

MINUTES
TOWN OF TOPSHAM
PLANNING BOARD MEETING
OCTOBER 25, 2011, 8:00 P.M.

MEMBERS PRESENT: Donald Spann
Michael Colleran
Scott Libby
Stephen Mathieu
Jay Prindall
Bruce Van Note

MEMBERS ABSENT: Ronald Bisson

STAFF PRESENT: Planning Director Richard Roedner and Town Attorney Rob Crawford

A meeting of the Topsham, Maine Planning Board was held on Tuesday, October 25, 2011 at the Municipal Building at 100 Main Street, Topsham, Maine.

1. CALL TO ORDER AND ROLL CALL

Chairman Spann called the regular Planning Board Meeting to order at 8:00 p.m.. (The Board actually gathered at 7:00 p.m. and held a workshop to discuss the sign ordinance, with the start of the regular meeting delayed until 8:00 p.m.) The recording secretary conducted the roll call and it was noted that all members were present except Ronald Bisson who had been excused.

2. MINUTES FROM THE OCTOBER 18, 2011 MEETING

Motion was made by Mr. Mathieu, seconded by Mr. Prindall, and it was

VOTED

To approve the minutes of the October 18, 2011 meeting as written.

(The vote was 4 in favor with 2 abstentions [Mr. Libby and Mr. Van Note]).

3. PUBLIC HEARING - AN APPEAL HEARING OF AN APPROVAL OF A SITE PLAN AMENDMENT FOR BOOTLEGGERS BEVERAGE WAREHOUSE, 13 HAMILTON COURT, MAP R05, LOT 16003 ON SEPTEMBER 6, 2011. THE APPEAL HAS BEEN FILED BY HAMILTON COURT, LLC, AND AN ABUTTER TO THE PROJECT

Chairman Spann began the discussion by reading the agenda item and referencing a letter from Attorney Frank Chowdry of the firm of Jensen, Baird, Gardner, Henry, dated October 4, 2011. The letter, a Notice of Appeal of the Planning Board's decision of September 6, 2011 on an Amended Site Plan approval for Bootleggers, LLC, was included in the Board package for review by the Board.

The Town Planner presented background stating that Topsham's Site Plan Review Ordinance provides for an appeal process and Section 175-15 details the appeal process. Aggrieved parties are given 30 days to appeal back to the Planning Board and must file with the appeal a concise statement of points of appeal, referring specifically to which of the performance standards were not met by the application. The Planning Board then holds a Public Hearing with reasonable notice within 30 days of the date of appeal and decisions of the Board are appealable to Superior Court within 30 days.

On September 6, 2011, the Planning Board approved an amendment to Bootleggers Beverage Center and Notice of Appeal was received on October 5, 2011, within the 30-day time period. As there is no particular procedure laid out in the ordinance the Appeal is being treated as a site plan process with appropriate notices having been issued. Mr. Roedner noted that the discussion at this meeting should focus on those points of appeal as opposed to new issues someone may have with the project. The procedure will be to follow the rules of the quasi-judicial process.

Chairman Spann asked who was present at the meeting to initiate the appeal. Attorney Frank Chowdry came to the podium, said he represented Hamilton Court, LLC, the Appellant, and asked that the Board treat the appeal as a request for reconsideration. Board member Van Note asked Attorney Chowdry what he considered the difference was (procedurally) between an appeal and a reconsideration. Attorney Chowdry said, in his mind, in order for an appeal to necessarily be pursued, there needed to be a separate body altogether and that he didn't see any difference between a reconsideration and an appeal.

Attorney Chowdry expressed the appellant's view that providing the additional parking spaces would create a hazardous condition and said the Board's decision violated Ordinance Section 225-27,A1 (prohibiting backing onto a street), 225-27, A2 (width of the access drive) and 175-8D (parking and circulation). He told the Board that Hamilton Court experiences between 500 and 700 customers daily coming into the car wash and that the road should be considered a street. He said granting the additional 10 parking spaces creates a hazardous condition and causes a negative return of profit for the appellant. Board members noted parking spaces were 8 and not 10. Attorney Chowdry said it was unfair that Hamilton Court bears all the responsibility for maintenance of the road. He also commented that his client requested that the Board conduct a site walk, which was not done and he again requested that this be done. During discussion the Board was in unanimous agreement that a site walk was not necessary as each member was familiar with the site. Board member Mathieu noted the site walk issue was not included in the appeal and he asked why, to which there was no response.

Attorney Chowdry reiterated the language from his appeal, that the Board was swayed by lack of economic return that Bootleggers would receive from its three proposed revised plans when allowing Bootleggers to seek final approval on its original plan.

Attorney Chowdry distributed a two-page handout including Bootlegger's original site plan (by Sitelines) and a second site plan with changes requested by the Board. He reiterated that the driveway was a road and not a private shared way. Chairman Spann questioned that the testimony given did not relate to the specific and concise statement of Appeal dated October 4, 2011.

At this point in the meeting, Attorney Chowdry introduced Skip Tardiff, Manager of the Car Wash. Mr. Tardiff presented approximately 40 photographs to the Board showing traffic disruptions and wet pavement conditions at the business. Mr. Tardiff told the Board the car wash operation had to be shut down because a Pepsi Truck was blocking the end of the tunnel. He said if the exit is blocked the door at the exit of the car wash will drop onto the vehicle trying to exit and what this happens the operation has to shut down. The Board commented that they had thoroughly reviewed the photographs presented at the prior meeting, understood the problems and that they felt the creating of the 8 parking spaces for the employees of Bootleggers alleviated the problem.

Attorney Chowdry told the Board that this client was requesting that the Board conduct an actual site walk during peak hours of operation of the car wash, that a peer review be conducted along with a traffic study. He said the evidence from this request would demonstrate that the approval must be rescinded.

With no further comments from the appellant, the Public Hearing was declared open.

Kurt Neufeld from Sitelines, representing Bootleggers, referenced the September 7, 2011 letter from the Planning Director stating the following Findings of Facts determined at the Planning Boards September 6, 2011 meeting:

- "This is a shared access easement, not a public or private road based on our codes;
- This is not a "major interior travel way" as used in our codes;
- The line of site from the parking area is unrestricted as far as Monument Place Intersection, a distance of approximately 120' minimum;
- There is an existing ad hoc parking problem during certain periods of time, and this proposal is aimed to alleviate a portion of this parking problem;
- Compared to the Monument Place end of the driveway, this end has a relatively low volume of traffic;
- Based on the 10-parking space design, it is not necessary for vehicles to back into the travel way to exit a parking space;
- The proposed parking area provides safety benefits by reducing the frequency of cars parking on the neighbors property, and will remove the existing landscaped area that is often used by patrons for parking;
- The minimal changes to the landscaping are acceptable, and testimony in May, 2011 from the abutters in the adjacent Condominiums indicated that the buffering is adequate;
- In an effort to minimize risk to the public utilizing the site(s), the applicant has agreed to eliminate the two parking spaces closest to Monument Place, and to reconfigure the island separating the proposed parking area from the existing parking in front of the store;
- The standards in Chapter 175-8, C and D, relating to adequate parking, safe pedestrian and vehicular circulation and access have been adequately addressed by the plan, as amended by the applicant at the meeting.

Mr. Neufeld told the Board the approved design is safe, that the parking spaces were reduced to 8 and are marked for employee parking only, which provides additional parking for patrons.

Mr. Neufeld said the applicant (Mr. Rossetti) was asked at the September 6, 2011 meeting if he would be willing to consider amending the Maintenance Agreement on the drive and Mr. Rossetti said he was in agreement to increase his share of the maintenance on the drive. As far as asking for a site walk, Mr. Neufeld responded that a site walk is not a requirement of the ordinance and Board members clearly stated that they were familiar with the site. He added that all aspects of Topsham's Ordinance were considered and that the Board made the right decision.

Attorney Ed Catlin - Mr. Catlin said he has attended several appeals and the procedure usually is for the appellant to challenge the Findings of Facts, which was not done in this case.

Attorney Chowdry - Attorney Chowdry said that one provision of the Zoning Ordinance which has not been discussed is the definition of "street." He made reference to Section 225-6 and said he believes the drive to be a street according to the ordinance. He added that it is a street if it is on a recorded plan registered in the County Registry of Deeds.

Kurt Neufeld responded and said the shared driveway is not a street and therefore, ordinance section 225-6 does not apply. Mr. Neufeld referred to the approved subdivision plan which only shows a shared lot line, and the site plan for the car Wash and Bootleggers, both showing a 20-foot wide shared easement area. He added that the Subdivision Plan was the only one recorded.

With all comments from members of the public having been heard, the Public Hearing was declared closed and the Board entered into discussion.

Mr. Mathieu commented on wording from the last paragraph of page 2 of the Appeal, "In response, the Applicant contended that each of the 3 competing proposals would result in a reduction of the desired number of parking spaces. This impact on the Applicant's expected economic return apparently swayed the Board. The Board approved the original proposal without any consideration of its previous concerns that (a) motor vehicles would unavoidable reverse into oncoming traffic, (b) existing street openings in excess of those permitted by the Ordinance made a bad situation even worse upon the addition of 10 additional parking spaces, and (c) the already intensive use of Hamilton Court will be made inevitably worse." Mr. Mathieu said what was said was not relevant, truthful and appropriate information and was not an accurate representation of the facts. Mr. Mathieu said he reviewed the minutes from the September 6, 2011 meeting, and it is very clear what took place at the meeting. Mr. Mathieu said he felt it was very disingenuous that no where in the appeal did it mention employee parking, that the information presented represented the Board in a bad way and not correctly as to what process the Board took.

Mr. Colleran said he disagreed with the Appellant's statement that the Board "recognized that interior traffic circulation created hazardous circumstances at its meeting of May 17, 2011." The Board thoroughly reviewed the application at the May 17, 2011 meeting and made no decision at that time except to request the applicant to go back to the drawing board and look at various alternatives and to come back to the Board with a new plan. He said the Board supports the Findings of Facts stated in a letter dated September 7, 2011 to Curt Neufeld of Sitelines. Regarding the request for a site walk - Mr. Colleran said Board members are familiar with both businesses and did not see the need for a site

walk. The appellant commented on the number of vehicles coming to the car wash and expressed concern about safety issues. The adding of 8 additional parking spaces should not affect changes in traffic but will allow employees to park out of the way and provide more parking for Bootleggers customers. The Board was in agreement that the driveway is not a street.

Mr. Van Note reiterated everything Mr. Colleran said and suggested the Finding of Facts from the September 6, 2001 meeting be included in any motion made this evening as they are still valid. He added that there is no legal requirement for a site walk or traffic study as requested by the appellant.

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

VOTED

That the appeal and/or reconsideration be denied and that the Board reconfirms the Finding of Facts in letter of September 7, 2011 including the checklist reviewed at the meeting, including:

- That the Appellant claims that the Board "recognized that interior traffic circulation created hazardous circumstances at its meeting of May 17, 2011." The Board disagreed with this statement as there was no assertion at that meeting that the traffic circulation "created hazardous circumstances." The Board asked if alternate layouts could be considered.
- The Notice of Appeal states that the Planning Board "failed to adequately consider the criteria as set forth in Section 175-8(D)". The Board disagrees and supports the Findings of Fact in letter to Curt Neufeld of Sitelines dated September 7, 2011.
- A site walk is not necessary because Board members are familiar with the site.
- There is no legal requirement for a site walk or traffic study.
- The Board does not agree with the Appellant that providing the 8 parking spaces will increase traffic, but actually will alleviate congestion by providing more parking for customers

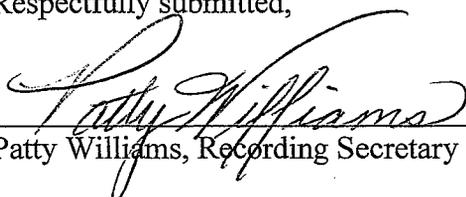
6. **ADJOURN**

With no further business to discuss, motion was made, seconded, and it was unanimously

VOTED

To adjourn the meeting at 9:40 p.m.

Respectfully submitted,


Patty Williams, Recording Secretary