

MINUTES
TOWN OF TOPSHAM
PLANNING BOARD MEETING
MAY 19, 2009, 7:00 P.M.

MEMBERS PRESENT: Don Spann, Chairman
Don Russell, Vice Chairman
Ronald Bisson
Michael Colleran
Tim Dunham
Stephen Mathieu
Nora Wilson

MEMBERS ABSENT: All present.

STAFF PRESENT: Rod Melanson, Assistant Planning Director

A meeting of the Topsham, Maine Planning Board was held on May 19, 2009 at the Municipal Building at 100 Main Street, Topsham, Maine. Chairman Spann called the meeting to order at 7:00 p.m.

1. **ROLL CALL**

The recording secretary conducted the roll call and noted that all members were present.

2. **MINUTES FROM THE MAY 5, 2009 MEETING**

Motion was made by Donald Russell, seconded by Stephen Mathieu, and it was

VOTED

To approve the minutes of the May 5, 2009 meeting as written.

3. **CONDITIONAL USE PERMIT - NIKKOLE LUND OF BRUNSWICK HAS SUBMITTED AN APPLICATION FOR A PROPOSED RESTAURANT AT 235 LEWISTON ROAD, TAX MAP R05, LOT 047.**

The applicant appeared before the Board at the May 5, 2009 meeting at which time the Conditional Use Permit for a proposed restaurant was reviewed. It was noted that the application was not advertised prior to that meeting, thus the properly advertised public hearing this evening (May 19, 2009).

At the May 5, 2009 meeting, Board members made specific comments to guide the applicant. There were no major issues with the project. After listening to the presentation made by the applicant's representative, Pat Harty of Harty & Harty, the Board made suggestions which have been incorporated into the revised site plans which were reviewed by Mr. Harty.

Mr. Harty distributed reduced-size copies of the revised plans to Board members. The plans were revised based on comments received from the Board at the previous meeting. He noted that the footprint has been added of the proposed septic system. He said the HHE 200 Form has been completed.

A section of the plan contained details of the proposed landscaping plan. Mr. Harty said the difficulty with the landscaping in that area beneath the physical landscaped area is paved. There is approximately 1-foot of topsoil in which a seasonal tropical display area is landscaped to coordinate with the Urban Gardening Center also on the site. Additional perennial plantings will be added to the entire area along with several shrubs.

Prior to the Public Hearing being declared open, Chairman Spann asked Mr. Harty to give a brief synopsis of the proposed restaurant to members of the public, which he did.

Following Mr. Harty's presentation, Board member Colleran asked if the space labeled as the Garden Center on the drawing was currently in use. Mr. Harty responded that it is. He said Urban Garden Center is a retail shop with several perennials and annuals displayed. To the right side of the entrance there is a large area filled with trees and shrubs. Mr. Dunham inquired if the restaurant will be served with public water. Mr. Harty said there is no public water connected to the site and it is served with a private well. He said initial water tests have been conducted and came back positive. However, the applicant is waiting for approval of the permit and will conduct further water tests as required by the State for a public entity. Board member Wilson questioned the layout of parking. Mr. Harty said the restaurant requires 24 parking spaces and he identified where the spaces are placed on the drawing to Ms. Wilson's satisfaction.

With no further questions, the Public Hearing was declared open. There were no comments to be received from members of the public. Board member Don Russell verified several statements for the Finding of Facts. The Public Hearing was declared closed.

FINDING OF FACTS

1. The property is owned by Jon Carr.
2. The applicant submitted a written statement from the property owner to speak in her behalf.
3. The property is located in the CC, 196 Zone identified by Tax Map R05, Lot 47 and the use requires a Conditional Use.
4. Total square footage of the restaurant is 2,400.

5. There will be no expansion of the footprint of the existing structure.
6. Seating capacity is 70.
7. A minimum of 24 parking spaces have been provided to meet the code requirements.
8. The hours of operation of the restaurant are from 6:00 a.m. to 2:30 p.m., seven days a week.
9. Number of employees will be between 10 and 15.
10. Use of the property is commercial and use of neighboring properties are commercial.
11. There are no abutting residential properties.
12. There will be no odor, dust or noise resulting from the use.
13. The physical characteristics of the site are outlined on the site map filed as part of the record.
14. The restaurant will be using private water and private sewer and the systems stated will be adequate to meet the required needs.
15. Landscaping buffer will address Ordinance Section 225-60 10.A will be between 11-foot and 15-foot and additional plantings will be added to the buffered zone.
16. The service area for the restaurant will be at the rear.
17. There will be no outside area used to service the restaurant.

Members of the Board unanimously agreed with the Finding of Facts.

CONCLUSIONS

1. The use is compatible with and similar to the general categories of uses of neighboring properties.
2. The use is compatible with the Comprehensive Plan and the anticipated future development of the neighborhood.
3. The anticipated traffic for the proposed development will not cause an adverse negative impact on the neighborhood surrounding the proposed development.
4. There will be no noise, dust, odor, vibration or smoke generated by the use that will adversely affect neighboring properties or the Town in general.

5. The physical characteristics of the site, including location, slope, soils, drainage and vegetative cover, are suitable for the proposed use.
6. The use will not constitute a public nuisance.
7. Any other requirements and applicable provisions of this Code, as deemed necessary are met.

Members of the Board unanimously agreed with the above Conclusions.

Motion was made by Mr. Russell, seconded by Mr. Bisson and it was unanimously

VOTED

To approve the Conditional Use Permit to operate a restaurant in the CC 196 Zone identified by Map RO5, Lot 47 and meeting the requirements of Ordinance Section 225-67F and also 225-60, 10.A Landscaping provisions of the code.

SITE PLAN REVIEW - NIKKOLE LUND OF BRUNSWICK HAS SUBMITTED AN APPLICATION FOR A PROPOSED RESTAURANT AT 235 LEWISTON ROAD, TAX MAP R05, LOT 047.

The Board was in agreement that the applicant was in conformance with the Performance Standards in Ordinance Section 175-8, A through S.

Motion was made by Mr. Mathieu, seconded by Mr. Dunham, and it was unanimously

VOTED

To give Site Plan Approval to Applicant Nikkole Lund at Tax Map R05, Lot 047, to operate a restaurant in the Commercial Corridor with the following conditions:

1. This approval is not final until such time as final plans, showing all conditions and waivers have been signed by the Planning Board.
2. This approval is based on the approved plans listed below, and on all submissions and information provided by the applicant at final approval, whether referenced in any findings or conditions of approval.
3. All work shall be completed in conformance with the approved plans, entitled "Proposed Site Plan for Conditional Use Permit," drawn by Harty & Harty PLS, consisting of the following page: Sheet 1, Site Plan dated 4/14/09.
4. No deviations from the approved plans are permitted without prior approval from the Planning Office or Planning Board.

5. Occupancy Permit will not be issued until proof of final approved water testing by the State is received for the file along with an approved Septic System Plan.

4. **SITE PLAN REVIEW - GIBBS OIL HAS SUBMITTED A PROPOSED NEW 60' X 100' RETAIL FOOD ESTABLISHMENT AND TO EXPAND GAS PUMPS AT 95 MAIN STREET, TAX MAP U04, LOT 032.**

Before discussion began on this agenda item, Board member Mathieu asked to make a point of order. He said as he reviewed the Gibbs Oil package of material forwarded to the Board, he did not understand why the item is even on the agenda for site plan review.

Chairman Spann responded that he had discussed this agenda item with the Planning Director and basically, before this item is pursued the Board needs to answer two questions.

- 1 - Is it okay to bring the item back before the board for Site Plan Review when a former sketch plan has expired, without a new sketch plan, even though the review period had expired by approximately 10 months?
- 2 - Is it okay to bring the item up for review even though it did not meet the 21-day submission time frame?

Chairman Spann said the reason the Planner asked the question is, if in fact the Board determined it was okay for both questions, it would mean the item came into this Board and became official and would move forward under the ordinances in effect today. (It was noted there is a Town Meeting Scheduled to occur tomorrow and the ordinance and rules may be changed.) Therefore, the need to answer the two questions to determine if the Board will allow the case to come onto the agenda.

There was a lengthy discussion of the importance of conducting considerations according to the Ordinances and the importance of decisions being made fairly to all parties with no exceptions to the rules. Several concerns were expressed that the sketch plan was reviewed over a year ago with the applicant not coming back to the Board in the appropriate time frame as stated in the ordinance.

Following discussion, motion was made by Mr. Russell, seconded by Mr. Mathieu and it was unanimously

VOTED

That the Planning Board not move forward with the Site Plan Review for Gibbs Oil at 95 Main Street, Tax Map U04, lot 032 because of not meeting requirements of Ordinance Section 175-6, Procedure for Site Plan Review.

Mrs. Wilson questioned if the Board could hear the case under Sketch Plan Review at this meeting to bring sketch plan review process current. Chairman Spann said the Board could conceivably hear the case again from sketch plan. However, Sketch Plan Review

does not get it into the formal process, which is what the intent was - to get it to this Board before the Town Meeting vote which may change the zone.

Board member Colleran asked Mr. Melanson if the Planning Office did the sort of work they would do in preparing for a Sketch Plan Review before tonight's meeting or is there work you normally do for sketch plan that you haven't done? Mr. Melanson said since the plans have not changed, and the sketch plan was approved, there is nothing more the Planning Office would have to do. He added that the plans received were more than they normally get for sketch and are actually of Site Plan Caliber. Mr. Colleran asked if the applicant was interested in doing a Sketch Plan Review at this meeting. The applicant responded he would be happy to talk about the project if the Board asked. Mr. Colleran said he felt that in order to avoid unnecessary delay, why not take this opportunity? Don Russell said where the applicant did not respond within the 4-month time frame from sketch plan acceptance, it is going way beyond an acceptable scope. Chairman Spann said he felt the Board should stay within its normal process. We ask that everyone else who comes before the Board to abide by Ordinance rules and regulations, that the Board should not start creating exceptions to the process. He added, it could be argued that if there is nothing difference from the previous sketch plan and we gave input in that sketch plan review, we are wasting the Board's time to do another sketch plan and he said he did not want to create the exception.

Chairman Spann said there are two basic points to consider. First, we have a 21-day submission time frame (and he said he understood why that is in place), but it is a 21-day submission time frame. That was not satisfied. We ask everyone to satisfy that requirement. Secondly, to the extent that we are saying there is no change to this sketch. There was a sketch review and there was feedback from this Board to their sketch review and yet there are no changes, it would be wasting the Board's time to listen to the same feedback that was given before on a sketch that has already been seen by this Board.

Don Russell said "The reason I don't want to get halfway through on this is because we have an article before the Town Meeting tomorrow night and we don't know how it is going to come out. The applicant needs to know the outcome of the Town Meeting vote before he goes any further. He could give us another sketch plan on what is in place tonight and it is not going to mean a darn thing to him until we have a completed application, not a sketch plan, but a completed application before this Board for the next meeting. They could give us a sketch plan on one set of ordinances and then later on and then the Town Meeting may change the ordinance before a completed plan come in and that is when the trigger is pulled is where we have a completed Site Plan before us - that is when it is determined what ordinance it falls under."

Following discussion, motion was made by Mr. Mathieu, seconded by Mr. Russell and it was

VOTED

To not proceed with Sketch Plan Review for Gibbs Oil tonight.

(Vote was 4 in favor [Spann, Russell, Mathieu, Dunham], and 3 opposed [Colleran, Bisson and Wilson].)

5. **ADJOURN**

With no other business to address, the meeting was adjourned.

Respectfully submitted,



Patty Williams

Patty Williams, Recording Secretary