawkins asked Morgan to address his comments. Morgan said that the plans he reviewed showed the storm water drainage out in Provident Way. He understood from Garand that DDR had been issued a site permit to do the ground work which includes stormwater drainage. There would be some major changes right outside the Bank along Provident Way. Morgan said the original approval for the Bank and the CVS had the stormwater drainage in the public right of way on the surface. He thought that DDR would be putting a lot of that underground, and that work had been started. This was confusing. Janvrin said the Bank site fence for the DDR project was being used for storage. Mitchell said he was responsible for getting the approvals from the Town, and then the work would coincide. Morgan thought that the Board was being asked to approve a plan that had yesterday's drainage; they should be keeping up with DDR. Morrill said that Morgan was correct. They had been showing the improvement of Provident Way as if it had already been done, and should do the same for this plan. He asked for a copy of Morgan's comments. Hawkins reminded that Morgan writes a memo for every case, and Morrill could have called the office for it. There are no secrets and if Morrill is prepared with a response, it would be more productive for the Board.

Morgan thought 7 added parking spaces were intended, and that this would result in less impervious surface. Morrill said that by percentage that would be so given the added area for the lot. The impervious increases but so does the size of the lot; the total decreased. Morgan would prefer that the figures be expressed in square feet. The EPA would be watching closer than ever, so the basic data was needed. Morrill said the Drainage Analysis and Stormwater Operations and Maintenance Manual had been submitted. Janvrin said it was not on the plan. Morgan explained that the Town had some outside consultants helping with the MS-4. Once a year he gets a letter asking what improvements Seabrook had made. This is the type of data that would be helpful going forward.

Chase asked about the triangular area. Morrill said it was the infiltration pond. At some point there might be underground detention and they could make that area look better and perhaps yield more parking. Mitchell said they did not like how that looked. He met with Sue Foote. This was a man-made wetlands that looks terrible. With the big development coming, they are looking at this very hard; it's a mosquito mess and a mistake. They want to correct it. Janvrin asked if it would be treated on-site and drained to DDR. Mitchell said DDR would not take that drainage because it would put them back to site specific process. It takes the drainage from Pizza Hut, CVS, Provident Bank, and the Old McDonald's. Morrill said the overflow goes out to Provident Way. Mitchell said they want to do a closed system for irrigation and beautification. Hawkins wondered why landscaping that area was not being talked about as part of the site plan review. Morrill said technically as a man-made wetlands they could be maintaining it and making it look nice. However, plants cannot be put in the pond because they need the volume for detention. They will return in the future with something different.

Wood remembered that the area in back of the Bank was really tight for turning around, and asked how the added piece related to this. Mitchell said it just takes a chunk out of one of DDR's entrance areas; it would not affect what they will propose for site plan review. Wood asked if it was coming from DDR green space, would it affect their percentage. Hawkins said it would not affect the big mall lot; it was thought it might be presented for a restaurant. Morgan noted that Provident Way is a town road and not known as south access road. Further to the east it was



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

owned by NextEra. The State owns the Routes 1/107 intersection. Some boundary lines were missing. In comparing sheets, the snow storage was on top of a swale. Light poles to be moved nearer the neighbors needed cut-sheets as to the light design. Once the pole is moved it would no longer be grandfathered; a waiver would be needed.

Chase said the area in back of the CVS Pharmacy was dark at night and unsafe; there was no light coming from the Bank. He asked if that could be addressed now. He did not need a grid. Mitchell thought to make it lighter. Khan said care exiting from the Pharmacy pick-up counter cannot see cars coming from the north to south. Morrill said the stop bar could be extended. Khan asked that they look at a stop sign. Wood commented that the Board was looking more favorably at light spill toward commercial property that otherwise is not brightly lit. For example, she thought that the Dollar Store always looked closed because it was poorly lit. This was discussed at the North Village meeting. Hawkins said the question was should the Board allow spill over onto Route 1 to provide some light. Spillover from commercial to commercial was not upsetting. Mitchell recalled that at the time of the CVS proposal, the Board wanted all light toned down. He said light should be appropriate and safe for walking, but not offensive. Morrill said they were aiming for overlapping light for the parking.

Chase asked if another light was actually needed. Morrill said the lights were ornamental; another would make the entrance way more attractive. Janvrin said the area is dark at night. Morrill thought that could be a good idea, as the lights now are under the canopy. Mitchell said commercial to commercial was appropriate; it would be different if the abutter was residential. Wood favored lights in the back and at the rear of the CVS. Mitchell said they use the Provident Bank landscaping as the model for new development. Khan asked if Mitchell knew anything about the Smithtown adopted last year, or about the North Village meetings to envision the area in 15 years. Mitchell did not know about this. Hawkins explained that the objective was to express what would be wanted, rather than just have haphazard growth. The Steering Committee was meeting with neighborhood groups to see what they would like to see in their area. Wood said they had met with one neighborhood; had another listening session scheduled, and then would meet with the west side residents and then the business people. Mitchell said he had done a lot in Seabrook and would be interested; he asked to be informed. They own a lot of property, and were buying more. They would be happy to provide input even if they don't always agree. Khan suggested Mitchell join the committee.

Hawkins noted the 7 proposed spaces and asked how that fit in with 4 spaces per 1000 square feet. Morrill said that would be for retail; this was deemed office space. Morrill said the maximum if it were retail would be 14 spaces; existing spaces were 23. The total would be 30. They are a Bank, not retail and there would be a minimum required. Morgan said one notation said retail. Morrill asked Withee if the Bank would be considered retail use. Withee said customers can come and go to transact business, as could commercial businesses, in an office. They were not a retail store; they call it a retail branch location. Janvrin asked if there were a meeting room. Withee said there was. They had a commercial lending office, retail lenders, and branch personnel. Janvrin asked how the use was described in the original plan. Mitchell said when Provident Bank first came to Seabrook, it was their first big leap to New Hampshire. It had grown a lot more than they had expected. Wood asked for the rationale for maximum number of spaces. Janvrin said impervious surface. Hawkins said there was a maximum on retail and a recommended minimum for most other applications except for offices and industrial where it is left to the Board.

Mitchell commented that they were permitting a Bank in Portsmouth and 14 spaces could never make it. Any Bank today would want 25 -30 spaces or they would not come. Withee said the



# Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

average customer might be there for 15 minutes, but they could also be transacting a loan which would take an hour or two. Chase said things could be sold in retail, but not in an office. Janvrin asked if there were another classification. Wood said a definition could be changed. Janvrin noted the Board could waive its regulation. Wood asked if the current spaces were used all the time. Withee said it's a very active branch being right off of Route 107. They get a lot of people in town, as well as from peripheral towns or off of I-95. Mitchell said with Walmart and uses such as Michaels, it would bring more business to the Bank. Hawkins said office would be one space per 200 square feet which would be a minimum. Chase said there would be no maximum Janvrin said it would be subject to the Board's discretion, and asked for the classification. Hawkins said it would be retail with a waiver – 14 would be inadequate. Janvrin thought a waiver request would be the easiest. Morrill will do that.

Catherine Evans cautioned the Board re making jocular comments about zoning ordinances that were made years ago. Sue Foote, Peter Evans, Bill Cox, and Phil Stockbridge got together deciding that parking lots needed to be a certain width and allow for turning. There was nothing cavalier about it. Shielded lighting was used so as not to cause light pollution or bleed light onto abutters whether commercial or residential. The ordinances were there for a reason. She agreed with Hawkins that exceptions could be made. Before disregarding regulations, the Board should put some thought into why they were there. Provident Bank was a great neighbor and great for the community. It's obvious that it is doing well. Was 7 spaces enough, or should it be 15. The ordinances were there for a reason. There needed to be a certain amount of area to turn and handle a car. One reason there were issues at Walmart in re parking was that they would put tents outside at different times of the year which would cause trouble for abutters as well as traffic flow on the access roads. The lighting was an issue with Lowe's and Kohl's and Market Basket expansion as well as the issue with Walmart. There is a history as to why things evolved as they had, so the ordinances should be reviewed. She favored adding more light; it was dark behind CVS. In the future, the Board should not just decide they can reinterpret at will without visiting the regulations.

Janvrin asked for a letter from DDR in re the light trespass. Morrill would do that He commented that what they really wanted was 14 parking spots. They have a letter from DDR supporting this, but didn't have the width so they went with 7 spaces. Janvrin said 14 would be within the setback so they would need ZBA approval. Mitchell said they probably would have had enough room if they had surveyed the property. Hawkins said they would not have been able to meet the landscaping standards. He did not want to see the landscaping deteriorate just to add more spaces. Mitchell said they wouldn't be getting rid of landscaping, only adding to it. Janvrin said more spaces could be gained in phase 2 when the detention area was closed out. Mitchell agreed. Wood asked if a waiver were given at this time, would they have to do another waiver later on. Janvrin said it would be on a case by case basis. Hawkins said that was not under review for Case #2013-06. Janvrin wanted the letter from DDR re the site trespass as a condition; also from the owner of CVS. He wanted the letters in before a final vote. Morrill agreed, saying they could come back after addressing Morgan's comments and getting the letters.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to accept Case #2013-06 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Chase expressed concern about vehicles backing out of the new spaces. Morrill said they would consider one-way traffic to have a good flow around the site. Morrill wanted the engineer to review the drainage. Morgan said that had been requested.

**Hawkins scheduled Case #2013-06 to the Technical Review Committee on April 15, 2013 at 10 AM in Seabrook Town Hall, and continued Case #2013-06 to May 7, 2013 at 6:30PM in Seabrook Town Hall.** [Secretary's note: The TRC was held on April 16, 2013]

### **Case #2013-07 – Proposal by Elidio Moreira for a condominium conversion at 67 Ledge Road, Tax Map 5, Lot 8-5;**

Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineering;

Hawkins asked for Morrill's presentation. Morrill said this is a residential lot with a duplex. The Applicant is applying for a condominium conversion.. The units were depicted; the sewer is on the back side of the building – the sewer easement is shown, the water lines come around and tie into the existing lines. The elevations and floor plans were shown for each unit. Wetlands markers were on the plans. Attorney Mary Ganz had submitted the condominium documents; limited common areas were on the back side of each unit; the square-footage was shown.

Hawkins asked for Morgan's comments. Morgan said that there were boundary markers missing. There was a note on wetlands but he could not find the named location. Morrill pointed out the wetlands permit. Morgan noted only one water shutoff was depicted when there should be two  $\frac{3}{4}$  inch lines. Morrill said there were two lines side by side up to the roadway; they were currently bound in plastic. Morgan asked how the contractor would know this if not depicted on the plan. Morgan said the note said the limited common areas were depicted but he could not find this. Morrill showed the location of the limited common area with a line down the middle for A and B. He noted that the condominium documents came in late. Janvrin thought the property was already built, and asked about the driveway permit from the town. Morrill said the driveway was rough and needs to be finished; they have the town permit and a wetland permit. Chase asked if the driveway would have an easement for both people. Chase asked how many vehicles would be parked. Morrill said each unit had a one-car garage and a car behind it. Chase wanted a turn out for backing up and then driving out. Morrill agreed it was tight.

Chase asked if they would raise the part by the road as it was not safe. Morrill said that would be necessary, as well as to install 2 cross-culverts as part of the wetlands permit. Chase wanted that depicted for safety purposes, and asked if that was part of Garand's responsibility. Garand said that the DPW takes care of the driveways where they meet the road. Janvrin was concerned that in a similar situation there were no guardrails, and asked if there would be any retention. Garand said that was discussed for the wetlands crossing and was depicted with the state approvals; they have the approval for what they are going to do. Morrill said there would be no guardrails; there would be just enough for the culvert to be on the existing ground so the water would flow back .

Hawkins asked if Morgan was satisfied with the responses. Morgan said he was, pointing out that a motion should have a few stipulations. Catherine Evans asked if Chase wanted a turn around on the left because it was wetlands, and there was a sewer easement. Chase said it would not go as far as the easement, only about 8 feet in. Morrill said they can't go into the wetlands.



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Evans said there was a pile of fill in the back, and asked where that would go because someone could not get around the building. and the silt fence was down. Morrill said they have to grade the site for the lp tanks, so the dirt had to be set aside. Evans said that trees came down in the winter and smashed the wetlands barrier. Morrill said they would take a look at that. Garand said it is supposed to be maintained. Janvrin called out a typo in re the wetlands marking in Note #16. Hawkins asked for further comments; there being none.

<b>MOTION:</b>	<b>Chase</b>	<b>to accept Case #2013-07 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: Unanimous</b>

Hawkins asked for further comments; there being none. The conditions include two water lines, condominium documents, restoration of the silt fencing, and labeling the wetlands. He asked about the Board's jurisdiction for driveways. Morgan said not usually for a condominium. Chase was concerned that the unit owners having to back all the way out would be unsafe. Janvrin said they might be ticketed for backing out on a Class V roadway.

<b>MOTION:</b>	<b>Chase</b>	<b>to approve Case #2013-07 Elidio Moreira for a condominium conversion at 67 Ledge Road, Tax Map 5, Lot 8-5, conditioned on (i) installation of two ¾ inch water lines, (ii) the condominium documents being acceptable to the Town Planner, (iii) restoration of the silt fencing to the proper operating condition, (iv) proper labeling of the wetlands, (v) the recommendation for a drive turn-around, and (vi) the plan revisions and mylars being entirely satisfactory to the Town Planner.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: Unanimous</b>

**Case #2013-08 – Proposal by Dana Knowles for a 2-lot subdivision and a lot line adjustment at 33 & 33B Folly Mill Road, Tax Map 10, Lots 11 & 11-1;**

Attending: Amanda, Nate and Patty Knowles;

Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering;

Boyd said that Dana Knowles wanted to give a piece of land to Amanda and Nate for a new home. There were 2 existing dwellings on the site as well as an auto repair business. This 3-lot subdivision was one of the first to take advantage of the 50-foot frontage in Smithtown Zone 6R. Boyd said that Morgan noted that the wetlands boundary had been taken from an earlier plan that created lots 1 & 2. Boyd agreed to have the wetlands scientist take another look and get a new wetlands delineation; note that permanent wetlands markers would be set would be added. Some boundary monuments that did not affect the proposal were missing. They are trying to keep the cost down; he asked that the markers not be required. Morgan was right that certain areas had been transposed. The sewer line would remain for the new home, and would split to tie into the sister's property. The easement for a shared driveway would have less impact. A utility easement



# Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

for the sewer T-off was needed, as the Sewer Department did not want a road cut. A new water service and meter would be installed.

Hawkins asked for Morgan’s comments. Morgan said to ask for a waiver on the boundary markers. Boyd referenced the lot-line adjustments so the structures would comply with the setbacks; the deck in the back would now comply in 6R. The five missing corner markers were not needed as the stone wall shows the locations. Chase asked about a cleanup for the sewer ties. Boyd said they would comply for the sewer application. Janvrin noted a change in the overhead wires so they would not cross over the house on lot 3.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to waive additional monuments on the Case #2013-08 plan.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Unanimous</b>

<b>MOTION:</b>	<b>Janvrin</b>	<b>to accept Case #2013-08 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>

Hawkins said the conditions would include updating the wetlands and boundaries, the wetlands scientist stamp, fixing the cloud markings.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to approve Case #2013-08 - Dana Knowles for a 2-lot subdivision and a lot line adjustment at 33 &amp; 33B Folly Mill Road, Tax Map 10, Lots 11 &amp; 11-1, conditioned on (i) resurvey of the wetlands and marking the wetland boundaries, (ii) the wetlands scientist’s stamp, (iii) fixing the cloud markings in the upper right area, and (iv) the revised plan being entirely satisfactory to the Town Planner.</b>
<b>SECOND:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>

### **Case #2012-09 Harborside Entertainment requesting interpretation of the approval.**

Attending John Dussi, Tim Mountzouris, owners, Pilar Cardomna, General Manager, Harborside Entertainment;

Hawkins called attention to Dussi’s letter in the Board Packet. Dussi recalled the extension of the deck approved as Case #2012-09 which specified the number of seats and parking requirements. Last year they did not put seats on the deck. The Beach Inspector said there could not be more than 285 seats. The inside dining consists of about 110 seats. In the summer people want to sit outdoors. Dussi said they had never exceeded the 285 seats on the premises. They want to have seats outdoors when the weather is nice, and indoors when it is not. The request that the language be changed from “seats” to “patrons”, noting that they have a safety permit for assembly that allows 375 people on the premises; they would never reach that amount. They would like the flexibility to put people indoors or outdoors without exceeding 285, which is their



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

intent. They would like to self-manage this, and had not had a problem in the past. When the Building Inspector approached them it was about use of the new deck.

Dussi said that in their opinion not allowing additional seats on the deck had rendered it essentially useless. The dining tables inside are too big to move around or take to the basement. They represent that they will not exceed 285 patrons, but to have seats that cannot be occupied was not consistent with the approval or the law. They asked that the Board clarify and modify the order by substituting the word patron for the word seat. Garand believed that the application had been for a roof overhang over the top of the existing deck. They chose to put another deck on the top as the nature of the construction. Dussi agreed. Garand said the Board was misled in the original application which was a sun canopy. Now they want additional seating. Hawkins said that the board had approved seating. The issue at the time was limited parking in the area. A few abutters testified about noise issues, particularly outdoor music amplification. The discussion was extensive. He thought the approval was for 285 seats, rather than 350 seats with someone counting heads all day. Effectively there was no way to control the number of people with a fire permit for 350, and a Planning Board permit for 285 that addressed other issues around the premises. Hawkins said that was done intentionally, recognizing that they might spread out the seating - inside and outside – depending on the season.

Hawkins also had other issues on the property which he did not intend to discuss at this meeting including fire pits, seats and tables on the lawn, tiki hut not on the plan or ever approved, noise, burning wood. The Building Inspector had raised those matters. Hawkins wanted to see those items addressed before changing the approval on the existing plan. He did not think they were occupying that space the way they originally told the Planning Board. Janvrin recalled that there was very limited parking and the Board's intent in stipulating 285 seats was so they would not exceed what had previously been approved. If the number of seats were increased, the parking needs would also increase. Additional parking could not be handled on the site. Utilizing the town's parking was now allowed but might not be in the future. His recollection was that only 285 seats would be available for patrons.

Khan strongly believed that the Planning Board was very business friendly. When the application came in, it was for a small change. Neighbors attended the hearing. If several items were to be discussed, Khan thought the neighbors should be notified; he would be hesitant to make decisions at this point. Although he might not agree with all that the neighbors raised, they should be heard. Janvrin thought abutters should probably be notified before a discussion. Chase thought the 285 figure was never achieved; he thought typically it might be as much as 165. Dussi agreed. Chase thought this was being stretched to as much as 350 seats to accommodate the 285 patrons; that did not sound like what was approved when the addition was requested. Dussi said that was why they were asking for clarification. Chase thought the approval had been clear; there could be seats inside or outside and people would bounce back and forth.

Mountzouris said they have data tracking so that the hostess knows how many patrons are in the restaurant at all times. To have an unoccupied chair and table on the deck is not equal to a patron. The parking is based on the number of people that come in a car; four people = four patrons. The 285 limit is based on how many people are allowed to be physically dining on the premises; that is different from what the fire department allows. Janvrin said the fire permit is based on how many people can get out of the building in a certain timeframe. It has nothing to do with what the Planning Board approved. Mountzouris said having tables and chairs outside that are unoccupied is like having a dining table for six with only four people in a house. They can track 285 people. Janvrin repeated that the Board set the 285 figure because that was what the



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

occupancy was before the addition; if that figure was exceeded, parking spaces would have to be increased which could not be done. Dussi said they would not go over the 285. They were looking to replicate the seating indoor or outdoor based on the weather pattern. Sometimes there may be only three people dining inside, or the inside seats are filled and no one is outside. They were asking for a total number of patrons of 285, which they would not exceed at any time. The question was whether they would be seated outdoors or indoors.

Wood asked how many chairs were currently inside the building. Mountzouris was about 106. Wood asked how many seats were currently outside. Mountzouris said about 180. Wood said another business in town might have an inside and outside deck where the seating is set. Just because it's a seasonal restaurant, the seating could not be doubled. She understood that on a rainy or cloudy day people sit inside. But the Board went through the thought process to arrive at its approval. It seems that now they are asking for it to be revisited for reasons that were discussed during the approval process. It looks like coming back for a second bite at the apple, without notifying the abutters. Dussi said he thought that would happen when his letter was received. Morgan said the letter was written as his suggestion to seek the clarifications being expressed at this meeting. Wood also thought it had been clearly heard.

Dussi thought their interpretation was different; they were not trying to deceive the Board. they did not want more than 285 patrons on the property at one time. Hawkins said the Board had been clear about the issues at the time of the approvals. They did not want any expansion of that property. The Applicants said it would be nice for people to sit on the outside deck to enjoy the view. The Board agreed, with the stipulation that the number of tables on the property would not increase. The stated number of seats was given at 285; that number went into the Notice of Decision. It did not say to put another 64 people on the upper deck. The intent was to assure that the intensity of use for that property did not change from what had been previously approved. That is the only reason the upper deck was allowed. The Board would not take a step that would allow increasing the intensity of use at that location. He did not see how that would not happen if more tables were allowed. Dussi said that meant they could have 285 seats outside and no seats inside. Hawkins said that would be correct. Janvrin said the reason for a 285 cap for seating capacity was because if that was exceeded the parking need would also increase. The Board did not address that, because it would have meant no approval. He thought that was doing them a favor.

Dussi said they were not challenging the Board; rather they were here out of respect for the Board. They did not put many seats on the deck last year so that they could get this clarification. Apparently, the Board is sticking to the language of the decision, pending further review. Hawkins said they could always put in an application to re review that seating capacity. He noted that they were operating outside their hours of operation. Dussi said they were closed at 11 PM. Janvrin said they were to be closed at 10PM. Mountzouris said after that time people in the building were staff. No patrons were being charged or served after that; the systems came down automatically. They stop serving at 10PM and are closed by 11PM. Janvrin's view was not to have any patrons on the premises after 10PM. Mountzouris said the kitchen closed at 10PM. Hawkins said the hours of operation in approved plan said 10PM. The Board was told that they were not operating a bar; everyone would be out of there by 10PM. Chase said that was strongly conveyed. Therefore, 10PM was approved. He recalled that there had been many people from the Beach worried about having a bar open until midnight or 1AM. They thought that operating as a restaurant and not as a bar was great.



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Mountzouris was 75 percent of their business was food; in the industry, restaurants close at 10PM. Janvrin said at the time of the approval, they said operation would cease at 10PM. They were operating outside of that, commenting that he had previously cautioned them to be careful about what they admit. Hawkins added there was nothing on their plan about lawn seating, the tiki hut, firepits, those things were operating outside of their approved plan. Janvrin suggested they work with the Beach Building Inspector on those items. Cardomna said they had done that. Dussi said the inspector was fine with the fire pits except for the wood smell. They corrected this by not using the fire starters, noting that they had a permit from the Fire Department. Hawkins said they did not have one from the Planning Board for the use of fire pits outside on the lawn. If that were part of an approval, the neighbors would be complaining to the Board, but this was never on the plan. Dussi said the Beach Inspector said it was fine as long as the starters were not used.

Chase said they were missing the point. For example, the fire department can say they can have 350 people; the Planning Board said they cannot. The Planning Board said they cannot have fire pits because they were not on the plan showing what can be done on the property. There needed to be approval from the CEO, or something had to be on the plan. Garand said in the original site plan that area in front was supposed to be rosa ragosa (rose hips) - landscaping for the restaurant and the open area, and no use was permitted in that area. That is what should have been followed. Wood said there should be no fire pits in the open area.

Dussi said they would appeal. They wanted to play nicely, but he felt the Board did not want to do that. They have been a great business in the community, and hire a lot of people. As an attorney, for the record, they would appeal; no insult to the abutters. They would spend some money for the town. Dussi said he was upset because they were good people. Khan said that the elected Board members were volunteers to be treated with respect. He cautioned that the Board would look into their parking, saying that the Board had done the restaurant a favor. Mountzouris asked to comment and Hawkins allowed this. Mountzouris explained that they put the chairs and tables on the other deck to align the inside and outside total to 285. They bought new heavy duty plastic tables and chairs, because indoor tables cannot go outdoors. Then they were told to take them out, without regard to a total of 285 seats. He thought the tables could go out there as long as that did not exceed 285 seats. Hawkins said that was the Board's original intent. Mountzouris said He could move tables and chairs around; they could be on the deck as long as that did not exceed 285 seats. Hawkins said that was approved during their last application to the Board. Dussi said that was all they wanted, but were hearing about different complaints.

Mountzouris said he heard the Board and understood the Board's position as volunteers. But to have someone come in at the middle of the summer when patrons were sitting down and dining, and threatening to shut them down if the seats were not removed, was not good business. The person might have said that there were 310 seats and the number would have to come down to 285 by the next day's opening; that would be correct business. He would not mind as long as they could put chairs on the deck. Hawkins said the board had approved the use of that deck. The limitation was for the total number of seats, not patrons, in the building, which is how all restaurants were treated. When they talk about parking it is about the seat count, not the capacity or patrons. The original plan approved 285 seats. When they returned for the deck, the Board did not want to increase the intensity of use on that site. The roof and deck were agreed for use as long as they did not increase the total number of seats in the restaurant. Move them around if they want to.

Dussi said they would have to shift the seats around. He was taken aback with all the other items raised, as he was not prepared for that discussion. He just wanted to clarify the seat issue after



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

meeting with the Beach Inspector and the Town Planner. All they want to do is run the business. If they have to return with an application for the fire pits they would do that. Mountzouris said they had clarified matters relating to the fire pits with the Beach Inspector. Wood said there were other people and procedures that need to go through the Planning Board, no matter what the Beach Inspector determines. The same was true about the number of seats. How could the Board change its mind at this meeting when it knows there are other issues going on. The responsibility is to the townspeople, so they have to bring up the other issues.

Dussi asked how to proceed. Hawkins said if they want to change the use [for fire pits or the lawn], they need to return to the Planning Board showing how the use would change on the new plan. However, the board would be unlikely to expand the number of seats because it did not want to change the intensity on that lot. Wood noted that the original plan depicted that area as open space. Hawkins said if the changes were requested, the Board would have to decide based on the application and a public notice. Chase referenced the earlier discussion about water lines, where the Board wanted to see two lines depicted. Mountzouris said that the application also needed to request a change in the hours of operation. Janvrin recalled the discussion about increased hours and thought that an application had been submitted and then withdrawn. Dussi apologized for his emotional statements. Wood noted that board members show their passion as well. Kravitz suggested that if they wanted to submit an application, she could walk them through the process. Chase wished them good luck in the business.

### **WORK SESSION**

Hawkins wanted to reschedule the work session because beginning it at 9:30 would make it a very long night. Janvrin asked if there was anything was time sensitive. Hawkins said mostly the discussion would be to about work for the Town Planner who was already working on a number of items.

Another administrative proposal related to case status and compliance which mostly would affect Morgan, Kravitz and Garand; they could study it and offer their comments.

### **OTHER BUSINESS**

#### **NORTH VILLAGE CHALLENGE GRANT**

Hawkins described the successful meeting with more than a dozen Rocks Road Neighbors on March 26. Concerns and preferences were discussed, but for the most part it was a positive session. One import issue raised was why the Planning Board gave the Kohl's neighbors a substantial sound wall, and the Rocks Road area did not.

### **ORDINANCES**

Hawkins said that buffers and landscaping could help, but thought there should be a site plan standard for redevelopment requiring a fence in between all residential and commercial properties. The purpose would be to protect abutters from sound, litter, light trespass, and the like noting that these are always difficult issues with an applicant. Such a regulation could be waived, but not before the Board gets to see what the applicant would propose depicted on the plan.

Janvrin said this could be green buffering. Khan asked if there should be one fencing standard.



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins did not want this, preferring to allow applicants to offer site specific solutions depending on what it would take to accomplish the purpose. Sometimes a six-foot plastic fence might be fine; other situations might require a sound wall.

Hawkins said this would be fought out when DDR returned to the Board. He wanted Morgan to draft language for the Board to review, noting that if the natural buffer was sufficient the requirement could be waived. Currently, developers are cutting right up to the property line leaving nothing to protect the neighbors. Woods related that that morning she received a call from a DDR neighbor saying there was a piece of heavy equipment right up to her yard. On the other side of this person's yard, the hotel had cut to the line. He asked Morgan to make this a priority. Garand wanted the height to be defined. Hawkins did not want to dictate this in advance, because every situation could be different. Janvrin suggested using a 12-foot standard. Hawkins thought not everyone would want it. Garand said if abutters did not need that height it could be waived, e.g. one Market Basket abutter wanted a gate. A soundwall was approved for DDR, but it was an argument. Chase thought it should be mutually agreed. Hawkins wanted to get this process going because it would happen over and over; the Board could discuss the specifics. He would not want a Kohl's type soundwall; a treed buffer would be fine.

Morgan said the purpose should be defined: cutting down on sound, protecting esthetics for neighbors, light, litter and trespassing. Chase thought there could be a berm with a fence on top. Janvrin thought there should be a minimum standard. Hawkins recalled that eventually the Demoulas neighbors were happy, but thought the long process should have been unnecessary. He noted that for several properties along Route 1, the trees had been cut to the property edge. Frazee said his neighbors had cried about the clearing; one person moved because of it.

Wood asked if DDR paid for his time when he met with them recently. Hawkins said that Morgan billed specifically by case, and Kravitz re-bills the applicants. Janvrin had hoped the noise and smell and lighting would get better with DDR, but that did not happen. Morgan said they hoped moving the soundwall could be done administratively.

Hawkins asked members to hold on to the workshop materials for the rescheduled session. Janvrin asked if these items could be addressed in May. Hawkins wanted quarterly work sessions with no cases on the agenda. He acknowledged that the cases had to be taken in within 30 days, but thought they could be continued so the Board could have the work session.

Chase asked if signage would be put on the Agenda in time for the fall public discussion. Hawkins said this would need a work session to get ideas and see what would be unacceptable. This would need a public hearing. As this is zoning it cannot be changed until September, although it could be discussed in a summer work session so that the issues could be framed and recommendations made. Wood added that items like signing, lighting and assistance to small businesses were being raised at the North Village subcommittee discussion. Chase said the businesses along Route 1 did not want to break the law. He wanted it to be handled before the end of the year so it could be properly be a warrant article at the Town Meeting, Janvrin suggested that a couple of board members could draft a proposal, Hawkins said it would go much faster if ideas were presented to the Board. Wood said her warrant article could be the basis for a proposal, and could be discussed when the subcommittee meets with the Route 1 businesses.

Wood liked being on the North Village subcommittee, learned a lot, and encouraged anyone interested to participate.



## Town of Seabrook Planning Board Minutes

Tuesday, April 2, 2013

NOT OFFICIAL UNTIL APPROVED

### **BECKMAN WOODS.**

Khan reported he had gotten several phone calls from residents concerned with their driveway situations given the likelihood of a lot of spring rain. They've tried to address this for a long time; nearly every driveway had standing water. He asked if Garand was aware of this. Garand said the Board had approved swale drainage. They could return to the Planning Board to change the drainage in the subdivision. Khan asked if Garand had seen the DPW Manager's memo. Garand said he'd been very busy but understood that during the winter it was not a good situation. Janvrin asked if this was in addition to somebody backing out and their tailgate hitting the driveway. Garand commented that sometimes visitors can't even get into a driveway.

### **BERGERON WAY**

Khan said the Board of Selectmen would address Bergeron Way as a town road, and asked Morgan if there were any problems. Morgan said the Planning board was fine with this.

### **ROCKINGHAM PLANNING COMMISSION**

Khan said that Seabrook would be hosting the RPC meeting on May 8 at 7 PM the Library. All are invited.

### **PLANNING BOARD WEBPAGE**

Kravitz said that the current town zoning and regulations could be located via the Planning board Webpage on the Town Website.

Hawkins adjourned the meeting at 9:45PM.

Respectfully submitted,

Barbara Kravitz, Secretary,  
Seabrook Planning Board