



Town of Seabrook
 Planning Board Minutes
 Tuesday, August 5, 2014
 NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Jason Janvrin, Vice Chair; Roger Frazee, Michael Lowry, Ivan Eaton III, Aboul Khan, Ex-Officio; Barbara Kravitz, Secretary; Steve Zalewski,]]] Building Inspector; Rick Friberg, Peer Review Engineer, TEC;

Members Absent: Francis Chase, Sue Foote, Alternate; David Baxter; Alternate, Paula Wood, Alternate, Tom Morgan, Town Planner; Hawkins opened the meeting at 6:37PM.

MINUTES OF JULY 1, 2014

Hawkins wanted to review the vote on page 3 to assure that it was recorded as the Board stated. Janvrin made the motion to support the efforts of the Impact Review Committee, for water and sewer only at this time. Janvrin recalled that the motion was to thank the committee for their work, and to ask the members to continue their investigation and come forward with a recommendation to the Planning Board, Hawkins noted the lengthy discussion focused on whether it should just be water and sewer to start with, or whether to work on the whole package at one time. Khan's recollection differed in that he thought the water and sewer was to be done at this time, other aspects would be looked at in the future, and Khan was asked to bring this knowledge to the Board of Selectmen for their support in order to go forward. Accordingly, at its last meeting the BOS voted 2: in favor, 1 opposed, to go forward in that way at his time.

Janvrin explained that the actual purpose was for the Planning Board to make a recommendation for the Town Meeting (the legislative body) that they adopt an ordinance. He had not wanted to be specific because that was a function of the Selectmen. Khan agreed, but thought that in order to go forward in a supportive and timely manner, the Chair had discussed that only water and sewer at this time. Eaton agreed. Janvrin's intent was that the Planning Board support the Selectmen in coming forth with an Impact Fee Ordinance. The specific fees and implementation would fall on the Selectmen. Hawkins will speak with the committee about water and sewer, and other possible fees the consensus was to work on an ordinance and come up with a fee schedule at least for water and sewer. Then the Board of Selectmen can implement or not implement. The Planning Board's job was to come up with a recommendation that the BOS can decide whether to implement. This could be a huge amount of work and could be expensive; he did not want to proceed if neither the Planning Board nor the Board of Selectmen was in support. Khan said at their last meeting the BOS voted (2:1) on re water and sewer. Hawkins said this would be discussed with the Impact Fee Committee and they would decide how to move forward. He wanted the motion to be stated the more general way Janvrin had made it.

MOTION:	Janvrin	to restate the motion made on July 1, 2014 and revise the Minutes accordingly: to support the work of the Impact Fee Committee and ask it to continue with its investigation and return with a recommended ordinance to the Planning Board in time for the 2015 Town Meeting, and to thank the committee members for their efforts.
SECOND:	Eaton	Approved: In favor: Hawkins, Janvrin, Eaton, Frazee, Khan Abstained: Lowry



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
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MOTION:	Janvrin	to accept the Minutes of July 1, 2014 as revised.
SECOND:	Eaton	Approved: In favor: Hawkins, Janvrin, Eaton, Frazee, Khan Abstained: Lowry

Hawkins asked for comments or questions in re the July 15, 2014 Minutes. Janvrin wanted his attendance to be recorded as after the correspondence had been heard.

MOTION:	Lowry	to accept the Minutes of July 15, 2014, as corrected.
SECOND:	Khan	Approved: In favor: Hawkins, Janvrin, Frazee, Khan, Abstained: Eaton

Hawkins stated that Cases #2013-26, #2014-16, and #2014-17 would be continued to August 19, 2014 at 6:30PM in Seabrook Town Hall.

SECURITY REDUCTIONS, EXTENSIONS, ROADWAYS

Case #2004-50 Cabral subdivision, Azor Way

Request for extension of Notice of Decision Conditions of Approval

Attending: Lisa Cabral;

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

Hawkins reported that Case #2007-50 was approved on November 6, 2007. There were extensions granted in 2008, 2012; the last extension was granted to July 20, 2014. The required security amount of \$169,700 was never posted. Brown said Cabral was requesting a further extension from July 17, 2014 to complete the roadway work, but had no financial means to do so. He was unable to obtain a letter of credit. He wanted to use any available funds for the project work which he would commence immediately, after which he would appear before the Board to provide the 10 percent maintenance security or the amount set then by the Board. He could either put up a security (which he had been unable to obtain) and do no work at all, or work on the road; he could not do both.

Brown said after the last board meeting they talked about the options for Cabral: (i) he could start the process over, (ii) come up with the security, or (iii) finish the work, or (iv) abandon the project all together. Abandoning the project did not make sense because of the time and money expended for the project, which is 2/3rd complete. One reason was that the project was a mini-subdivision which are no longer allowed in the town; a special exception would be allowed. Another reason was that the Board would be looking at something that they had already approved; he thought the zoning had not changed all that much. Cabral was paying taxes on the water and sewer bills on the lots; the infrastructure was in place. The lots could not be sold until he can record the deeds; the plan cannot be recorded until the project was complete. Cabral's request was to complete the project and then post whatever security the Planning Board said was necessary.



Hawkins said in 2007, the state allowed 4 years to complete project; it had been extended to five years. The project was approved seven years ago. He agreed that nothing would be accomplished by starting over, as the situation would not change e.g. Cabral cannot put up the security. Janvrin said the purpose of the 5 year sunset was so that the Applicant could not make an application to avert future zoning changes.

Hawkins agreed, and suggested reviewing the case file to see what had changed before deciding what course to take. Brown asked how the Board would get around the mini-subdivision issue. Janvrin asked if there was a way to get a current conditions drawing. Boyd noted that Cabral was a contractor and put in place all of the water and sewer infrastructure, but times were tough. He also did a lot of work in the town. The lots were compliant; the only thing that changed was the Board's position on mini-subdivisions. The town had recently looked at smaller roadways within the rights-of-way; the pavement would be adequate. They understand that to do the subdivision under the current 50-foot roadway requirement would not be possible, and would be disastrous to the Cabral family. He thought the Board could waive that requirement and accept the 30-foot standard because the pavement would be adequate, but probably would not want to do so because of new cases. With the project 2/3rd done, Boyd asked about a one year extension.

Case #2013-22 JoHannah Lord

Confirmation of Notice of Decision extension date

Hawkins referenced a letter from JoHannah Lord requesting that the additional 180 day extension period previously discussed with the Board be granted to December 17, 2014. Kravitz explained that Lord was asking for confirmation of that date. Hawkins said applicants had 180 days to finish their conditions of approval. Hawkins said this would be the additional extension for Case #2013-22 which was originally approved on December 17, 2013. Janvrin said the Board had agreed to the first extension and to hold off on recording the mylar. Hawkins recalled the discussion about not recording the mylar at that time.

MOTION:	Hawkins	to grant a further 180 day extension to December 17, 2014 to complete the Case #2013-22 conditions of approval; at the request of the Applicant, the mylar will not be recorded.
SECOND:	Janvrin	Approved: Unanimous

Case #2005-42 Dow's Lane

Request to access security for repairs

Hawkins said that Dow's Lane had been completed and there were people living in the houses. He referenced the material in the Board packet in re a continuing sewer problem. The Town Manager has asked the Planning Board to recommend to the Board of Selectmen that the \$11,600 security be seized by the town to pay for repairs by the Sewer Department on the pump substation. One problem was that in the Condominium Association Documents there was nothing about maintenance of the pump station, so there were outstanding issues that needed to be resolved between the Town and the Association. At this time the Town Manager was asking



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

the Board to recommend seizing the cash security being held by the Town in order to do the needed repairs and maintenance. The town had already spent money on this problem.

Janvrin asked if the town was paying for the electricity for the pump operation. Hawkins said the first problem was that because the developer stopped paying for the electricity, it was shut off. One of the residents actually put the electric bill in his name and was paying it. This was more a condominium issue. Janvrin noted it was a private matter. Hawkins said the town could not let the sewer back up into the homes. Janvrin said the town was holding in excess of \$11,000, and the expense for repairs was \$[REDACTED], including labor costs. He asked if the vote would be in re seizing the entire security. Hawkins said the request was to seize the entire security because the developer had walked away and the Selectmen would probably have to decide whether to take over the pump station or negotiate with the Condominium Association to do the maintenance. This was a long way from being resolved. Janvrin recalled that the roadway installed as part of this subdivision had a drainage issue.

MOTION:	Janvrin	to recommend to the Board of Selectmen that in the matter of Case #2005-42 – Dow’s Lane the Town seize the cash security as of June 20, 2014 in the amount of \$11,605.51 to pay for expenses incurred by the Town of Seabrook.
SECOND:	Lowry	Approved: In favor: Hawkins, Janvrin, Khan, Lowry, Frazee Opposed: Eaton

CORRESPONDENCE/ANNOUNCEMENTS

**GLO Realty Trust – occupancy of retail store
Alan and Mary Ganz, Trustees
Request for reconsideration.**

Attending: Alan and Mary Ganz, Christopher Austin,

Hawkins referenced a letter from Ganz’s requesting reconsideration to occupy an existing store in the Ganz Plaza; the Board had voted to request an expedited application. A. Ganz apologized for not attending the July 15, 2014 Planning Board meeting; he had not received notice that this item would be on the agenda. Several years ago they had had a similar situation with a prospective tenant. He came to the Board and was asked why they were here. They told the Board that after a year they had to come back to the Board. Ganz said at the time the Board seemed perplexed, and that Tom Morgan had said it was not the purpose of the ordinance to bring someone back if they were putting in a valid use under the ordinance e.g. retail to retail. Also, they were told that the Building Inspector was the one to say whether a business could go into a particular place. They decided to come back to the board to make sure they had their ducks in a row. He sent a letter to the Board with the hope that it would act on the letter. They heard through the grapevine that the Board was going to have some kind of a formal hearing on this matter. That was why they came to this meeting.

Ganz distributed a depiction of the layout of their Plaza and the position and tenant of each unit; their law office and some of the businesses also used space on the 2nd floor. Ganz wanted Austin to describe his proposed business. Janvrin clarified that the purpose of coming before the Planning Board is stated under Section 14 of the Zoning Ordinance which dealt with



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

abandonment, and which the Board did not have the authority to supersede. Ganz agreed. Janvrin said the Planning Board's legislative intent was so that it would have some insight and oversight of different businesses that were coming into the town. This was so whether or not [members] thought it was a good idea. Janvrin said it sounded like what Ganz wanted to present was what would be presented in a formal hearing for an expedited application. Ganz understood, but said that would take a longer period of time. One reason he was asking for a more expedited procedure was that Austin wanted to go forward and a competitor had already gone before the Board. He might otherwise lose the opportunity for certain vendors to supply his business, because certain vendors might not supply vapor cigarettes to competitors within a certain distance.

Hawkins commented that Ganz had asked him to present this to the Board, which he did at the July 1 work session. The Board still wanted an expedited application; a formal confirmation vote was taken when Ganz' letter was brought up on July 15. He noted that the previous building inspector pushed the Board to bring people back and listen to what would be changing, giving many examples of how problems were caused for his work. The Planning Board generally agreed that if a facility had been empty for more than one year, the applicant would be asked to come forward with an expedited application. This did not require engineering drawings, only a sketch or overhead of the location and described the business and site traffic expectation. If anything was to change outside of the building it would be a regular, not an expedited, application. Over the last five years the Board had been consistent with the go ahead if it had been closed for less than a year and the use would not change from one renter to the next e.g. retail to retail; an expedited application was required if closed for more than a year. Hawkins agreed with Janvrin that the Board could discuss reconsidering the vote, but should not have a presentation without an expedited application.

Ganz respectfully found it problematic that he received zero correspondence from anybody about coming before the Board. Janvrin said the Board was not obligated to provide notice of a meeting for other than an application. Ganz said the only way he knew about this meeting was that he made the effort to come to the Town Hall. He believed that if the Board was putting something on the Agenda, it should at least notify the parties. Janvrin said this matter was under correspondence; it was not a case hearing. Ganz thought at the minimum the Board should have the courtesy to send out a letter telling him this would be on the July 15 Agenda. Hawkins said when a correspondence comes to the Board, it goes into the Board packets for discussion at the meeting. Correspondence did not get the same treatment as a case – there was no back and forth and no abutter notice. It was the person's responsibility to follow up. The Board could not chase everyone who writes a letter about what the Board would do next. It would be the writer's responsibility to follow up and ask if they would be on an agenda and when.

Janvrin added that just as Ganz had not been noticed that the Board would discuss this on July 1 or 15, none of his property's abutters were notified that this would be discussed at this meeting. They would have received notice if an expedited application had been received. Ganz responded that shortly before July 1 he was at the Town Hall to speak with the Town Manager and also he spoke with the Chair. He said that both suggested that the letter be written; he relied upon that. Further, he said that the Chair told him it should not be a problem if presented to the Board. Hawkins said he had told Ganz that historically if a place had been closed for more than a year, the Board generally asked for an expedited application, but he would present Ganz' letter to the Board and let them make a decision. He did this on July 1 at a work session and again on July 15 when the Board voted that this case deserved an expedited application. Ganz asked if the Board did or did not want them to present [at this meeting].



Town of Seabrook
 Planning Board Minutes
 Tuesday, August 5, 2014
 NOT OFFICIAL UNTIL APPROVED

Khan said that previously with a big developer from time to time the Board might reconsider a request because of a hardship in that they might lose their tenant. He asked that the Board reconsider Ganz' request, because otherwise they might lose their tenant. In this economy he knew how hard it was to find a tenant. Janvrin said as a business person he disagreed because the abutters to that property had not been notified about this matter that came before the Board under Correspondence, and the Board could not act contrary to the Zoning Ordinance Section 14 re abandonment. Had an expedited application been submitted on July 1, the case would have been heard at this meeting (more than 30 days later). He had an issue that Ganz was not notified, but the Board was acting according to its own regulation. Janvrin said it would not be in the best interest of the Board to waive jurisdiction. The reason for an expedited application was not so much the use, but to review and have on the record the hours of operation, parking concerns, etc and to hear the abutters' concerns and to place conditions on an approval for that use. Absent that an applicant could be open 24 hours a day, whereas someone going through the normal application process would have a limitation.

Khan said conditions could be imposed – it was in the Board's hands. Hawkins said the abutters had not been notified. Public hearings were scheduled so that the abutters get notified. Ganz said theoretically he could have a tenant move out for 354 days and keep bringing in someone else for a few days at a time until he had a tenant. Hawkins said the Board could not make an ordinance that would protect everyone against every scheme in the book. The closure period in the ordinance was arbitrarily one year; perhaps it should be three years. If closed for more than one year, the Board wanted an expedited application so that the abutters could hear what was going into the space and the Board got a chance to review the property once again. The Board had done that consistently for a long time.

Lowry asked for the time frame for the vacancy; Mary Ganz said about a year and a half. Austin had filed with all of his business information, hours etc. Janvrin said this Board had no jurisdiction over business licenses which were in the hands of the Board of Selectmen; he thought the Planning Board should review that stipulation. Eaton remarked that the abutters had not been invited. Ganz asked if the Board were denying their request for reconsideration. Hawkins wanted a motion one way or another.

Khan felt the motion should be to reconsider the request, not to reconfirm the prior motion. Hawkins said the message would be the same – to reconfirm the prior notion or to deny reconsideration. Lowry said he had not wanted to waive jurisdiction without knowing anything about how the business would function. This would be an opportunity to find out more about it. Hawkins asked for Frazee's view. Frazee wished the Board did not have to be so legal in re small business. The application process had merit and to follow the rules.

MOTION:	Janvrin	to reaffirm the action on July 15, 2014 that the GLO Realty Trust come before the Planning Board with an expedited application for Unit 5 at the Ganz Plaza, 779 Lafayette Road.
SECOND:	Eaton	Approved: In favor: Hawkins, Janvrin. Eaton, Lowry, Frazee; Opposed: Khan

Janvrin asked if the application were submitted on Thursday, how soon could the case be heard. Kravitz said approximately four weeks. Janvrin noted that during that period there would be review and notices to the newspaper and abutters.



11-34.11-03 RMD - Market Basket South
Request to allow renovation of retail storefronts

Attending: John Matthews; RMD;

Matthews the last time he appeared before the Board, they were granted permission to occupy certain retail space. Since then they have secured leases with Dress Barn, Olympia Sports and Party City [[[]]] at Southgate Plaza. A full set of drawings had been submitted to the Building Inspector to renovate the storefronts and take down the aged storefront canopy as far as the Blockbuster store. He showed a rendering of the new design, saying the tenants were very happy at the upgrade. He showed a photo of Wilmington Plaza to demonstrate the new look, which also was the design for the Market Basket, Epping development. The treatment would be similar with nice signage and awnings for a light feel also matching the existing brick facing. Panels would go in and out for a nice look that Southgate Plaza and the Town of Seabrook deserve. The Building Inspector asked that the Board review it to see if they found it acceptable.

Khan thought the work had already been started. Matthews said the canopy was being removed under the existing permit obtained for the Dress Barn. They were under considerable pressure to deliver that site complete within a few weeks. Hawkins commented that when they were before the Board they had asked about changing the face for that store, and they were working with the Building Inspector. Now they wanted to do the same upgrade for the balance of the stores. Lowry wanted the Building Inspector's comments. Hawkins said it had been the practice for the Building Inspector, depending on his work load, to take on projects like this that were more construction than siteplan review. This discussion was not about who would occupy the stores; it was about building changes; typically the Board had not gotten into that aspect. The Board would also consider the Building Inspector's evaluation in re waiving any jurisdiction on a project, and leave it to him as to whether the building was done the way it should be. He thought this project was that type.

Hawkins noted that RMD came to the Board for permission to reoccupy the stores that had been empty. The Board granted that request, and also said it was ok about redoing the face of the Dress Barn. This request involved similarly re-facing the rest of the Plaza, other than the Market Basket completed recently. He asked Zalewski if he was in a position to take on this project, or would prefer an application to the Planning Board. Zalewski had no problem taking that on that responsibility. Hawkins explained that the Planning Board would waive jurisdiction to the Building Department, and Zalewski would work on whatever he required with the applicant on the re-facing process. Even when the Board approved siteplans it did not get into the building construction aspects. As this involves an existing building, the Board was asking if the building Inspector would take on the jurisdiction. Lowry asked if Zalewski had reviewed the plan. Zalewski had reviewed it quickly and was comfortable.

Janvrin asked about the southern portion of the building that had been approved for expansion, noting it was not depicted in the drawings. He asked if it was safe to assume that when those unit(s) were build the facing would be the same as what was being proposed for the existing building, or would they return to the Board when they actually had a tenant(s). Matthews said he would gladly bring a drawing to the Board for review; currently he was negotiating with a single tenant to occupy the Blockbuster unit plus the to be built units. They might change the architecture a little bit at the corner for more presence. Janvrin said the Board had been told that



bicycle racks would be placed in the Market Basked plaza. Matthew said he would have bike racks installed.

Hawkins asked for more comments: there being none.

MOTION:	Janvrin	to waive jurisdiction to the Building Department for the renovation of the existing storefronts in the Southgate Plaza, Lafayette Road, and that the drawing presented to the Planning Board at its August 5, 2014 meeting be placed in the Case #11-34 file; when the Applicant is ready to move forward with the approved addition at the southern end of the building, it will return to the Planning Board with the drawings.
SECOND:	Lowry	Approved: Unanimous

PUBLIC HEARINGS

Hawkins opened the Public Hearings at 7:35PM.

REMANDED CASE

Case #2012-18 – Latium Management Corporation, Tropic Star Development, LLC, and Scott Mitchell to demolish the Getty North station and replace it with a 1,200 square foot “retail” building and two gasoline dispensing islands at 663 Lafayette Road, Tax Map 7, Lot 87, continued from April 1, 2014, April 15, 2014, may 20, 2014, June 3, 2014, June 17, 2014, July 15, 2014;

Attending: Scott and Jim Mitchell, Tropic Star Development;
 Appearing for the Applicant: Attorney John Arnold, Hinkley, Allen; Wayne Morrill, Jones & Beach Engineers; Jeff Dirk, Traffic Engineer, Vanesse & Associates; Frank Montero, petroleum consultant, MHF Design Consultants, Tom Crowley, Summit Distributors;
 Appearing for 11 New Zealand Road LLC: Charles Mabardy; Attorney Christopher Aslin, Bernstein Shur: Robert Woodland, Woodland Design Group;

Hawkins recalled that this case was approved in 2013, and the decision was challenged in court. The Town lost in court and the case was remanded to the Planning Board citing two things the Judge said it should have considered correctly: 1) assure that the Board considered the traffic that would be created on this site by the retail operation behind the station because they shared parking and an easement on the site, and 2) because of the removal of the striping for the parking spots that were under dispute by the two parties. Accordingly, Case #2012-18 had come back to the Board; since then, a couple of hearings had already been held. Hawkins thought the Applicant appeared ready to move forward. He asked who would represent the Applicant at this meeting.

Arnold said they were appearing to address the Superior Court issues concerning circulation and parking lot striping. At the last meeting the Board had asked for a review of the comments made by Mabardy’s traffic consultant. Morrill would go through the prepared responses in re the siteplan; Dirk would address the traffic consultant’s comments; Crowley and Montero would



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

address any questions about the gas station operation and circulation on the site. After responding to any questions that the Board might have, they would ask for case approval. Hawkins asked if members had a drawing dated July 11, 2014; they did.

Morrill said after the last meeting they had made some modifications to the site plan. On July 29, 2014 he submitted a letter that went through the changes to the plan requested by the Board and the DPW Manager. and the responses to the TRC. Morrill said they had gone through the DDR site and depicted the actual onsite changes. Everything out in the field was currently on the existing conditions plan. The siteplan had the most changes. The major revision was in re the existing curb front on New Zealand Road. Because of subsequent comments they had moved the driveway cut further down the road to line up better with the parking spaces at the rear of the site. That change allowed a better driveway for trucks to enter the site to access both properties. Given comments about inadequate loading facilities, one parking spot that was behind the building was eliminated resulting in a large loading area without a parking spot. Four parking spots were shown - the maximum allowed on the site could be five. Traffic flow arrows were added to help customers find their way. The dumpster was relocated from the south of the property to be across from the loading zone allowing the dumpster to be picked up easily. The changes to the utility and drainage plans resulted in changing some of the sidewalks along New Zealand Road, and a hydrant was relocated.

Morrill said the DPW Manager had pointed out that the piping materials for a catch basin at the rear of the site was inconsistent, and wanted this infrastructure to be replaced. How this happened was unknown; the Applicant decided to make the replacement with a clean pipe with known materials. This would also mean installing a new catch basin on the other side of the road; the two catch basins would be tied together. Hawkins asked if the only changes were eliminating one parking space and moving the [New Zealand Road] entrance. He asked for the width of the new driveway. Morrill said it was originally 28 feet wide and would become 30 feet. As the Board had originally granted a driveway waiver, Morrill asked if that could still apply or if they needed a written request. Janvrin recalled that the original waiver was granted so that WB-62 delivery trucks would have the proper swing. He pointed out that the rear tires of those trucks actually encroached on the exiting lane when entering from New Zealand Road; the stop line had also been moved back from the intersection. Morrill confirmed this. Janvrin asked if there had been consideration for line of sight when the dumpster location was moved. Morrill said they thought there was significant space; traffic would be coming from New Zealand Road and have good sight of the dumpster.

Dirk said with respect to the remand order his task was to examine the relationship of both sites and the impacts thereto. At the last meeting they received comments from the abutter's traffic consultant. Since then they had addressed each comment in detail in the letter he had prepared and submitted to the Board. The comment areas were access, onsite circulation and traffic impacts. Dirk referenced Morrill's prior comments in re changes to the siteplan, which were access issues that would also translate to circulation. There were three driveway access points – one in and one out on Route 1, and another at New Zealand Road which function as NHDOT had set forth. All functioned in the same manner as on the site previously the first driveway on Lafayette Road was an entrance, and the second driveway was an exit. Their relationship and functionality did not change for access to either property.

Janvrin had worked at that site in the 1980s when both entrances were full access – right in/right out. Dirk said from a function and safety point of view, the NHDOT determined the Lafayette Road driveways would be one in and one out. The third access at New Zealand Road had always been a full access driveway and would continue so. Some of the refinements dealing



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

with the width and function of the driveway were improvements to the property. For example, shifting the New Zealand Road driveway to the west put it further from Route 1, and the queue from that intersection would be further away from the driveway i.e. the signal could process the traffic and there would be also be access through the driveway even when the signal was red. The prior BP access points were retained to and from the fueling islands from Route 1 as well as the driveway in the back. 11 New Zealand Road continues to have access from New Zealand Road; exiting from the site could be to Lafayette Road or from the rear driveway to New Zealand Road.

Dirk said that some of the significant circulation changes resulted from some of the traffic consultant's comments to provide more signage and markings on the site to better regulate the traffic on the site. Given the one way driveways to Route 1, they have promoted much of that directional circulation around the convenience store. There would be a stop sign so that vehicles entering from New Zealand Road would have the right of way. The two-way travel aisle to and from New Zealand Road was maintained. The travel flow around the convenience store from the pumps would be one way east, flowing toward the one way exit. Adjacent to that there was two way traffic flow. One reason was to retain two-way traffic vis a vis New Zealand Road enabling backing into the loading area, and to allow other access to the parking spaces. One way and do not enter signs would be placed. Khan asked if another car could pass by if two cars were fueling up at the eastern canopy. Morrill measured the distance. Dirk said if one vehicle were fueling up another could not pass by and would have to go around; those vehicles would be visible from the entrances. It does not appear as two travel lanes. There was two-way circulation in re the New Zealand Road access, so the circulation had not changed.

Khan asked about the delivery truck movements. Dirk said the refueling truck would be a large tractor-trailer; smaller delivery trucks were typically 30 to 40 feet, non-articulated. The fuel delivery truck would enter from Lafayette Road, proceed along the front of the convenience store building to the remote refueling area, and leave via the Lafayette Road exit only driveway. When that vehicle is staged for refueling, no vehicles would be allowed in that area which the attendant would have blocked off the refueling island with cones. A path will remain open for emergency response purposes, and for pedestrians. Deliveries will be scheduled in advance and managed on the site. The majority of deliveries, estimated at 19 per week, will be by the smaller box truck vehicles for the convenience store products. Dirk said they could enter from either roadway, and pointed out that the edge of their loading area had a 24 foot minimum distance from the 11 New Zealand Road parking spaces so that vehicles could still enter and exit without blocking the ability to use the spaces.

Dirk said in response to discussion about the onsite truck turning movements they analyzed the WB-62 design, a large articulated semi-tractor trailer. Eaton asked if the southern eastern canopy had one or two pumps. Dirk said two pumps. Eaton was concerned that a vehicle pulling in would not want to wait for a vehicle to complete its pumping; it would back out causing a traffic jam on Route 1. He thought that would happen frequently. Dirk thought that could happen on occasion, but there was some separation from the entrance. Eaton said the vehicles could not move so the backup would go all the way down Route 1. Dirk said he was more concerned about someone coming in and slamming into the back of a vehicle than about a backup. He understood the concern, but did not think it would happen normally.

Dirk said they had analyzed the onsite movements of the three vehicle types were analyzed in re going into the [gas station] site and for 11 New Zealand Road; the tanker truck and the single unit truck had been described. The large, articulated semi-tractor truck (WB-62) would enter from New Zealand Road and turn left into the site. The truck would drive past the convenience



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

store, turn left, and back up to the loading area. Dirk said importantly this was similar to the way it was accommodated in the past. The prior use of the site had a diesel pump, so if a truck was refueling at that site, the entering truck would have to wait to back up into the loading platform. There would be about 30 feet between the edge of the island and the property line, which was an improvement for larger trucks to access the site because it could go around a vehicle. Dirk said the other traffic consultant had referenced a WB-67 truck; physically, that vehicle could not enter the site previously or in the future. Further, the way the Route 1 intersection had been designed it could not turn onto New Zealand Road. Janvrin asked if that referenced a 54 foot box truck with a sleeper cab. Dirk conformed this, saying that would be the largest size truck allowed on the interstate highway system. It was not the design vehicle used by DDR or the NHDOT for turning at the intersection. Janvrin asked if the intersection was designed for the WB-62; Dirk said it was, and was the standard design for such intersections. .

Dirk then turned to onsite operations, remarking that a full traffic study had not been required. The majority of the traffic would come from the southbound direction feeding off the busy Route 1 traffic. The NHDOT and the Board's consultant looked at the site, the majority of vehicles would be pass-by trips, so the usage for the site did not warrant a formal traffic study. However, it was important to look at the driveways and connections onto the roadway system, and internal circulation. In looking at prior analyses, the queuing generated by this operation on Lafayette Road and New Zealand Road, and the analysis of the DDR operation by the NHDOT. Dirk's analysis looked at the intersection and the effect of the site operation. It also included the Seabrook Crossing development and improvement analysis i.e. the latest analysis of improvements in this roadway corridor. Everything had been "sized" to accommodate the project.

Dirk said in re the trip projections, the improvements for the site, together with those of the DDR retail development and Seabrook Crossing, result in the left turn lane being sufficient to accommodate the increase in demand. The queue on New Zealand Road did not get back as far as impeding the access to either of the properties. The risk capacity reflected accommodating the project site. There had been questions about the practicality of the number of fueling positions at the former site i.e. 5 or 6 vehicles. Dirk said the current site plan could accommodate 8 vehicles. The existing conditions had compared 6 positions at the former site to the proposed 8.

The further analysis said only 5 vehicles could have been fueled at once. Accordingly, they had revised the trip projections to compare 5 previous fueling positions, which increased the proposed trip generation. Therefore the new proposed hourly trip generation would be increased from the previous 50 to 70 projection of trips to 80 to 100 trips figured at the driveway - net of pass by traffic. The Board's traffic consultant had refigured the exaction fee based on the basis of peak hour Saturday traffic

Mitchell thought it important to report that the NHDOT permit had been received. Janvrin understood that meant a minor permit as there were less than 108 trips and the NHDOT did not require the greater scrutiny as they would for e.g. a DDR project. Dirk confirmed this, saying it had to do with the net differential in traffic for the opposed use from what had been on the site, so the classification had been for a minor review. Janvrin asked how much distance there would be between a vehicle nosed in to the 11 New Zealand Road parking and backing out of a space, and a vehicle pulling into the site from New Zealand Road. Dirk said it would back into the travel way, similar to any parking lot. He said that this would be a low speed environment, contrary to other comments that were meant for higher speed situations. Motorist expectations would be like in a parking lot with pedestrians and other vehicles backing out of spaces; nothing



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

unconventional or unexpected. He agreed that some of the comments for adding signage and markings were warranted and would be incorporated.

Janvrin noted that with one parking space removed and one site for a working employee, three spaces remained. In his experience, people want to park nearest to the building door, He asked if there would be signage or striping around the building denoting a fire lane with no parking. Dirk said that the Board's consultant asked for "no parking" signs to be clearly placed along the perimeter of the convenience store; as well as other relocation signage and markings; this would be added to the plan. Janvrin asked if there would be any physical barrier to the south e.g. a berm where the pavement ends. Morrill referenced the landscape plan. Janvrin's concern was a WB-62 truck going around, and asked if even half-inch raised asphalt or cape cod berm indicating that it was at the edge of the site, which truck drivers would notice. Khan commented that most gas stations had that. Morrill said the guard rail was being removed from the original proposal, and there was no replacing berm; he thought Montero might have an idea. Hawkins asked about a landscape island.

Janvrin referenced the drawing of the refueling vehicle, and asked if its only entrance would be from Lafayette Road. Dirk conformed this. Janvrin said it needed to be in a southbound lane to the furthest left, and cross two lanes to enter the site, noting that Route 1 becomes three south lanes after the signal. He thought the rear tires on the passenger side would come very close to the curb while the tractor proceeded to the pump. Dirk said because of the prior lane approach in the southbound direction, all of the other vehicles would be behind the truck; no one would be cut off. Dirk said it was not uncommon to have such tight turning. Intersection design assumes that turning trucks do so at 15 mph, but entering a site they go much slower and turn tighter as long as the turning did not intrude onto curb paths. Janvrin thought if the Board required the Applicant to place a bollard at the sidewalk of the northern most curb just prior to the pumps, entering would be very tight and the truck might knock at it. Dirk said the upside down U at the pumps was required. Janvrin commented that there was not a large margin for error at the entrance.

Janvrin understood that when exiting the site, the signal would be pulsing traffic giving ample time to get out onto Lafayette Road. Currently, the intersections were not operating at their optimum, so an exiting truck would be crossing two lanes before straightening out on Route 1. Janvrin's problem was with the tires of the delivery vehicle coming so close to the curb stops on both sides of that driveway. Dirk said the design was not atypical; also the accesses should be kept as narrow as possible because of crossing pedestrians and traffic flow. Janvrin referenced the plan for attendants to close down the lanes servicing two pumps prior to refueling deliveries; some vehicles would ignore this making the truck go around again. Dirk said the attendant would direct vehicles in the wrong to move. Janvrin did not like the fueling pump in front of the store entrance, and asked if they had looked at putting that pump on the southern most end of the canopy. Dirk said it was looked at. Part of the issue was in trying to address the site circulation in light of the remand, and keeping the circulation remaining the same as it was under all conditions, including the refueling truck. Access and the ability to gain access to the parking spaces and the onsite circulation would remain unchanged.

Janvrin recalled the waiver to the driveway on New Zealand Road to allow the WB-62 truck tires not to encroach on the other access lane. He thought it was down to 30 feet from 34, and that the stop marker had been moved back, and that the encroachment would again occur. Dirk said in selecting the design vehicle for a site, it would be the most frequently used truck. It was common practice that the other, larger vehicles would be allowed to off track and use the full



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

driveway width to keep the driveways as narrow as possible. The key point is that it stays in its travel lane on the public highways. Janvrin was ok with this.

Saladino referenced his response memorandum, noting that most of his suggestions had been adopted in the plan. The 20 feet width in the ordinance was pretty narrow. Given the size and placement of the convenience store, it would make sense to have “no parking” signs or pavement striping as appropriate around the building. He suggested placing a “do not enter” sign at the south end of the eastern fueling island to avoid exiting in the wrong direction, and to straighten out the stop bar. His concern that if a car would not have access if it was coming in during refueling had been addressed by the cones and scheduling refueling in advance. Saladino said it was not clear how the language in the easement document provided for access to the 11 New Zealand Road property, i.e. if they were entitled to have a fully articulated truck access, or what level of truck was allowed. He asked if the spaces would have to be vacant for a truck to do the swing to access that property’s loading platform. He suggested that was a question for the attorneys. The revised plan showed one less parking space (from 5 to 4) with one parking space for employees and another for handicapped. He thought 2 spaces for the convenience store customers could be sufficient, noting that the “no parking” signage would be even more important. Saladino referenced their calculation for the exaction fee based on 108 trips (less 50).

Khan said that the Court did not think the circulation had been adequately looked at during the prior review, and asked how the signage would impact the circulation so that the Court would be satisfied and not send the case back again. Saladino said could not be guaranteed. He thought this had been addressed through the various turning movement diagrams and signage showing that the various design vehicles can access the site.. It was not a clear access for an articulated tractor trailer to back in to the site if there were cars in the spaces. He did not know what the abutter was guaranteed. That could be an area of vulnerability.

Hawkins did not think the Board was ready for a vote at this meeting. Before the next meeting he wanted to come up with conditions of approval that looked at the original case, also to see if the waivers then granted were still warranted. The objective would be to have the conditions in a form ready for a vote. Since this case was remanded from the Superior Court, it would be useful to have a letter from the Applicant detailing what was done to satisfy the Court’s finding that the Planning Board did not consider the impact of the traffic from 11 New Zealand Road, and exactly what was done to address the comments about the striping for the easement area. The Court told the Board that it had not looked at some things properly; the letter should say what specifically had been done to address the concerns of the Court. Nothing should be left out because if there is a disagreement, the case would come back to the Board.

S Mitchell said the problem was that there had been no “use” in the (rear) building which had been vacant for several years. His attorney recognized 35 uses that could possibly operate in that building. Hawkins noted they could look at the current application addressing a proposed use. For example, what if it was entirely a restaurant, or entirely retail. A calculation could be done of how much volume could be done in the [] 1500 square feet. It would not be exact, but they could speak to reasonable assumptions, and that it could also change hands. They could say that the revisions considered what could be there and looked at various possible traffic volumes where the 9 spaces would still have unfettered entry and exit. Dirk said they had previously submitted several scenarios detailing various potential trip volumes. They would include that in their summary. Hawkins described the summary as considering everything they did to address the Court’s concerns.



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

Hawkins asked for abutter comments. Mitchell asked if Montero and Crowley could get their comments into the record at this time. Hawkins agreed. Montero said they had laid out the gas station design working with Jones & Beach. Crowley, who manages many convenience stores would speak about the different delivery vehicles. With respect to the side pavement, they could put a cape cod berm to define the truck movements. They had spaced the new fueling stations differently. They did look at other options on the refueling truck; one restriction was that the vehicles had to drop their product on the passenger side. Because of the counter-clockwise circulation, they did not want the refueling station to be considered a structure. The new location was better for visibility and monitoring. The largest truck on the site would be the furl tanker; delivery trucks would not be larger than Coke trucks.

Crowley distributed a letter detailing his 36 year experience as a petroleum distributor and owner and operator of 22 convenience stores, as well as supplying about 87 gas stations in New Hampshire, Vermont, Maine and Massachusetts, of which 53 have footprints the same or smaller lot size footprint, and larger convenience stores, than the proposed station. He also operated up to 600 chains along the east coast. He was asked to look at this project in comparison to the typical New England gas station, and estimate the potential impacts, sales and gasoline levels, circulation, store sales, type and number of delivery vehicles, frequency of deliveries. The expectation would be for delivery vehicles on the site 7 percent of the time. Fueling delivery is typically about 11,000 gallons, 3-4 times a week. In New England, 1/3rd of the deliveries happen overnight when no one was in the store. He had limited knowledge about the proposed use of the building in the rear. However, they would not be getting gasoline delivery and would typically be serviced by smaller trucks.

Janvrin said that some said that the building was so small, it would have to be serviced more often to keep the stock. He assumed that all of the stock would be vendor manager. Crowley confirmed that there would be limited storage area; product would be in coolers or as dry goods. He noted that a 1,200 square foot convenience store would not have a high customer volume, and thus not require many supplementary deliveries. Janvrin asked how many of Crowley's stores had circulation around the building; he thought most such stores had the building at the property line. Crowley said about 11 of the 22 stores he owned had rear building circulation. Mitchell noted that when they met, Crowley was running an Irving Oil site; Crowley said he managed their New England convenience stores, also Hess stores. Janvrin asked Mitchell for the hours of operation. Mitchell said they would begin with 24 hours, and did not want to be limited. Likely it would become 5AM to 11PM. Crowley commented his stores run 18 hours per day. Janvrin commented that Irving did a lot of off hours delivery.

Hawkins asked for abutter comments. Aslin still had questions as to how this would work – if there was adequate space on the site, and if truck turning was safe. He asked for some time to provide a written detailed response to the various letters commenting on the revisions which had been submitted during the previous week, and requested that the next meeting be in September. He asked Woodland to speak. Woodland said they had received the comments during that week; he wanted to prepare a written response and more substantive review, particularly of the projections. He said there was no documentation for a lot of the statements, including where the figures re the intersection came from. They do not show what trips are generated in re each driveway, or the patterns for entering the site. He could not separate the traffic generating from this site and the DDR site. Woodland said there were a lot of changes; they were using the DDR traffic studies for the projections without discussing them in the material submitted. He said it was impossible to address, although he would make a few comments.



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

Woodland wanted to emphasize their concerns and then submit a formal study citing all of their concerns. He asked for the traffic study from which the projections for the intersection were modeled, noting that substantive changes had occurred at the DDR site since then. Initially he thought it would be a Target; now it was a super Walmart. There were no pad sites; now there were five, three of which were under construction. A ton of additional traffic was coming on right now. Woodland said without having any documentation about how they came up with their numbers in the latest submission, they did not know what elements were considered. He would reach out to Dirk for the background information; it would take some time to assemble that information.

Woodland referenced the fuel delivery sketch showing there was not a lot of tolerance when pulling into or out of the site. He said the graphic was not showing the lane geometry. There were two southbound through lanes. The vehicle had to cut across a through lane of traffic movement to make the only access to this development happen. Woodland said that was not safe at all, and the graphic was not showing what was out in the field today for the geometry on that approach. He said it was not standard practice, not safe, and needed to be addressed. The same happened with vehicles waiting for a gap when exiting the site. He wanted the chance to run their own turning templates and go through the submitted analysis to point out where they feel short in re the driveways, and consideration of the traffic going around on the site. Woodland said when the project was initially presented to NHDOT, it showed a net decrease from 11 stations. Three reports later they did not have the correct number of stations in the report, only the last submission was correct. He wondered if the NHDOT had seen the net increases presented at the last meeting which more accurately reflect the changing character and trip generation of this use compared to the existing shack. He did not need 70 days to prepare a response, but wanted to do a full report.

Woodland wanted the additional width for the access off the side street. They might want to reduce the width for pedestrians, but this would be a commercial access. There were many things not addressed from their original letter, and have additional comments. When the project was first proposed the deliveries were not where they were now. Taking a good look at a 12,000 gallon delivery truck making a turn across a lane of traffic to see if it was safe, or if there was a safer access way was needed. They needed a couple of weeks to summarize their concerns in a more in depth presentation. Hawkins asked for other comments. Mabardy said when the traffic reports were done for the first time re the Mall, there was not a two way entrance. The site was not even open, so they did not know what traffic that would add to the intersection for his lot or for the [gas station] site.

Aslin asked if the Board wanted to ask questions of the abutter. Hawkins said the Board was in Court to address the concerns of the abutter. If the abutter wanted to supply a summary, that would be useful for the Board, but it was not going to drag this on and on. It would make a decision and a recommendation. A summary, not 30 pages, from each party would be helpful for the Board to make its final decision. Janvrin did not want to see more of a historical summary.. Hawkins wanted each party to get the points down sufficiently so the Board could make a decision, hopefully at the next scheduled hearing.

Hawkins continued Case #2012-18 to September 16, 2014 at 6:30PM at Seabrook Town Hall. Janvrin asked if the materials for the Board be submitted by September 2, 2014. Hawkins asked if the parties could submit their materials by August 26, 2014 so that they could be provided to the Board in the September 2 packet. Both the Applicant and the Abutter agreed to that submission date.



Hawkins recessed the hearings from 9:05 to 9:15 PM

ONGOING CASES

Case #2014-14 – Proposal by Harborside Restaurant Group, LLC to extend operating hours for Castaways Restaurant at 209 Ocean Boulevard, Tax Map 26, Lot 91, continued from June 3, 2014; continued from June 3, 2014,
Attending: Ted Mountzouris,]
Appearing for the Applicant: Henry Boyd, Jr, Millennium Engineering;

Hawkins had not been present at the June 3, 2014 meeting and asked Janvrin if the Board's intent had been to re-notice Case#2014-14 to cover fire pits and music on the deck, as well as the operating hours. Janvrin said rather than do an acceptance, it was decided a new notice would be posted with the few notes that had been added to the plan, and the firepots and live music hours, as well as the extension of hours. Hawkins said the new notice went out without those two additional elements. If fire pits were taken up at this meeting, it would be without reference in the Application or the Public Notice. Janvrin said the abutters had been noticed for the original hearing and then noticed again. Based on tom Morgan's comments, he thought only the hours of operation could be addressed.

Boyd agreed, but thought from the beginning that the fire pits should be permitted on that property as they were temporary; the Fire Chief had always been supportive. They had already gone through the discussions; he did not think they ever had to be in a notice. They did the right thing and there still wasn't a notice. They had lost their entire summer at a beautiful setting. Last year the fire pits were popular, and were wood burning. The Board had not said why they had to approve this; he did not think so. Boyd said he'd asked Morgan and the Board whether it needed their approval; it was a table with a little fire pit. He also did not understand why live music was before the Board. They'd been to the Beach Commission and had a letter from the Fire Chief who had no issues, although the Police Chief and the Beach Commissioner would not do so. Hawkins asked if the fire pits would be hard pipe. Boyd said that was shown on the plan, but could be removed, as they would only use temporary propane bottles. Janvrin said the seating limit had been set for the site. Boyd agreed and said that would never be exceeded. If there were seats at the fire pits, they still could not go over the maximum seating. They rearrange seating for parties, but businesses should be allowed to operate reasonably.

Hawkins said the hours of operation extension would be discussed at this meeting, and asked how the Board felt about re-noticing the other items. Janvrin read the definition of "structure" In the zoning ordinance:

..."Any structure constructed or erected by human means, whether on land or water the use of which requires location on ground or bed of water, or requires a tax map for something having a location on the ground or water, fences, stone walls, retaining walls, driveways, steps, porches, piazzas of less than 12 – 24 feet..."

Janvrin asked if these appurtenances should be considered structures under that definition, noting that this was the town definition – he did not know if the Beach had a different definition.



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

Boyd said they were before the Planning Board because the zone was Beach Commercial. Hawkins said there was a beach definition, but the issue was putting out tables and hard piping the fire pits. If there was no hard pipe, it could not be considered a structure; if it was hard piped then re-noticing was appropriate. Janvrin agreed. Boyd said for this year it would be temporary. Janvrin said it would be a portable or seasonal lawn item. Boyd will change the note on the plan to state that they would be temporary. Boyd said he would also remove reference to an easement for the benefit of this property that had never been conveyed.

Janvrin said that there had been discussion about outside entertainment, but that would fall under the jurisdiction of the Board of Selectmen. The Planning Board could be in favor and it could go on the plan, but the BOS had jurisdiction under the entertainment license. Hawkins recalled that the Board insisted that one applicant reduce the noise to consider the neighbors. The Board could make a recommendation to the BOS which he hoped it would consider. Janvrin recalled that one business license that had allowed live entertainment was modified to no outside music, and it had to be unamplified acoustic music. The Case #2014-14 Applicant would not use amplification. Boyd said the issue had been addressed for months and months; they were even challenged by the Town Manager. They were told to come up with some reasonable hours for music. The problem was that the base reverberated out through the walls. Janvrin asked if the Applicant would agree that he was not trying to get approval for amplified music. Mountzouris said they have acoustic guitar music e.g. Jimmy Buffet or James Taylor, not reggae or live bands.

Hawkins wanted to address the items separately, without the extended repetition of what had been said in prior hearings, beginning with the hours of operation. Mountzouris, said typically the kitchen closes at 10 pm and the restaurant is clear by 11 PM. They do have to clean up and do stocking etc on the off hours. If someone walks in at 9:50PM they do not serve them because the kitchen will be closing down. Customers may still be eating, but no new customers after 10PM; wait staff may be closing their accounts, and he does the cash out and is last out. Janvrin asked if they really wanted to accommodate weekends and maybe special sports events. Mont]]] said they did not want to have the late casino crowd. This winter they stayed open 3 days and the 130 patrons asked for a New Year's Eve party, which they could not do because they close at 11PM. They discussed this with Boyd who said that other establishments had a 1 PM close, so they came to the Board. Eaton asked until what time the liquor commission allows them to plan live music. Mountzouris said they can go to close; they do not do that and the hours are from 5PM to 8PM. Boyd said the restaurant manager wanted 5-9 from Thursday to Saturday, but they are not yet doing that.

Janvrin commented that if they wanted something more than an acoustic event, they would have to go to the BOS. He asked if they had an entertainment license from the Selectmen. Mont]]] said they did not and were told if they had the right to play music outside unamplified. Janvrin suggested they check the code. He recommended leaving that decision to the Selectmen, because if the Planning Board stipulated acoustic only, that is all they could have. Hawkins said any restaurant that had come before the Board was approved for being open until 1AM, but that did not include the outdoors. He suggested asking them to close the patios at 10 PM. Mountzouris said he could use them until 11 PM now. Hawkins said that would mean that everyone was inside the building by 11PM. He thought part of the problem was that there was supposed to be open space and plantings where they put the fire pits. Boyd said they were in full compliance with the NHDES permit in re the expansion of the deck. The area is gravel and sand, and it had to be fenced at the wall, and there were to be rosa ragosas – no structures. The movable tables and chairs don't come out until May, but nothing is built there. A lawn was never intended. The NHDES did not want any sealed surface.



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

Hawkins asked how the total seating stipulation was being managed when chairs are outside. Mountzouris said they only put out the number of physical seats that are allowed. A lot of tables and chairs are in the cellar; the top deck is pretty clear. Hawkins asked Boyd if the NHDES permit was targeted at structures, and not occupancy. Boyd confirmed this, and said the NHDES did not look at usage. They cannot build anything there; the setbacks allow for additional encroachment for decks. Hawkins asked if the Board took action, how long would it take for a final plan that could be signed. He commented that historically final plans had not necessarily been submitted. Boyd thought the only change would be the removal of the gas pipe. Hawkins noted that the easement would be removed. Hawkins asked about a letter from the police. Boyd said the restaurant manager had repeatedly asked for this; also the Beach Inspector did not respond. They will get the Fire Chief's letter to the Planning Board. Hawkins noted the taxes had been paid, and asked if the business license was up to date, and to provide a copy. Mountzouris said it was. Janvrin asked for a copy of the entertainment license. Hawkins noted that the awning was no longer lighted.

Hawkins asked how recorded music and the speakers on the building that play out on the deck were controlled and that the noise did not disturb the neighbors. Mountzouris said the control is inside and 9 volume knobs can adjust the noise level at any time both inside and outside. There were 4 amplifiers: -1 inside and 3 for the deck tiers. Hawkins' concern was that sound lowered as it got further away from the speakers; the sound might then be turned up causing neighbors to complain. He asked if speakers could be on the deck facing north so the volume could be kept lower. Mont said they do this with 2 speakers hanging on the outside toward the north, facing the pits. Janvrin thought it prudent for the board to leave the entertainment hours to the BOS. Hawkins wanted to make a recommendation acknowledging the BOS had jurisdiction.

Hawkins was ready for abutter comments, but asked those who had spoken in the past to offer new comments; the speakers would be limited to about 5 minutes. Abutter Theresa Kyle objected that the Board was listening at this meeting because the Applicant was specifically instructed to send in a new plan itemizing the things that they wanted, and that had not been done. That application was to show the music and the fire pits, but what was sent to abutters was the same as had been sent before. For the record she thought the board should not be hearing this case because it had not been accepted on June 3, 2014 and should not be accepted at this time unless it conformed to what was to be done. Kyle said in re being open to 1AM and abiding by that - they did not. On the past weekend, they did not close until 1:20AM; music was playing at 10:45PM. She thought they were being given everything they wanted.

Kyle said she had attended a meeting at which Chair Sue Foote would only approve the extra deck if nothing was to be in back of the building – only rosa ragosa bushes; it was supposed to be kept as a clear area. The operation also had many other problems which she had previously addressed having to do with the state Liquor Enforcement Bureau, and the County Attorney. Giving them the right to stay open to that late was showing a complete disregard for the taxpayers who had been there long before [this business]. It was a nuisance and annoying. People who live at the Beach know that no matter how much they turn down the music, it would be heard because of the night air and the way the wind blows. Kyle felt that if she was restricted to 5 minutes, so should the Applicant.

Bill Hougly, a Nashua Street resident, welcomed people to Seabrook Beach and the entertainment in July and August which all enjoyed. He commented that the Seabrook Post Office was about the same distance from this meeting room, the closest abutter. The noise and traffic from the Post Office could not be heard in this Selectmen's Meeting Room. With 4 lanes in

Town of Seabrook Planning Board Minutes
August 5, 2014 draft #6 Page 18 of 25



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

front of the restaurant, he did not see how anyone could hear anything from the facility. He thought there had been exaggeration and it was limited to one individual that was upset. The thought the neighbors in the area were very pleased with the family facility service. Kyle said it was not just she that had complained, and said to look at the police logs for other people in the neighborhood. She said that last week three of them had been listening to the music until 10:45PM. A patron who was not an abutter did not know what it could sound like 18 hours a day. Mountzouris said he did the closing that weekend; he was also an executive consultant for 4 multi-million dollar companies. His staff was instructed to shut down the outside music when the kitchen closed at 10PM, and inside while patrons were eating. He did not understand the references to around 1AM because he did the last cash out and was out the latest by 11:45PM.

Hawkins asked for further comments from attendees; there being none. Eaton, as a new member of the Board, wanted to have a statement from the Police Department to see if there was an issue before granting approval. Lowry asked if Kyle had called the police about the excessive weekend noise described she described. Kyle said one time she called about 10:30PM for herself and two other neighbors; the police did a drive-by and did not enter the building. She called again at 12:30PM because of music; they were still open; customers came in at 10:30 to 10:45PM; the last person to leave the building was at 1:20AM. Lowry asked if there was documentation i.e. a report from the Police Department about this. Kyle had her record for calling in, but did not know if there was a police report. She said there was a drive-by and the Police Chief got angry with the officers because they had handled the whole situation that haphazardly with a drive-by. She said there was a record of both of her calls. Kyle said there was an exercise class on Sunday morning with music on the deck with somebody yelling and stretching. That was not just noticed by her, but she did not complain; a town official wondered what they were doing at 9:30AM. Kyle said neighbors and abutters want to know if they are running a lounge, a restaurant or an exercise facility.

Boyd said they had asked the Police Chief for a letter 60 days ago. If I was a serious, serious concern, he thought the Chief would say so. Janvrin recalled the Honey Pot noise situation when the police would pull into the Eaton Plaza across Route 1, roll down the window, and determine whether in their opinion there was excessive noise. Because of that, there was no action taken. He remarked that the cases were unrelated, but the situation was similar. He also recalled the conversations about Rocks Road decibel levels in re the NextEra shooting range facility. This went back to the ordinance and the town having no way to measure that noise. Janvrin commented that Seabrook was not the only Seacoast town having a difficult issue determining what was or was not acceptable. In Hampton worked with abutters; a decibel level was set but there was no way to measure it. He thought this was the first case involving a restaurant along Ocean Boulevard. The current nuisance or noise ordinance was under the jurisdiction of the Selectmen.

Hawkins asked if anyone disagreed that a 1AM closing time had been allowed for any restaurant that appeared at the Board. Janvrin recalled that the Honey Pot was allowed an outside smoking area as long as there was no alcohol beverage, and asked if the fire pit area could be considered an outside smoking area after 11PM. Hawkins thought the regulations for inside and outside should differ; there was no reason for anybody to be outside after 11PM; he thought that 10PM would be a legitimate request for the deck, although they could be there until 11PM. He would not agree to extend hours for the deck, because it was unnecessary and did not take into account any of the neighbors' issues. Eaton agreed. Hawkins did not see an argument to not allow this restaurant the same hours as any other in Seabrook. Eaton asked for something from the Police Department as to whether there was an ongoing issue, because it had been stated there was a problem with lots of calls going in. Lowry said there was no report; if there was an



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

incident, a copy of the report would be available. Eaton said if something was called in, there was a police log. Janvrin said the Police Department might deal with noise differently than the Planning Board. Enforcement was a matter for the Selectmen. If there was a report, he wanted to see it. Absent that, there was no evidence.

Hawkins asked how the Board felt about 10PM closing on the deck. Mountzouris could not agree as people come in to dine and are eating at 10PM, even though the kitchen was closed. He could not say they had to come inside during the meal. He could shut off the music, but not that they couldn't finish their meal. Janvrin said presently they were asking for the entertainment until 9PM, and to have the outside open until 11PM for people who dine. He wanted to accommodate people inside who wanted to smoke after 11 PM as long as they did not have beverage of food in their hand. Hawkins said the discussion was not about a smoking area, rather about operating a restaurant on the deck. Mountzouris said there was a smoking area in the front. Janvrin reminded that the case needed to be accepted.

Hawkins wanted to focus on the changes and define the limits, so that an enforceable document could be sent to the Beach for whatever complaints might come in. He asked for all music to be off outside at 10PM. Live music should be in a separate recommendation to the BOS. The fire pits would be movable furniture; Janvrin said they would not fall under the definition of "structure". Hawkins thought that the plan would be revised to remove the hard piping, but would allow removable seating with the total seating on the property at 285. The recommendation to the BOS would be to allow live acoustical music on the deck from 5PM to 9PM from Thursday through Sunday, but no amplified music; this stipulation to be notated on the plan. Janvrin said the note would be allowed on the plan; the recommendation would be in re unamplified music.

Selectman Ed Hess asked if these items would be turned over to the Selectmen for a decision. Hawkins said entertainment licenses were in the BOS purview. The Planning Board would make a recommendation to the Selectmen relating to an entertainment license for acoustic music but no amplification outside on the decks. Hawkins said the recommendation would be to allow live acoustical music (e.g. guitars, singers) outside, with no amplification, from 5PM to 9PM Thursdays through Sundays. Hawkins asked for Khan's view. Khan said the Planning Board would send the Minutes of this meeting to the Selectmen with a recommendation, so it would be easy for the Selectmen to understand what happened at this meeting. Khan asked how often the restaurant would have private parties. Mont said they have wedding receptions, baby showers, 50th anniversaries - outside and inside. They do not have private parties where they shut down the restaurant, except a fundraiser for Senator Nancy Stiles; someone might make a reservation for a reception, but not for the whole restaurant.. New Year's Eve would be an exception, but it would be open to anyone. Eaton asked if they would rent out their space for an unrelated or bar use. [Mont said they had an event the day before.

MOTION:	Eaton	to accept Case #2014-14 as administratively complete for jurisdiction and deliberation.
SECOND:	Lowry	Approved: Unanimous

MOTION:	Janvrin	to find that the unattached fire pits as described in the Case #2014-14 hearing before the Planning Board on August 5, 2014 do not qualify as structures under the Zoning Ordinance of the Town of Seabrook.
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Town of Seabrook
 Planning Board Minutes
 Tuesday, August 5, 2014
 NOT OFFICIAL UNTIL APPROVED

SECOND:	Hawkins	Approved: Unanimous
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Eaton thought they would have to get a fire permit. Hess asked if any other business could apply to have outside music until 10PM. Hawkins said each would be handled one at a time. Hess said there were other businesses at the lower beach that were shut down and told they could not have the music. Hawkins said the Planning Board was giving a recommendation to the Selectmen because an entertainment license for outdoor music was not in its jurisdiction; this was up to the Selectmen. If this entertainment license was granted by the Selectmen, the Planning Board recommended it include the restrictions set forth in the vote (below).

Hess said there were some businesses that in the past had been completely denied any music at all. Hawkins asked if that had been on the siteplan. A request for a license approval was up to the Selectmen to approve or to deny. It was not the responsibility of the Planning Board, which was making a recommendation for this particular location taking into account some of the issues raised. The Board was not saying that the Selectmen must grant an entertainment license for outdoor music. Hess said in all fairness for somebody else that asked for this on the Beach, he thought giving it to one establishment would become a problem. Hawkins thought that was a consideration for the Selectmen. Hess thought it would become an open ballgame for anybody else. Hawkins said yes if approved, and no if not approved. Hess thought if this was done for one, when somebody else asked they had to have the same consideration; it couldn't be done for one and not for others. Hawkins said the Selectmen would have to consider that when the subject came up.

MOTION:	Hawkins	<p>to approve Case #2014-14 – Harborside Restaurant Group, LLC for a change of hours to 7AM to 1AM inside the restaurant for Castaways Restaurant at 209 Ocean Boulevard, Tax Map 26, Lot 91, with the following stipulations:</p> <ul style="list-style-type: none"> (i) the deck will be closed to everyone at 11 PM; (ii) all outdoor music will be turned off at 10 PM; (iii) fire pits will be turned off and that area vacated at 11 PM; (iv) there will be no hard piping for the fire pits and the hard piping will be removed from the plans; (iv) removable gas fire pits are approved subject to the hours stated above; (v) the awning sign will not be lighted from the rear; (vi) no amplified music outside on the decks and no music at all after 10PM; (vii) the maximum number of seats (285) to be notated on the plan; (viii) no wood burning fire pits; (xi) the easement depicted on the submitted plan to be removed; (xii) the revised plan to be submitted to the Planning Board within 30 days; (xiii) the conditions of approval to be listed on the plan; (xiv) all outstanding invoices from the Town are paid; <p>and</p>
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		(xv) the final plan to meet the requirements of the Town Planner.
SECOND:	Lowry	Approved: In favor: Hawkins, Khan, Lowry, Frazee; Opposed: Janvrin, Eaton;

Khan asked that the approval language for the permit be provided to the Board of Selectmen.
On August 19th the Planning board voted as follows:

MOTION:	Hawkins	<p>to accept the Minutes of August 5, 2014, amended as follows: to modify and restate the motion made on August 5, 2014 with respect to Case #2014-14 Harborside Restaurant Group, Castaways Restaurant, 209 Ocean Boulevard by adding (xvi) below:</p> <p>to approve Case #2014-14 – Harborside Restaurant Group, LLC for a change of hours to 7AM to 1AM inside the restaurant for Castaways Restaurant at 209 Ocean Boulevard, Tax Map 26, Lot 91, with the following stipulations:</p> <ul style="list-style-type: none"> (i) the deck will be closed to everyone at 11 PM; (ii) all outdoor music will be turned off at 10 PM; (iii) fire pits will be turned off and that area vacated at 11 PM; (iv) there will be no hard piping for the fire pits and the hard piping will be removed from the plans; (iv) removable gas fire pits are approved subject to the hours stated above; (v) the awning sign will not be lighted from the rear; (vi) no amplified music outside on the decks and no music at all after 10PM; (vii) the maximum number of seats (285) to be notated on the plan; (viii) no wood burning fire pits; (xi) the easement depicted on the submitted plan to be removed; (xii) the revised plan to be submitted to the Planning Board within 30 days; (xiii) the conditions of approval to be listed on the plan; (xiv) all outstanding invoices from the Town are paid; (xv) the final plan to meet the requirements of the Town Planner, and . (xvi) to allow live music on the deck only Thursday through Sunday from 5PM to 9PM subject to receiving an entertainment license issued by the Board of Selectmen.
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Case #2013-15 – Proposal by Arleigh Greene, GRA Real Estate Holdings, LLC and Waterstone Retail Development, Inc. to demolish existing buildings on Tax Map 8, Lots 54-2, 54-4, 54-5, 54-7, 54-8 and 90, and to construct a 168,642 square foot shopping complex with associated parking and access drives, continued from July 2, 2013, July 16, 2013, September 3, 2013; September 17, 2013, October 1, 2013, November 5, 2013; November 19, 2013, December 3, 2013, December 17, 2013; January 7, 2014; continued from March 4, 2014; April 1, 2014; April 15, 2014, May 20, 2014, July 15, 2014. Discussion topics are exaction fees, security, offsite configuration and traffic reports; Provident Way signal;

Attending: Anton Melchionda, Doug Richardson, Waterstone Retail Development; Arleigh Greene,
Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers; Jeffrey Dirk, traffic engineer, Vanesse & Associates

Hawkins recalled that this case had been previously approved and asked why the Applicant requested to be heard at this meeting, noting that nothing had been received from the state. Morrill said that the Board had asked for that the conditions of approval from the Planning Board meeting of June 3, 2014 be added to the April 4, 2014 conditions on the final site plan submitted. Other conditions were a 200 foot long, stackable driveway off Provident Way, depicting a gas line around certain of the buildings and a water line sketch done with the Altus Engineer. He asked for this revision submitted to the Board be signed so that the new driveway off Provident Way can be put out for utility construction. Hawkins asked if they were trying to get this planset signed so it can be used in the field. Morrill agreed this was the objective. Hawkins commented that when the Town Planner returned, he could review this planset revision with the objective of giving the chair the ok to sign the planset.

Melchionda said they had been working continuously with the NHDOT on all of the offsite improvements, and had one timing situation with one condition to present to the Board. In order for the Applicant to deliver to the NHDOT all of the information required for the department's final design and decision, all of their work and the striping had to be done; completion of this work which Waterstone itself was not performing, had been delayed by 60 days. Because of the delay, they were informed by the NHDOT that once Waterstone's schedule was put together they would then be able to complete the lion's share of the improvements. Melchionda stated that their commitment to the Board was that Waterstone would complete all of those improvements related to Provident Way and Route 1 prior to the certificates of occupancy for all of the buildings. However, after meeting with the NHDOT, they find they will be able to complete the offsite improvements relating to Provident Way and route 1 intersection but due to the seasonal paving issues, they will not be in time for the closing of the aggregate paving plants generally in mid November. The challenge is they have contract obligations Hobby Lobby, and Goodwill Industries, the anchor tenants, to open after Christmas in early January 2015. The balance of the tenants were comfortable with waiting until the spring so that the work would be complete for the summer.

Melchionda said, based on being unable to complete all of the paving and striping, they would show all of the Phase 1 work that would be completed by approximately January 2, 2015. At that time, they would ask that the condition that reads "...no certificate of occupancy will be granted until all of the work was done...; be changed to allow them to get certificates of occupancy only for those two anchor tenants. Janvrin asked if the work for Provident Way would be completed by then. Melchionda asked Dirk to speak to the specifics. Dirk said all access would come from Provident Way via the Route 1 intersection and the road improvements and access would be complete for the two tenants. They would just not be accessing those tenants from Route 1



Town of Seabrook
Planning Board Minutes
Tuesday, August 5, 2014
NOT OFFICIAL UNTIL APPROVED

south of that intersection. Those two tenants would generate about half of the anticipated traffic volume, but this would increase when the other tenants were in place. There would be sufficient improvements in place to accommodate the two [Phase 1] users. Melchionda commented that one of the anchors bringing heavy traffic would be closed on Sundays.

Janvrin asked about the improvement to Chevy Chase, and whether that access (right in/out) from Lafayette Road would be open and accessible. Dirk said that was the intent. Richardson said it had to be open because there were stores that needed their access to continue; bob's Furniture would not be moving until Phase 2. Melchionda said this was all discussed in work sessions with the NHDOT so what was important to them was clear, and that Waterstone knew what they had to do to satisfy them. They wanted to know if the Planning Board was in agreement with the two phases. Janvrin asked if they could provide a sheet that showed Phase 1 and another that showed Phase 2. Richardson said all onsite improvements would be completed. Melchionda pointed out the work that would be complete for Phase 1, stating that there would be more than ample capacity for Phase 1. The work they will be doing on Route 1 in advance of the NHDOT completing the widening, and the Perkins intersection light will wait perhaps until June. Richardson emphasized that they would not open any other tenant until all the improvements were done. Hawkins asked for the overall completion date. Melchionda said that the Provident Way roadway and access to Route 1 would be done by year end (Phase 1); the Route 1 work would likely be done in June 2015 so they would not need to have construction that summer. Janvrin asked if by the summer, Route 1 would have an extra lane. Melchionda said that was their plan .

Melchionda said that for January only Hobby Lobby and Goodwill would be opening; all of the other pads were as yet undefined. Hawkins asked for a written summary for the next meeting so that the Board could understand everything that would be open for Phase 1, and what would open in Phase 2, so that the Board could take a vote. Melchionda will provide this. Richardson explained that they are under pressure to move this project forward. Khan asked when the Board would receive the letter from the NHDOT. Melchionda said NHDOT had their full design and, so far, they are ok. Hawkins said the Board had been waiting since March. Melchionda will check that NHDOT the Board was provided with the pre approval letter. Richardson said they had already gone with Vanesse to the NHDOT with full construction drawings; the NHDOT would not do final designs until that had been received. Hawkins recalled the concerns with drawings that had been changed. Melchionda said the final Jones & Beach plans had been provided to the Board. Hawkins asked if anything would change. Morrill said the striping on Provident Way could change; nothing internally would change. Melchionda clarified that the anchor buildings were in place. Three pads did not yet have committed tenants, so they might return to the Board for modifications when those tenants were in place. Also, they use many different versions of plan pages for merchandizing purposes with potential tenants. All of the construction was being done to the final plan that had been submitted to the Planning Board. Melchionda said he would highlight the pad being discussed so there would be no confusion. . Hawkins asked if he had to label plans that would be signed as conditional, and asked that sketches for potential tenants be identified as for discussion. Kravitz suggested a "discussion" stamp be applied to the title block. Melchionda said everything would be built to the [signed] plan.



Case #2013-26 – Proposal by 11 New Zealand Road, LLC and Charles Mabardy to establish a convenience store and restaurant at 11 New Zealand Road, Tax Map 7, Lot 87, continued from January 7, 2014, continued from January 7, 2014, March 4, 2014, April 1, 2014, April 15, 2014, May 20, 2014, June 3, 2014; June 17, 2014; July 15, 2014;

At the request of the Applicant Hawkins continued **Case #2013-26 to August 19, 2014 at 6:30PM in Seabrook Town Hall.**

Case #2014-16- Proposal by Istar LLC, Soraghan Realty Trust, Provident Holdings, and DDR Seabrook LLC for a lot line adjustment at 652 Lafayette Road, Tax Map 8, Lots 49, 50, 51-1, and 55-30; continued from June 17, 2014

At the request of the Applicant Hawkins continued **Case #2014-16 to August 19, 2014 at 6:30PM in Seabrook Town Hall.**

Case #2014-17 – Proposal by Istar Seabrook LLC to construct a 5,640 square foot retail facility at 652 Lafayette Road, Tax Map 8, Lot 49; continued from June 17, 2014

At the request of the Applicant Hawkins continued **Case #2014-17 to August 19, 2014 at 6:30PM in Seabrook Town Hall.**

PROPOSAL BY THE PLANNING BOARD TO AMEND THE SUBDIVISION AND SITE PLAN REVIEW REGULATIONS IN REGARDS TO PARKING, APPLICATION FEES, FINANCIAL SECURITIES, continued from June 17, 2014; July 1, 2014; July 15, 2014;

OTHER BUSINESS

PROPOSAL BY THE PLANNING BOARD TO AMEND THE SUBDIVISION AND SITE PLAN REVIEW REGULATIONS IN REGARDS TO PARKING, FINANCIAL SECURITIES, AND APPLICATION FEES.

Hawkins adjourned the meeting at 10:40PM

Respectfully Submitted

Barbara Kravitz, Secretary
Seabrook Planning Board