

Minutes of Meeting
Planning Board Meeting – January 7, 2010
Southwest Harbor Town Office
6:00 p.m.

AGENDA

I. Roll Call/Call to Order: The meeting was called to order at 6:00 p.m. Present: Michael Magnani, Eric Davis, Lee Worcester, Gordon Wissinger, Bob Bosserman, Ryan Donahue (6:05). Code Officer: Donald Lagrange was also present.

II. Minutes of Meeting: December 17, 2009: It was Moved (Magnani) and Seconded (Rawls) to approve the minutes of December 17, 2009 as amended to add that Dutra will put a yield sign from the parking lot egress onto Meadow Lane. Approved as amended. 4 – 0 – 2 (abstain: Wissinger and Davis)

III. Visitors to be heard not on the Agenda - none

IV. Continuation: reconsideration Granholm/Dutra: Attorney Bill Ferm presented an engineering report from Hedefine Engineering & Design on behalf of Granholm. The Board took time to read the report (copy on file). Chair asked Granholm if she had any further comments. Ferm encouraged the Board to look at the last page, the drawing, and asked the Board to explore that alternative option, which addresses a number of points. Ferm referenced the existing non-conforming use at the front of the property, which allows vehicles to back out into traffic on State Route 102 and the proposed plan trades that non-conformance for the non-conforming use of Meadow Lane and commercial traffic. He stated that is not a fair trade off. Gillis said he did not know a working drawing needs an engineering stamp, in reference to comments in the Hedefine Engineering letter, and stated the applicant consulted with DOT, engineers, Code officers and Garden experts before presenting their plan. Mr. Gillis asked the Board to make a decision on that point and that point only. He said the abutter has misrepresented herself, as she has a home occupation which has similar qualities, having to bring in and take out materials, and the applicant would argue that Meadow Lane has been used commercially both by Dutra and Granholm. The Board

took time to read the document presented by Mr. Gillis, representing Mr. Dutra. (copy on file). Chair asked the Board for questions or comments. Bosserman asked that the Code Officer weigh in on these submissions. The Code Officer stated he has not had sufficient time to review either document, as one arrived at the end of the day, and the other was presented at the meeting. It was Moved Bosserman and Seconded Donahue, to continue the reconsideration of the Dutra application to the January 21st meeting.

Discussion: Rawls reviewed the drawing asking who has the right of way, and said there should be a caution sign for those who have the right of way, and a yield sign for those coming out of the parking area onto Meadow Lane. Wissinger said any additional information should be brought to the Board 7 days in advance. Vote 7 – 0 in favor of continuing.

- V. Application: Heath Higgins, dba The Moorings Restaurant, 131 Shore Road, Map 017, Lot 086, Zone: Maritime Activity; Purpose: Accessory Dwelling unit and Boat Sales, Charter & Rental.

Mr. Higgins said he would like to put a small apartment over the restaurant in order to have 24 hour residency on premises, for safety reasons. He would also like to have a small rental station in the restaurant for small boat rentals. Parking would be off site at the permitted 14 Mansell Lane site. The Board reviewed the memo from the Code Enforcement officer. It was his recommendation to move the application as complete. Jean Marshall, as representative for Watson's, asked if there was information from DEP, the Harbor Committee and Army Corps. She said these items should be in the packet, and the prior permits only dealt with boats coming to the dock. CEO said these agencies were all involved in the development of the pier. The LUO does not have any specifications relating to this. The pier traffic is the same as traffic on Main Street in a commercial district, and there is no requirement in the Ordinance to limit that traffic. The parking is the only performance standard that the CEO could locate, for maritime activity zone, and the pier has already been approved with permits from all agencies in place. This is a maritime activity and the regulations are very limited. Marshall does not agree and referred to the Harbor Ordinance, and said that the pattern has always been that any addition to the Harbor has always gone before the Harbor Committee. The applicant is asking to put two passenger boats and rental boats on the pier, and that should be reviewed by the Harbor Committee of the Town. Marshall read a letter from Sean Mahaney (army corps) indicating that the applicant may need to update his permits, and she suggested review by the Harbor Committee. The Code Officer stated: there

is no limitation to the size of the craft or the amount of crafts that can come in to the pier. Donahue asked what Marshall saw as the differences; she stated her concern was the 40 passenger and 8 passenger boats coming and going out on tours. Donahue asked what activities are not allowed under the present permit, and it appears selling tickets is the only thing not allowed. Marshall said the Army Corps would like to look at the activity again, and she is asking the Planning Board to have the applicant have them review the plan. Bosserman asked if the applicant has seen the letter. Higgins said he has not seen the letter. He would like the Planning Board to make their decision and he would get the appropriate permits as required by the Planning Board. Rawls asked if the Harbor Committee would have to review the credentials of the applicant. Applicant can provide documents. Rawls asked if Army Corps would be checking the draft of vessels, or time allowed for tie up. Higgins said the Army Corps would not review that. Bosserman said the Board could proceed and make a decision with conditions attached. Wissinger asked about the permit check offs on the application and asked for clarifications on the check-off items. CEO said flood hazard permit has been issued for the pier. Wissinger has asked why they are not attached. CEO asked the Board to review page 39 of the Ordinance. Marshall said it is a new use, and not an accessory use. The Board returned to the application for completeness. CEO said when allowing a new business on the pier with parking off site, it is important to make sure handicapped access through the restaurant is permitted. The prior permit for the pier provided for handicapped access. Marshall asked if the Fire Marshall should review the dwelling unit proposed. CEO will require that. It was Moved Donahue and seconded Wissinger to consider the application of Heath Higgins, dba, The Moorings restaurant as complete subject to any additional permits required. Vote in favor: 7 - 0

Compliance Section: Wissinger asked the following: structure 1, 5200 s.f. listed and it appears to be 5700 s.f. Higgins said the most recent plan is 6300 s.f. Wissinger asked that be straightened out with CEO. Wissinger said the parking spaces should be indicated on the application, and the application says 0. CEO submitted the plans for Mansell Lane, and Worcester and Wissinger said there needed to be some indication that 18 of the Mansell Lane parking be listed somehow. The parking should be listed as 62 and not 41. Notes to CEO specify that 18 spots on Mansell Lane will be used for this purpose. Wissinger pointed out that there are 19 spots, with 2 residential. Wissinger asked if, in the permitting of the parking spots, that permit has met all the performance standards? CEO said that as a condition

of approval, all buffering shall be completed by June 1, 2010. The CEO's memo discusses two issues of compliance, including accessory use to a commercial activity, and under the maritime zoning this is allowed.

Structure sizes must be verified

Performance Standards: Wissinger asked anticipated hours of operation for the boating portion of the application. Bosserman said the PB determines the level of impact of an activity. It was Moved

Wissinger and Seconded Davis that the following performance standards are not applicable to this application:

a,b,c,d,f,g,j,k,m,n,o,p,q,r,s,t,u Vote: 7 – 0 in favor.

Exterior Lighting: Conditions of the LUO, page 26 should be adhered to per memo from the CEO

Flood Hazard Permit: Condition of the LUO, page 27 should be adhered to per memo from the CEO

Handicap Access: not required to provide handicap access to the accessory residential dwelling unit and does not need to be a condition. CEO said State Fire Marshall review will take care of this item. Marshall said the handicapped access ramp on the land of the Inn to the restaurant has been a grandfathered use; in this application this is a new use and the abutter is asking the use not be allowed other than by the restaurant. The Board disagreed.

Parking and Loading: Calculations require 18 spaces to be located off site at 14 Mansell Lane. As a condition of this parking, previously approved by the Planning Board action of April 12, 2006, landscape buffering provisions required for that approval must be completed by June 1, 2010.

CEO recommended conditions for inclusion: (reference items 1, 2, 3, through 12, omitting 5 & 13 (below) to be listed as notes, of CEO memo of 12/21/09.)

Marshall suggested a limitation on the accessory dwelling unit in the event the restaurant ceased to exist. CEO agreed that item 13 be added saying that discontinuance of the restaurant would require

discontinuance of the accessory use, unless future ordinance changes allow accessory use.

Marshall asked if there is a change in the roof-line for the accessory dwelling. There is no change. Bosserman asked if the buffering was specific – CEO said it was.

It was Moved Wissinger and Seconded Rawls that the application of Heath Higgins, dba, the Moorings Restaurant, is in compliance with the Southwest Harbor Land Use Ordinance subject to conditions delineated by the CEO as follows: 1. The property may be developed and used only in accordance with the plans, documents, materials submitted, and representations of the applicant, made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Southwest Harbor Planning Board. 2. The applicant authorizes the inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance. 3. Parking for this permit is to be located at 14 Mansell Lane conditional on Planning Board approval dated April 12, 2007. 4. Offsite parking provided at 14 Mansell Lane according to Planning Board approval of 4/12/07 will have 18 spaces for proposed accessory dwelling unit and boat sales, charter and rental. 5. Buffering according to the terms of approval for parking area on Mansell Lane to be completed by June 1, 2010. 6. Use of pier/docks for a boatel is not allowed; no overnight occupancy or mooring of any vessel not owned by applicant. No marina activities allowed. 7. Use of the Harbor to be in accordance with the Coastal Waters and Harbor Ordinance for the Town of Southwest Harbor. 8. There will be no dimensional expansion of pier, floats or ramps without Planning Board review. 9. Applicable State and Federal permits, including but not limited to Army Corp, DEP, State Fire Marshall Office, Submerged Lands Lease and Conservation permits for proposed use are submitted to CEO prior to use of pier, and accessory dwelling. 10. Due to limited access area on sidelines, except as provided on easements, rights of way, or other rights of passage, there will be no exterior public access to the water front from Shore Road. 11. Signs will be placed on the Easterly property line limiting access to abutting property. And noted: Discontinuance of

14 Mansell Lane will require suitable replacement of parking and additional Planning Board Review. Approval and associated permits for dwelling unit and boat rental, sales and charter service will be revoked if parking is not available. On site parking is restricted only to commercial business activity. Also noted: Discontinuance of the restaurant would require discontinuance of the accessory use, unless future ordinance changes allow accessory use. Discussion: CEO said prescribed rights exist in answer to Marshall's question to the Board as to whether they are allowing a new use to travel over the Inn's land. CEO said commercial activity exists at the site now. Worcester commented it is no different than a sweater store deciding to sell shoes as well. Vote 7 – 0 application approved.

VI. Ordinance Workshop (as time permits): Worcester said the Planning Board should meet on the 14 of January at 6:30 p.m. to work exclusively on Ordinance changes.

VII. Other Business: none

VIII. Adjournment: It was Moved Wissinger and Seconded Donahue to adjourn the meeting at 8:57 p.m. Vote: unanimous