

Minutes  
Southwest Harbor Planning Board  
Regular Meeting  
March 5, 2015

I. Roll Call/Call to Order

Chairman Ryan Donahue opened the meeting at 6:05 PM. Other Planning Board members included Eric Davis, Mike Magnani, Chad Terry, Chris Rawls, Mike Mansolilli and CEO Don Lagrange

II. Mike Magnani moved to accept the public hearing minutes of December 18, 2014. Seconded by Chris Rawls and voted in favor 6/0/0. Chad Terry moved to accept the regular meeting minutes of December 18, 2014. Second by Mike Mansollili and voted in favor 6/0/0.

III. Visitors not on the agenda

There were no visitors not on the agenda to be heard

IV. Application from James Mitchell for a restaurant/lounge for up to 50 inside seats and 8-12 outdoor seasonal seats located at 18 Village Green Way and more fully described as Map 6, Lot 39 of the Southwest Harbor tax maps.

This is a request for a restaurant/lounge for up to 50 inside seats and 8-12 seats seasonally on an outside patio. The Planning Board reviewed the application according to the following:

- ~ Scale, north arrow and names of abutting property owners. (OK)  
North direction and list of abutting properties are represented
- ~ Dimension and area of each lot to be built upon or otherwise used: (OK)  
Noted on site plan
- ~ Location of any wells on the lot or within 100' of property lines: (OK)  
There are no wells on the property or abutting properties. Public water service is provided.
- ~ Name and location of any abutting water body, streams, brooks and wetlands: (N/A)  
No abutting water bodies.
- ~ Areas to be cleared and areas of any cut, fill, grading or other earthmoving activity: (N/A)  
No clearing or earthwork
- ~ Size, shape and location of existing and proposed buildings and/or structures including dumpsters, piers, docks. Include set backs from lots lines, rights of way, water bodies: (OK)  
This is an existing building located in Zone A
- ~ Outdoor lighting, signs: Existing and proposed locations (OK)  
No signs indicated on plan. Outdoor lighting will be screened according to Section VI (E).
- ~ Sewer and water facilities: Existing and proposed (OK)  
Public water and sewer services are provided

- ~ Layout and location of parking areas with existing and proposed parking spaces (including commercial vehicle parking). Legal non-conforming parking spaces to be noted: (OK)
  - Nine (9) spaces are existing. Section VI (L) (1) (b) states:  
New commercial uses in Zone A may be added without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Existing commercial uses in Zone A may be expanded or changed without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Elimination of any parking spaces or any changes in shape or size of the structure footprint(s) will require full compliance with all parking standards.
- ~ Location of existing and proposed roads/driveways with setback from nearest lot line: (O/K)
  - Noted on plan
- ~ Name/location of existing or proposed right of way and easements on the site or abutting the property: (N/A)
  - No right of ways or easements proposed
- ~ Existing grades and any proposed changes in grades. (NA)
  - There are no changes in grades
- ~ Soil Erosion and Sedimentation control plan: (N/A)
  - None required
- ~ Freshwater wetlands or hydric soils: (NA)
  - Not applicable
- ~ Plans for proposed structures must include access and dimensions, elevation plan showing height of the building and all floor plans: (OK)
  - Floor plans included with application
- ~ Buffering/Landscape plan as described in Section VI. (N/A)
  - There are no abutting residential properties to require buffering

**GENERAL REGULATIONS/STANDARDS:**

The property is in compliance with any applicable ordinance and meets all the requirements of Section II of the LUO.

**RIGHT, TITLE, INTEREST:**

A purchase and sale agreement between the owner and applicant provides standing for the applicant.

**PROJECT KEY PLAN:**

Attached to the application

**SITE PLAN:**

Part of the Key Plan

**STANDARDS FOR SPECIAL ACTIVITIES:**

None.

DEPARTMENT REVIEW:

No review by the Police, Fire and Highway Departments, nor from the Conservation or Harbor Committees are required; no requests were submitted for their input.

Chad Terry moved the application is complete with a condition there will not be any reduction in parking spaces especially due to storage of snow. Seconded by Mike Mansollili and voted in favor 6/0/0.

The Planning Board, after review of the following performance standards and based on recommendations from CEO Lagrange, determined they were not applicable to the application.

- ~ Landscaping/Buffering
  - Buffering is not required due to no abutting residential properties.
- ~ Clearing of vegetation
  - Clearing of vegetation is required for review in shore land zones. This parcel is located inland in Zone A and therefore review is not necessary.
- ~ Driveway and Driveway opening
  - No changes in the entrance or the size of the opening. This is not applicable.
- ~ Erosion/Sedimentation Controls
  - No soil disturbance will occur to require controls.
- ~ Fill and Excavation
  - None required.
- ~ Fire Protection
  - None is required by the standards of the LUO.
- ~ Flood Hazard Permit
  - Location of proposed structure is not in the Flood Zone as indicated on the FEMA maps and a permit is not required.
- ~ Handicap Access
  - Subject to State Fire Marshall
- ~ Heavy Commercial or Industrial Pollutants
  - Not applicable due to the use of structure being non-industrial.
- ~ Parking and Loading Standards. (Nine existing parking spaces)
  - New commercial uses in Zone A may be added without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Existing commercial uses in Zone A may be expanded or changed without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Elimination of any parking spaces or any changes in shape or size of the structure footprint(s) will require full compliance (with all parking standards.
- ~ Road Standards
  - Village Green Way access.
- ~ Sign Regulations
  - Sign applications to be submitted to CEO for approval.
- ~ Soil Standards

- Not applicable
- ~ Storm Water Runoff Standards
  - No changes or expansions of structures
- ~ Stream Standards
  - No stream on parcel
- ~ Vibration Standards
  - There will be no vibration activity on site during construction or post construction.
- ~ Water Quality Standards
  - There are no activities which require water quality monitoring or assessment.
- ~ Water Supply Standards
  - Water Supply Standard is not applicable.

Chad Terry moved the above performance standards are not applicable to permit review for the above stated reasons for the Mitchell application for a 50 inside seat restaurant/lounge and 12 seat on seasonal patio. Seconded by Chris Rawls and voted in favor 6/0/0.

The Planning Board agreed the following are applicable to this application.

- ~ Exterior Lighting
  - Applicant to provide lighting specs according to Section VI (E) of the LUO. Applicant represented any outside light fixtures will be shielded.
- ~ Noise
  - No noise which is objectionable due to volume, intermittence, beat frequency or shrillness shall be transmitted outside the lot where it originates with the exception of time signals, vessels, and warning devices and noise necessarily involved in the construction or demolition of buildings and other structures.
  - The Planning Board reserves the right to determine if noise from a proposed project or an expansion of a use will be “objectionable”. A majority vote of the Board is required for this determination.
  - Applicant represented low key vocalist and jazz music would be the norm. Absent of windows and the fact the area is surrounded by commercial business, the Board was in agreement noise would not be a factor. No vote was taken except by consensus.
- ~ Sewerage Disposal Standards
  - A grease trap is required and shall be a condition for approval.

Chris Rawls moved the above applicable performance standards noted above are acceptable as represented and remain as conditions to the permit. Seconded by Chad Terry and voted in favor 6/0/0.

The applicant must comply with all the requirements of the Town of Southwest Harbor Land Use Ordinances. In addition, in order to further promote the purposes of the Southwest Harbor Ordinances, the following conditions on the approval of this application:

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 does not relieve 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 purposes of permit compliance.
4. This permit does not relieve the applicant's responsibility of other applicable State and Federal permit requirements.

Eric Davis moved the application of James Mitchell for a 50 seat restaurant and 12 seat seasonal patio at 18 Village Green Way as presented is approved subject to all representations, comments and documents as well as the following conditions:

Application for liquor license and amusement permit requires Town approval.

Seconded by Mike Mansollili, the Planning Board approved the application on March 5, 2015 by a vote of 6/0/0

V. CEO Lagrange presented a review form for the revision of a previously approved subdivision to be used with the following application. Eric Davis moved to accept the document as review criteria for this application and future applications, seconded by Mike Magnani and voted in favor, 6/0/0.

VI. SEAWALL POND SUBDIVISION, David Lloyd, Seawall Road, Southwest Harbor

REVISION OF A PREVIOUSLY APPROVED SUBDIVISION

1.  **Location Map**
  - Existing subdivisions in proximity of the proposed subdivision;
  - Location and names of existing and proposed streets;
  - Boundaries and designations of zoning districts;
  - Outline of subdivision and any remaining owner's property.
2.  **Other Required Permits:** advisory opinion from appropriate federal, state and local agencies as to the application of their rules.
3.  **Plans:** 2 copies; scale not more than 1" = 100'; 8 copies of the plan(s) reduced to a size of 8 1/2 x 11" or 11 x 17".

**Information to Be Shown On the Revised Plan of the Application:**

1.  identifying title
2.  Assessor's Map and Lot numbers

3.  Evidence of right, title, or interest in the property
4.  Field survey of the boundary lines of the tract (General Standard C.1.SECTION VIII)
5.  Date the plan was prepared
6.  North Arrow
7.  Graphic map scale
8.  Name & addresses of owner(s), sub divider, & who prepared plan
9.  Name of adjoining property owners
10.  Number of acres within the proposed subdivision
11.  Location of property lines, existing buildings, watercourses, vegetative cover type, other essential, existing physical features.
12.  Proposed lot lines with approximate dimensions and lot areas
13.  Location, names & widths of existing & proposed streets, easements, building lines, parks & other open spaces on or adjacent to the subdivision.
14.  Width & location of any streets or public improvements shown on the official map & Comprehensive Plan, if any, within the subdivision
15.  Parcels of land proposed to be dedicated to public use and conditions
16.  Location of any open space to be preserved, improvements & management
17.  Names & addresses of owners of record of adjacent properties
18.  Location of any shoreland Zoning boundaries affecting the subdivision
19.  Boundaries of any flood hazard areas & 100-year flood elevation
20.  Required for subdivision, near bodies of water: contour lines at interval specified by Board showing elevations in relation to NGVD
21.  Indication of type of sewage disposal to be used within subdivision
  - a)  public sewer: a letter shall be submitted from the Town indicating that there is adequate capacity within the Town's system to transport and treat sewage
  - b)  subsurface wastewater disposal: test pit analyses, prepared by a Licensed Site Evaluator
  - c)  centralized or shared subsurface sewage disposal system: prepared by a licensed site evaluator or
22.  Indication of the type of water supply to be used.
  - a)  public water supply: a letter from the S.W. Harbor Water Company indicating adequate supply and pressure & approving the plans for extensions where necessary.
  - b)  Where the S. W. Harbor Water Company's supply lines is to be extended, a written statement from the Fire Chief (or assistant), stating approval of the location of fire hydrants.

- c)  evidence of adequate ground water supply and quality may be requested by the Board and this shall be submitted by a well driller or a hydro-geologist familiar with the area.
- 23.  Copy of the deed from which the survey was based; copy of all covenants or deed restrictions, easements, rights-of-way, etc.
- 24.  Copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision.
- 25.  Copy of the portion of the State soil survey covering the subdivision.
- 26.  Adequate storm water management plan.
- 27.  Location & size of existing & proposed wells, subsurface sewage systems, culverts, & drainage ways on or adjacent to subdivision.
- 28.  Determination that proposed subdivision will not adversely affect the quality or unreasonable affect the shoreline of any body of water.
- 29.  Map identifying all freshwater wetlands regardless of size, rivers, streams, brooks within or abutting the subdivision.
- 30.  Estimate of the amount & type of vehicular traffic to be generated on a daily basis and at peak hours.
- 31.  Statement of financial capacity demonstrating the financial ability of the sub divider to complete the project.

**THE REVIEW CRITERIA FOR SUBDIVISION APPROVAL**  
Revision of Seawall Pond Subdivision, 2006

D. The Planning Board shall consider the following criteria before granting approval and shall make findings of fact that the provisions of the Subdivision Ordinance have been met and that the proposed subdivision meets the following review criteria of Title 30-A, M.R.S.A. Section 4404.

1.  **POLLUTION:** will not result in undue water or air pollution; in making this determination, the Board shall at least consider:

- Elevation of the land above sea level and its relation to the flood plains;
- The nature of soils and sub-soils and their ability to adequately support waste disposal;
- The slope of the land and its effect on effluent;
- The availability of streams for disposal of effluent; and
- The applicable health and water resource rules and regulations.

**FINDING (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

2.  **WATER:** has sufficient water available for the reasonably foreseeable needs of the subdivision; or, if the Town supply is used, will not cause an unreasonable burden on the existing supply (SECTION VIII, General Standards A.1., Central Water Supply, page 18).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

3.  **GROUND WATER:** will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water. (SECTION VIII, General Standard B.1., Impact on Ground Water, page 19).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

4.  EROSION: will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. (SECTION VIII, General Standard C.1., Land Features, page 19, and SECTION IX, Road and Storm Drainage Design and Construction Standards. Additional Improvements and Requirements, page 24).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

5.  STORM WATER: will provide adequate storm water management (SECTION VIII, General Standard Surface Drainage, page 18, and SECTION IX, Road and Storm Drainage Design and Construction Standards C., Storm Water Management Design Standards, page 23).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

6.  SEWAGE DISPOSAL: will provide for adequate sewage waste disposal; and will not cause an unreasonable burden on the Town services, if they are utilized. (SECTION VIII, General Standard A.3., Subsurface Sewage Disposal, page 18).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

7.  SOLID WASTE DISPOSAL: will provide for adequate solid waste disposal; and will not cause an unreasonable burden on the Town's ability to dispose of solid waste.

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

8.  TRAFFIC: will not cause unreasonable public road congestion or unsafe conditions with respect to use of the public roads existing or proposed. (SECTION VIII, General Standard D., Access Control and Traffic Impacts, page 19, and SECTION IX, Road and Storm Drainage Design and Construction Standards, page 22).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

9.  AESTHETIC, CULTURAL AND NATURAL VALUES: will not have an undue adverse effect on the scenic or natural beauty of the area. (SECTION VIII, General Standard E. Retention of Open Spaces and Natural or Historic Features, page 21).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

- aesthetics
- historic sites
- significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the Town
- rare and irreplaceable natural areas
- any public rights for physical or visual access to the shoreline.

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

10.  SURFACE WATERS: will not adversely affect the quality of that body of water or unreasonable affect the shoreline of that body of water whenever the proposed subdivision is situated in whole or in part, within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river.

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

11.  CONFORMITY WITH LOCAL ORDINANCES AND PLANS: is in conformance with the Southwest Harbor Land Use Ordinance, Southwest Harbor Comprehensive Plan (SECTION VIII, General Standard F., and Conformance with the Comprehensive Plan, Other Plans, Codes and Ordinances, Page 21).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

12.  FLOOD WATERS: will determine if the subdivision is in a flood hazard area; (If it is, the proposed plan must show the flood hazard boundaries and include a condition of plan approval requiring that principal structures within the subdivision will be constructed with their lowest floor, including the



basement, at least one foot above the 100-year flood elevation); (SECTION VIII, General Standard G., Construction in a Flood Hazard Area, page 21).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

13.  FRESHWATER WETLANDS, RIVERS, STREAMS OR BROOKS: all potential freshwater wetlands, regardless of their size, within the proposed subdivision have been identified on any maps submitted as part of the application and all rivers, streams and brooks within or abutting the subdivision (rivers, streams and brooks as defined under Title 38, 480-b.9., Natural Resources Protection Act).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

14.  FINANCIAL AND TECHNICAL CAPACITY: must have adequate financial capacity to meet above criteria of this Ordinance; (SECTION X, Performance Guarantees, page 25).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

15.  MONUMENTATION: permanent monuments must be set at or within 50' of lot corners & street intersections (SECTION VIII, General Standard A.4, Monuments, page 18).

**Finding (vote), \_\_\_\_\_ yes \_\_\_\_\_ nay \_\_\_\_\_ abstain**

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Seawall Pond Subdivision

INFORMATION TO BE SHOWN ON THE FINAL PLAN

1.  all of the information required under plan revision approval
2.  any recommendations made by the Board at approval
3.  the plan contains sufficient data to allow the location, bearing and length of every street line, lot line and boundary line to be readily determined and reproduced upon the ground.
  - a.  Lines shall be tied to reference points previously established
  - b.  Include length of all straight lines, deflection angles radii, length of curves & central angles of curves, tangent distances & tangent bearings for each street.
4.  Soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the Shoreland Ordinance Section of the S. W. Harbor Land Use Ordinance.
5.  the sub divider is not in violation of the provisions on a previously approved plan

**Subdivision Revision Approval/Denial**

Date of Meeting:

The revision is  APPROVED  DENIED

1) If the revision of the previously approved subdivision is denied, the following additional material is needed to make a complete submission:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ 2) If the revision of the previously approved subdivision is approved, the following conditions, changes, and/or

additional information is needed to meet the provisions of the Subdivision Ordinance for Final Plan approval.

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Signature of Planning Board Chairman \_\_\_\_\_ Dated \_\_\_\_\_

VI. Revision of a previously approved subdivision for David Lloyd identified as Seawall Pond Subdivision, 2006 located at 560-562 Seawall Road and further described as Map 19, lots 20-1, 21 thru 21-E.

The Planning Board reviewed the plan of David Lloyd for a revision of a previously approved subdivision according the above check list. The following information was deemed relevant and shall be added to the plan or submitted as an attachment:

- 4. The boundary lines would affect the Krussell property but there was no acknowledgement from Krussell. The Board requested a deed to be recorded to reflect the changes between Krussell and Lloyd.
- 13. The pond labeled Beaver Pond will be changed to common name of Seawall Pond.  
The name of the road will be labeled the correct name of Beaver Pond Lane.
- 18. The shoreland zone boundary will be indicated on the plan and labeled.
- 20. The Board did not require contour lines to be shown due to proximity to shoreland zone due to the relatively flat parcel.
- 31. Statement of financial capacity was not required due to no effect to the town.

The Board determined it was not necessary to review the plan according to items 1 through 15 since they were reviewed during the initial application. Mike Magnani moved to accept the review criteria from the initial application, seconded by Chris Rawls and voted in favor 6/0/0.

Mike Magnani moved to approve the application of David Lloyd for the revision of Seawall Pond Subdivision subject to the above criteria. Seconded by Ryan Donahue and voted in favor 6/0/0.

VII. Other Business

CEO Lagrange presented three copies of the road ordinance; (1) Original copy; (2) revised copy with red line, and completed revised copy. He suggested the Planning Board review in future meetings for presentation to the voters.

VIII. Davis moved to adjourn meeting at 8:00 PM, seconded by Rawls and voted in favor 6/0/0.