

Town of Southwest Harbor
Planning Board
August 4, 2011
6:00 p.m. @ Southwest Harbor Town Office

MINUTES

I. Call to Order/Roll Call: The meeting was called to order at 6:00 p.m. Present: Lee Worcester, Mike Magnani, Mike Mansolilli, Ryan Donahue, absent: Eric Davis, Chris Rawls

II. Visitors to be heard not on the agenda: Lydia Goetze, from the Comprehensive Plan Implementation Committee said an item, not only on the most recent comprehensive plan, but on the previous plan was for the Planning Board (PB) to consider re-zoning the area from Manset corner to Manset Town Dock to Residential Shoreland from Harbor Zone. It is unlikely Harbor zone activities would occur in that area since it is all residential at present. Secondly, the committee would like the PB to consider that when the survey was done two years ago, there was great interest in workforce housing. The Implementation Committee would like to hold a joint meeting on the 15th of September with Chris Spruce who has expertise with workforce housing and with affordable housing – perhaps publicity would encourage attendance. This would be an information session and the reality is, we are unlikely to get more affordable housing subsidized by State and federal money in the near future; however, the housing trust would work with us. Additionally, be aware that the comp plan implementation committee (CPIC) would like to meet with the PB in early fall to look at what ideally would have happened in the first 6 months and the 1st year of the new comp plan, as well as ongoing items. CPIC would come with a priority list of items. Worcester supported the combined meeting, as did Donahue. Walsh suggested the Combined Affordable Housing meeting be held at the Fire Station Meeting Room, and will contact Chief Chisholm to see if the space is available. She will work with Goetze for publicity.

III. Acceptance of Minutes of June 2, 2011: It was Moved (Worcester) and Seconded (Davis) to accept the minutes of June 2, 2011 as presented. Vote: 5 - 0

Eric Davis arrived at 6:16 p.m.
Chris Rawls arrived at 6:22 p.m.

IV. Election of Officers: It was Moved (Magnani) and seconded (Worcester) to elect Ryan Donahue as Chairman of the Planning Board. Vote: 6 - 0

It was Moved (Worcester) and Seconded (Davis) to elect Chris Rawls as Vice Chairman of the Planning Board. Vote: 6 - 0.

It was Moved (Donahue) and Seconded (Davis) to elect Mike Magnani as Secretary of the Planning Board. Vote: 6 - 0

V. Finding of Facts: Laura Shelby, 237 Seawall Road, Map 017-Lot 050:
Discussion: none. It was Moved (Davis) and Seconded (Rawls) to accept the Finding of Facts for Laura Shelby, 237 Seawall Road, Map 017-Lt 050 as presented. Vote: 6 - 0

VI. Finding of Facts: Shoreland Properties, 77 Seawall Road, Map 001-Lot -77: It was Moved (Davis) and Seconded (Mansolilli) to accept the Finding of Facts for Shoreland Properties, 77 Seawall Road, Map 001, Lot 77, as presented. Vote: 5 – 0 – 1 (Worcester)

VII. Application: Feliciano’s LLC, dba Village Washtub, 297 Main Street Map 6 Lot 84, Zone A: convert 14 x 32 foot area into a 39 seat lounge. Seating was changed from 32 to 39. Board noticed. Section VIII (C)(4) (c): Not applicable, item 3, wells, Item 4 abutting water bodies, Item 5, Areas to be cleared; Item 6, existing or proposed structures; Item 11, rights of way and easements; Item 12, existing grades and proposed changes; Item 13, soil erosion & sedimentation control plan; Item 14, freshwater wetlands, Item 15, proposed structures, elevation, plans;

General Regulations and Standards: property is in compliance with applicable ordinances and meets all requirements of Section II of the LUO, per CEO; Opinion by Police department is included – and not applicable is Fire, Highway Department, Conservation or Harbor Committee. Worcester pointed out that if abutter removes their fence, applicant must replace the fence and that should be part of the condition for approval. CEO suggested review of that under performance standards. Donahue asked if there were any comments from Police concerning entrance and exit from the facility. CEO said the applicant may have to get an expansion of use permit from the DOT and CEO will make that a condition of the application. No requirement for notification of the fire department. It was Moved (Davis) and Seconded (Mansolilli) that the application be found complete. Vote: 6 - 0

Non applicable performance standards include, B- clearing of vegetation, C - Driveway and driveway opening (This item suggested by the CEO to be moved to applicable performance standards) Duly noted and removed from the non-applicable list of items; D – erosion/sedimentation controls; F, fill and excavation: note the patio area will not disturb more than 100 cu. yards and this item is not applicable, H – Floor Hazard Permit; I, Handicap access; J- Heavy commercial or industrial pollutants; M- Road standards; N – sewerage disposal standards; O-sign regulations; P - soil standards; storm water runoff standards; R- stream standards; S – vibration standards; T – water quality standards; U – water supply standards. It was Moved (Davis) and Seconded (Worcester) that items B, D, F, H, I, J, M, N, O, P, R, S, T and U are not applicable to the application and Item C be moved to the applicable category. Vote: 6 – 0.

Applicable performance standards:

A. Landscaping/buffering: recommended that the level of activity be medium and the buffering is adequate for this level of activity. Add the condition that should the abutter move the existing fence, the applicant must put a fence of equal length and height up to replace the removed fence. Worcester is concerned that all the buffering is off property and is beyond the control of the applicant. The south side buffering is on adjacent property. Davis suggested adding a condition specifying that should an abutting property owner remove the existing buffering, the applicant must provide adequate buffering for the use, by way of fencing. Donahue asked if Rindler wished to speak to the buffering issue.

C. Driveway and Driveway opening: CEO said with the increase of spaces and use on the property, there needs to be permission from DOT. There is adequate room to pull in, turn around and pull back out onto the street. CEO suggests the State DOT be notified of the additional use, and asked if they need a permit for that use from DOT. Donahue asked about the arrow at the parking – Applicant put the arrow up to let people know there was additional parking in the rear. The applicant must contact DOT to notify them of their additional use.

E. Exterior Lighting: three proposed locations that the applicant will put in shielded lighting in accordance with the SWH LUO. These are existing lights that shut off at closing time – the existing lights will be shielded. The front light is a dusk to dawn light which may be put on a timer and will be shielded. Hours of operation are 6am – midnight in summer, and 7am – 10pm in winter. Musson pointed out that Feliciano is very responsive with the lights. He asked for information on the overall project and where the lounge is located. Applicant pointed out the area to be used. Rawls asked if there were any complaints concerning the lighting in the large picture window facing the street. There have been no complaints. Henry asked about hours of operation for the lounge, and applicant said probably from 12 noon to 12 midnight while the washtub is open; winter hours for the lounge would probably coincide with the washtub hours, and may depend on the sports games on television. It would vary with the traffic. Chairman asked the applicant to use their best judgment and respect the rights of all in the area, and commented that it sounded as though the applicant has done that. Davis commented that the applicant is in Zone A and should be entitled to the rights of the zone. CEO suggested that exterior lights as noted on the plan will be shielded. Patio will be screened and lights will be dim as well as shielded.

G. Fire Protection: confirmation required from state fire marshal office prior to issuance of a use permit.

K. Noise: CEO recommended to limit the hours of operation from noon to nine pm. Applicant said there is no music. Magnani said the CEO has the ability to monitor the noise issues. CEO said the LUO is purely subjective, and there is no teeth in that, however, the police can also be notified and they should be the driving force. Musson, abutter, said if the property is sold to someone else, having a condition of approval for no live music, would be useful. Worcester pointed out that the Town has an amusement permit ordinance which would be needed and would be dealt with by the Board of Selectmen. CEO said the overall approval would be based on the representation that the applicant has stated he will have no live music or karaoke. Applicant said if there were live entertainment in

the future, there would be air conditioning that would require windows be closed, thus reducing outside noise. Worcester suggested a note that it is the responsibility of the applicant to deal with the noise problems he may create. Davis objected to limiting the time of operation until 9pm when, if the applicant is responsible, he should be allowed to be open until 12 midnight. Concern from Kate Henry was expressed over being able to control customers once outside the lounge. Donahue said that would be a police matter, and we would not like that to be an issue. Worcester said the applicant suggested midnight and he would agree to that as long as there is a note that the applicant is responsible for any objectionable noise emanating from his building. Musson said the patio area would be of more concern, and not the inside operation. Magnani said he feels it should be left up to the owner for the hours of operation, as this property is in Zone A. Worcester said he is more concerned that the applicant be held responsible for the noise outside his establishment, and suggested saying: the owner agrees to control any and all objectionable noises emitting from the building or patio as determined by the CEO.

L. Parking/Loading standards: The applicant has sufficient spaces for this use.

It was Moved Worcester and Seconded Davis that the Performance Standards with the exception of A, C, E, G, & L, are not applicable for the stated reasons, and that Performance Standards A, C, E, G, and L are accepted as conditions of the application; that the applicant will make application to Maine DOT to ensure approval of items C, Driveway and Driveway Openings, maintain a solid fence around the patio area, would be required to replace the fence on the south property line with one of equal height and length, should the abutting property owner remove same, would be required to buffer in accordance with the use, should other abutting property owners remove the exiting buffering which is located on their property, would be responsible for an agreement to control any and all objectionable noise emitting from the property or patio, would screen all lighting, and would not be limited by the hours of operation. Vote: 6 – 0.

Compliance Review: this application conforms to the LUO Section II, General Regulations and Standards, Section V, Standards for Zone, and was recommended by the CEO that the application be found in compliance. It was Moved Davis and Seconded Magnani, that the application of Joseph Feliciano, 297 Main Street, be found to be in compliance with the SWH LUO and approved with the conditions 1 – 4 noted in the memorandum from the CEO dated July 25, 2011, and stated as follows: 1. The property may be developed and used only in accordance with the plans, documents and materials submitted with the permit application. 2. This approval is based on information provided by the applicant/owner regarding the ownership of property and boundary location. The applicant has the burden of ensuring that he/she has a legal right to use the property and that he/she is measuring required setbacks from the legal boundary lines of the lot. The approval in no way relieves the applicant of this burden, nor does it constitute a resolution in favor of the applicant on any issues regarding the property boundaries, ownership, or similar title issues. The applicant/owner would be well

advised to resolve any such title problems before expending money in reliance on the approval of this permit. 3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purpose of permit compliance. 4. This permit does not relieve the applicant's responsibility of other applicable State and Federal permit requirements. Vote: 6 – 0.

VIII. Land Use Ordinance Workshop (if time permits):

IX. Other Business: Meeting schedule: The next meeting will be September 1, 2011 at 6:00 pm. CEO asked the Board to look over a memo suggesting a fishing pier for the public.

X. Adjournment: It was Moved (Worcester) and Seconded (Magnani) to adjourn the meeting at 8:00 p.m. Vote: 6 - 0