

Southwest Harbor Planning Board
Meeting: May 5, 2011
6:00 – 8:00 p.m. Southwest Harbor Town Office

MINUTES OF MEETING

- I. Roll Call/call to order: the meeting was called to order at 6:00 pm: attending: Eric Davis, Ryan Donahue, Mike Magnani, Mike Mansolilli, Chris Rawls, Gordon Wissinger, Lee Worcester.
Visitors: Heath Higgins, Jean Marshall, Leslie Watson, Donald Lagrange-Code Enforcement, Keith Higgins
Chairman said he would like to add two things to the agenda and they were a discussion of the term “availability” and the election of officers.
- II. Minutes, Previous meeting if available
- III. Visitors not on the Agenda: none
- IV. Discuss Ballot Question for June 14 special meeting
Amend Section XII (appendix) to describe zones. He read the description of Zone B that was proposed to be changed, along with Residential Shoreland Zone will also have a change in description. Donahue asked if this material was e-mailed to Board members. CEO had e-mailed the information to each member today. In Zone B, the title remains the same, with the description changing, being “all areas including Map four lots 51, 54 and 68 (as approved on Town Ballot May 3, 1999 that being the Claremont which has never been depicted on the Map) and not within Zone A, the Maritime Activity Zone, the Commercial Fisheries/Maritime Activity Zone, the Residential Shoreland Zone, the Harbor Zone, the Resource Protection Zone and Acadia Natinal Par (ANP). Residential Shoreland Zone would read: “all areas along the main shore (except Map 4 lots 51, 54 and 68 approved by Town Ballot May 3, 1999 that being the Claremont), Greenings Island and Long Pond within 250’ of the normal high water which are not in the Maritime Acitivity Zone, Commercial Fisheries/Maritime Activity Zone, Harbor Zone, Zone A, Zone B, Acadia National Park (ANP) and the Resource Protection Zone.. The Resource Protection Zone remains the same. Wissinger said, in reference to the Claremont property that shoreland restrictions should apply, as previously stated when that property was in Zone C. Zone C should have been updated when the Residential Shoreland Zone was created. This now affects Zone B.

This is ballot question #4 in June. Wissinger asked if there were any shoreland restrictions in the May 3rd ballot question. The ballot question was reviewed. Wissinger confirmed that the Resource Protection area did not exist in 1999, and was established 2 years ago. This updates the ordinance. Wissinger pointed out that there is a description for Zone C still remains though Zone C was voted to be eliminated on May 3, 2011. The description of Zone C exists in Section XII without any standards. The description of Zone B as it exists today, does not include the description of the previous Zone C, and needs to be rectified.

- V. Heath Higgins, dba the Moorings Restaurant for re-construction of non-conforming structure: The Board began the review of the permit: Board questioned why accessory dwelling was added in proposed use. Wissinger asked what process is being asked for here. Jean Marshall spoke saying she had the same questions about issuing two permits in one application, and why couldn't it be done in the same way it had always been done. Higgins wants to avoid a separate permit so as not to lose the time reference to "significant start". Wissinger recommended striking the word "separate" under 'describe project' and simply put "permits and approval requested." Marshall asked if the Board had already approved the accessory use, and Chairman said they had. Chairman said there will be no discussion on accessory dwelling with pier (charter use) during this application. Marshall said there is a restriction on the piece of land that the building must be no more than 18' from the ground, and even if the building floor must become higher because of a flood hazard requirement, the total height of the building may not be more. Higgins said there will be no height change. CES said they will be in compliance with their permit by rule. Dumpster needs to be located on the site plan. Prior site plan has been approved with all existing lighting and dumpster location should be appended to this application. Board will reference prior plan as approved when they motion acceptance of this complete application. Marshall (Ian) asked what would happen if the floor level were required by State Floodplain management to be higher? CEO said the application has been submitted and in Part 1 the applicant has approval to begin construction. The new floor will have to be 1' above the floodplain. Higgins said Benson Surveyors certified after the fire, that the floor was above the floodplain and could even be lowered. The ramp and walkway will be entirely on Moorings Restaurant property – this is the only change. Wissinger: is the deck on the plan the concrete patio? Higgins said it is concrete and deck. Concrete patio has been there, and that is no change – it did not burn in the fire, but it will be left as is. The wood deck that was burned will be replaced as it was. Wissinger said be explicit in what is being approved. The plan from last year's application will be made part of this application. The site plan from 2007, which indicates lighting and dumpster location will be accepted and appended as part of the application. Applicant agrees that these drawings, 2007 and those included in the application are accurate and are part of the application.

The timing of the actual construction is of concern to the Moorings Inn next door and that owner asked if she has any protection against that construction. Board said it will be addressed when they review performance standards. It was Moved Wissinger and Seconded Rawls to accept the application as complete with the following conditions: that the structure information is limited to structures 2 and 3, that the existing parking includes the Mansell Lane parking, approved previously; that erosion control measures be installed per the Permit by Rule and the site plan is amended by the plan from a previous application dated 3-2-07 and revised 4-05-07 and that the location of the Moorings Inn well and the Moorings Restaurant dumpster must be added to that plan. The Planning Board also accepts the modification to the entrance ramp-walkway as shown in the current application. Vote: 7 – 0.

Wissinger suggested continuing this application next week. The Board decided to continue the application tonight. The meeting broke at 7:50 a.m. and resumed at 8:00 pm.

Performance Standards for the Moorings Restaurant were reviewed as follows: It was Moved Davis and Seconded Magnani that items A, B, C, J, M, O, R, S, T, and U are not applicable. Vote 7 -0

Review of remaining Performance Standards:

Conditions suggested by CEO memo include: a permit by rule be received, the lighting comply with the conditions of Section VI subsection e of the SWH LUO, that a permit be obtained from the fire marshal for the structure above the foundation, that the elevation of the lowest floor be one foot above the flood plain with appropriate certification by a licensed surveyor or engineer prior to continuing with construction of the structure, that construction be limited to 7:00 a.m. – 5:00 p.m. Monday – Thursday, and 7:00 a.m. – 4:00 p.m. on Friday. There will be no construction activity from 4:00 p.m. Friday till 7:00 a.m. Monday morning. Regarding this issue, Leslie Watson, the Moorings Inn, said the hours are more critical rather than the days of construction. Magnani said pushing it back to 8:00 a.m. is not unreasonable, but 9:00 am is. Donahue said if Saturday and Sunday work is allowable then 8 – 6 including weekends seems reasonable from May 15 – Oct 30th. Noise restrictions should include engine noises, heavy equipment and other construction noises not allowed before 8am or after 6pm. Outdoor construction noise should be limited 8 – 6 for 7 days a week – May 15 to Oct 30. CEO said that box trailers etc. should be on the site plan and located so as not to obstruct the view of the Hotel. Board said the condition that the use of the Mansell parking area for charter boat use, will be allowed only if the conditions of that parking area be met. Conditions of all prior permits still apply. Mansell parking must be in compliance with conditions of its permit before the restaurant may be re-opened. Include other conditions for approval and allowances 1, 4, 5 from the CEO memo. Fire Chief must send letter of approval.

It was Moved Wissinger and Seconded Donahue that the application of Heath Higgins, dba, the Moorings Restaurant is approved with the condition that the performance standards a,b,c,j,m,o,r,s,t,u are deemed non-applicable and the Board approves the permit for reconstruction of the foundation and structure with the following observations and conditions: Perform standards are deemed non applicable. That the applicant agrees to control erosion and sedimentation per the permit by rule application, that any lighting installed is per the plan submitted and be shielded and meet the requirements of lighting in Section VI, Subsection e of the SWH LUO; fill will be governed by the permit from DEP and the applicant will get a permit from State Fire Marshal prior to structure above the foundation construction and will certify that lowest elevation is one foot above the flood plain; further that all outdoor construction noise is limited to 8:00 am - 6:00 pm, 7 days a week between May 15th to October 30th, this being relegated to noise from heavy equipment, saws etc.; that all prior permits still apply and there be no occupancy of restaurant until the Mansell Lane parking area permit conditions have been met; that the permit by rule approval is needed for this permit to begin the foundation and the allowances from the CEO Memo #'s 1, 4 and 5 be included and other condition 1 – 5 be

include and noted that grease trap for the plumbing permit is needed. Any amendments: none. The Board noted that the CEO is able to issue a foundation permit prior to issuing a permit for the structure. Vote: 7 – 0

The Board went into Workshop Session to work on the Ordinance change relating to Zone B, for the June 14, 2011 vote, and the Public Hearing by the Planning Board on May 12, 2011. The continuation of the review Section XII, Definitions, the description for the various zones, was circulated to the Board. Donahue and Wissinger felt this ordinance change needed to get to the voters to complete the work approved by the vote on May 3, 2011. Other Board Members agreed. CEO said the only change that needs to be made for the Claremont is that there needs to be an exception to the 40,000 s.f. reference within 250' of the shoreline. Wissinger warned against violating State Shoreland zoning law. Board agreed that the wording for the warrant that addresses these issues should be simple, and done as soon as possible. Worcester said the simple way may be to leave the Claremont out of the equation. To include the Claremont lots, the CEO said the only thing missing now from Zone B is an exception that says 'anything within 250' of the high water mark, shall be 40,000 s.f.' That should be the exception in Zone B. Wissinger said that would be OK. Chairman said he believes the Planning Board has the authority to make that restriction, based on the 1999 vote.

CEO said the Planning Board made changes to Zone B & C without the exception of the Claremont. Worcester said the addition of the exception should be made to the Ordinance, as well as changes in the definitions. CEO felt the Claremont should be pulled from this, get the definitions for Zones B & C done, and bring it up at the next meeting. He feels the State will condition that, regardless of what the Planning Board does. Wissinger said next May the Board should address the definition of "availability", and put in the exception in order to get this done soon and also refine the zone. It was Moved Rawls and Seconded Wissinger to accept the description of Zone B to read all areas not within the Residential Shoreland Zone, the Maritime Activity Zone, Commercial Fisheries/Maritime Activity, Harbor Zone, Zone A, Resource Protection Zone or Acadia National Park (ANP). Discussion: CEO summarized: Strike out Zone B, New Description of Zone B, revised description of Residential Shoreland Zone. Vote: 7 – 0. Wissinger said prior to the new map being made, the CEO should be sure all zones are validated.

Chairman said there were two other items to discuss prior to the end of the meeting. Discussion of the use of "availability" with regard of how lots are used by utilities – change that to lots serviced by utility. The Board also needs to work on coming up with needed changes to make corrections in the Ordinance with respect to the Claremont. Wissinger asked if an agenda indicates a workshop, could we include the items expected to be discussed during the workshop and this will allow the public to decide whether they wish to attend.

Wissinger and Worcester are up for renewal of term this June. They are requesting renewal of term from the Board of Selectmen. Worcester said the Board needs to elect officers at this meeting:

It was Moved (Rawls) and Seconded (Davis) that the officers remain as: Chairman, Worcester, Vice-Chairman, Rawls, Secretary, Donahue. Vote: 6 – 1 (Donahue)

VI. Adjournment: The meeting was adjourned at approximately 10pm.