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APPROVED

HUNTINGTON DEVELOPMENT REVIEW BOARD

Minutes of October 28, 2014

PRESENT: Joe Perella, Jeanine Carr, Britt Cummings, Mark Smith, John Altermatt, Mary Taft

ABSENT:

OTHERS PRESENT: Zoning Administrator Ed Hanson, Duncan Keir, Melissa Hamilton, Bret Hamilton, John Hadden, Robin Hadden, Joe Segale, Roman Livak, Bernie Young, Karyl Kent, Jim Wood, Bruce Jamieson, Michele Cummings, Britt Cummings (Stone Corral hearing recusement)

- 7 pm Continuation - Conditional Use Megs and Duncan Keir (owners) and Bret and Melissa Hamilton (applicants) permit for business to add brewery (Stone Corral Brewery) to post and beam business (Liberty Head Post and Beam), 2855 Main Road
- 8 pm Continuation - Roman Livak appeal of decision of the Zoning Administrator, 8420 Main Road
- 8:45 pm Public Comment
Minutes of October 14, 2014
Mail
- 9 pm Adjourn

The meeting began at 7:07 pm; chaired by Joe Perella.

Continuation - Conditional Use Megs and Duncan Keir (owners) and Bret and Melissa Hamilton (applicants), 2855 Main Road

The hearing began at 7:07 pm, chaired by Joe Perella.

PRESENT: Zoning Administrator Ed Hanson, Duncan Keir, Melissa Hamilton, Bret Hamilton, John Hadden, Robin Hadden, Joe Segale, Roman Livak, Bernie Young, Karyl Kent, Jim Wood, Bruce Jamieson, Michele Cummings, Britt Cummings (recusement from DRB)

Melissa Hamilton, applicant, provided a summary of details to everyone in the room. The proposed project is to add a brewery and other related subsequent uses as a taproom and a food establishment.

This use is in addition to the post and beam business already in place.

Joe Perella suggested using the post and beam business a baseline of activity to get a sense of the changes, if any, from Liberty Head. Duncan Keir pointed out a mistake in the posting on FRF. He added that one of the activities currently at the site was the use of a forklift.

Perella asked about special events that might have longer hours. Hamilton answered, "We would like to stop serving at 9 pm. We plan to have a Class I license. Brett Hamilton added that they would come back for event permitting.

John Altermatt proposed a business cap per day. Bret Hamilton responded, "We can't cap. Ask Linda at

Beaudry's Store. Business is variable."

After some discussion around hours and when to stop serving – 9 pm versus customers arriving just before 9 pm who might want service later, Jeanine Carr summarized "it sounds like you are happy with what you have for hours." Hamilton said they were "looking for flexibility." Melissa Hamilton said they would like to be "open later for music down the road."

Discussion went back and forth about how many visits per day would be allowed. Altermatt asked if the Board thought 2000 visits per day would be appropriate. Bret Hamilton said that they didn't know the mechanics for measuring. Melissa Hamilton said that they had taken information from other breweries and guessed at a number. Perella said that the DRB could address it with a clause in the conditions of approval that would allow the Conditional Use to be reopened. Melissa Hamilton said, "The town decides the degree of risk. We want to see it as an asset. The onus is on the town for recourse." Altermatt responded, "In my eyes, there are a certain amount of conditions, and then, when you blow through it and then come back."

Robin Hadden referred to the traffic for the Maple Open House, to which Mary Taft responded that there were 600 people. She then said that on a nice day, 300 people climb Camels Hump.

John Hadden asked for a generous ceiling of 400 and to address the situation if "there are complaints from neighbors." Perella responded that if "something unforeseen" comes up, we would reopen the permit. Altermatt clarified, "If there are no conditions, we can't reopen." Perella added, "You can, but it would be hard."

Karyl Kent asked about the number of parking spaces. Keir responded that there was plenty of room: 50-75 spaces in the gravel dooryard. Britt Cummings agreed that there was space for 50 cars. Joe Segale added that the number of spaces would dictate. John Hadden agreed that there is a natural cap if there are no parking spaces,

Keir suggested no parking on the road. There are two acres of land with plenty of parking. The issues are impact on the town and the impact on the neighbors. He proposed crafting the conditions so if the neighbors feel their quality of life is being impacted, there is an opportunity to reopen the hearing.

Mark Smith said, "If cars start parking on the road, you aren't meeting the criteria. This is a new enterprise and it is going to evolve."

Carr changed the topic, remarking that the applicants had thoroughly answered 4.2. She said that the DRB should grant the permit with conditions. Perella said that one option would be to reopen the permit upon petition of the adjacent landowners.

He then turned to the applicants and asked, "What permit are you asking for?" What do you envision to start?" Bret Hamilton explained that tourists schedule trips around brewery hours. They would like Wednesday-Sunday, 11 am to 9 pm. Melissa Hamilton asked for flexibility for growth. She pointed out that there was often "no opportunity for food in Richmond after 8 pm."

There was a long discussion about hours of various establishments.

Michelle Cummings then said, "We didn't build that house 28 years ago to have a business operating seven days/week with these hours. We are entitled to one day/week when we don't have activity in our back yard."

Altermatt talked about the criteria and trust and good will. Will that impact the neighborhood? It is important to say that one hour later everyone should be out of the building. Smith agreed that the neighbors are a consideration.

Perella suggested "no service of food and alcohol after 9 pm." Melissa Hamilton objected. "No other place refuses to serve... It's not standard protocol." Perella responded, "This is not modeling after a typical restaurant. This is a neighborhood." Melissa Hamilton said, "You don't know how things are going to go. You can't control that." She then gave the example of Flat Bread in Waitsfield. "No one is out at 11 pm."

John Hadden asked, "Would you foresee being open seven days/week for both [brewery and restaurant]? Most restaurants have a day off." Bret Hamilton talked about his late visits to restaurants: "When I want to get together, I don't want to be philosophically limited." Melissa Hamilton then talked about how various production issues being uncontrollable. Her co-applicant added, "We have to check things."

Altermatt said that the restaurant and tasting activity seven days/week is the issue. Bret Hamilton then responded that the atmosphere is "similar to a café." Melissa Hamilton added that people would hang out and there would be a sit down dinner. Perella said, "The permit can grow as you grow the business." He reviewed the applicants' details: tastings, dining six days/week, manufacturing seven days, 7 am to 7 pm. He asked about proposed number of employees. Smith said there is an impact on neighbors. It helps to have specifics. It here is a specific time, "People are ok with that and seem to like that boundary. And we like it." Melissa Hamilton commented, "People are mindful if you close the kitchen at a certain time."

Carr asked about the time frame for moving from manufacturing to tasting to restaurant. She asked if it made more sense to focus on manufacturing. Perella said that the issue is the Hamiltons are trying to buy the property and would like to have answers about future expansion.

Karyl Kent talked about how she had worked in restaurants and this has never been a problem: "The kitchen closes; the restaurant closes. You aren't going to pay people to stand around and babysit."

Robin Hadden told the BCA that it was micromanaging, to which Perella responded that "when there are neighbors involved it is not unreasonable. Specificity protects the applicant and the neighbors."

Melissa Hamilton said, "It seems funny to be asking me .Do we not have operating hours."

The Board looked at the concerns from neighbors Britt and Michele Cummings.

Britt Cummings said that we “are not going to come up with a consensus. We listened to input. It is important to have specific limits. There are parking space limits. An occasional exceeding of limits would not warrant a complaint.”

The Board then went on to discuss the number of employees. Altermatt suggested that no conditions be put on an employee cap.

Keir refuted the 50-60 gallons/minute that was stated at the October 14 hearings, but others who had been at that meeting said that they had heard that. Bret Hamilton estimated that at a half gallon/minute, 5200 gallons of water are needed to produce 20 barrels. Carr suggested a clause in the permit to come back to discuss water use over a stated volume. She asked for hypothetical hours for the restaurant. The project could be approved, but the specifics for the restaurant would be addressed in a later permit.

Zoning Administrator Ed Hanson asked the Applicants if they had approached the state for permits. He then went down a list of possible permits needed.

Perella began to recap the impacts:

1. Wastewater and well capacity will be addressed by the state. This board is not equipped to manage this.

Britt Cummings said that the number of employees should be limited and create a trigger for a new permit or permit revision. Bret Hamilton objected, saying that they could have many employees: brewery, restaurant, distributors working off-site. They could have up to 100 people working for them. How could this be managed? There followed a discussion on the number of employees.

Altermatt pointed out, “Your proposal give a cap [of employees].” Bret Hamilton asked, “Why are we having this conversation?” Perella answered, “We have a job to go through criteria. We need to define it.” Hamilton asked, “From the point of the town, why would you limit jobs?” He then went on to talk about how no limits were put on farming activities. Melissa Hamilton talked about On the Rise and its positive impact on the community for employment. Perella said that the DRB was “hearing strong resistance from the applicant. We can put a cap on it. We don’t want to shackle.”

Michele Cummings asked, “Are we talking a commercial park versus business residential. This is quality of life.” She asked for “defining parameters.”

Smith said to the applicants, “You are arguing for vagueness. The Board needs to have confidence that problems could be mitigated. We need to have a sense of cooperation from you, too.”

John Hadden said, “I see cooperation. They are fine people. Bruce Jamieson added, “I’m hearing cooperation. They have asked for advice.”

Roman Livak said, "It is unfortunate that there are not performance standards for the applicants." Perella said, "There's certainty in regulations when things are spelled out." Keir said, "They presented good information. If things go bonanza, they should overrun the neighborhood and they have the mechanism to come back to the board."

Robin Hadden remarked, "Their success with the business might attract other business. To have the discussion, you need standards."

Perella asked the board if it felt that it could approve the application with certain conditions. Upon receiving affirmation, he outlined the conditions:

1. Manufacturing, 7-7, seven days/week
2. Tasting 11 am-9 pm, six days/week. Restaurant closed by 9; patrons out by 10. No orders taken after 9 pm.
3. Employees on site at same time: cap of 25
4. Customer parking – no parking on Main Road. Parking sound adequate and is self-regulating. It is to the benefit of the applicant to enforce.
5. State permits received: water/wastewater
6. Significant impacts: additional review on complaints of significant impacts.
7. Lighting:
 - a. Minimize lighting impacts on neighbors including no direct lighting
 - b. Lighting not on during closed hours
8. Landscaping:
 - a. Screening on south side– mutually agreed upon with adjacent neighbors
 - b. Screening – conifers, low growing and nothing on Vermont invasives list
9. Right of Way on south end of property (Cummings property): limited to emergency vehicles

Upon the conclusion of the list of conditions, Britt Cummings said that their concerns were dropped.

Duncan Keir pointed out that there is a pull off in front of the barn where drivers park briefly to talk on cell phones.

DECISION OF APPROVAL:

Jeanine Carr moved to approve with conditions; seconded by Mark Smith. Approved unanimously.

Continuation - Roman Livak Appeal of the Decision of the Zoning Administrator

The hearing began at 9:17 pm, chaired by Joe Perella.

Present: Zoning Administrator Ed Hanson, Roman Livak

Perella reviewed the background of 5.9 and summarized preliminary thoughts and the legality of the regulation. He gave the example of a reg that disallows political signs, which would infringe on First Amendment rights for freedom of speech. The DRB could not legally enforce this sign ordinance and cannot, in the case of merger reg of existing conforming lots, do this. In fact, he said, "We are obligated

not to.”

There was discussion about the specific lots. He asked “If none are unconflicting, are they merged?” Two lots are bisected by Main Road, but each meets the minimum standards of one acre.

Livak said the initial parcel was contiguous with zoning, Edith Baughman subdivided it into two lots. He had purchase each lot singly.

He then said that mentioning the Listers in zoning was not relevant.

Hanson said that “strictly from a legal point of view appeal is my only option.” He said that the Board’s decision was only to address, “Did I or did I not act correctly in denying the application.” He went on to point out that the discussion was outside the scope of why the hearing was convened. “I denied it because it has one number. It already has a residence on it.”

Perella asked about the statute on merger by the Listers.

Altermatt said, “Whether merger is valid is what we are trying to do now.” Livak said, “The use of the tax map ID number has no jurisdiction with zoning.” Carr added, “Setting aside the Listers, are we looking at the regulations?”

Livak then said that properties were merged through acquisition, “I would suspect that the Zoning Administrator would make contact [with the landowner].”

There was comparison comments made about Swannie, which Perella said was “not particularly controlling or relevant. The Planning Commission had already started the process here and we deferred to their decision during transition.” He then went on to say, “We should always interpret the ordinance in favor of the landowners since it takes away rights.” His preliminary opinion was that the town’s regulation is broader than the statute. “The Listers decision is pertinent.” Altermatt commented that decision of the Listers is binding.

Perella said he wanted to research further. He asked if any of the lots were nonconforming. Livak talked about the subdivision that Edith Baughman did and then said that the 26-acre parcel has a wastewater permit. Hanson referencing 5.9.2, pointed out that the wastewater system isn’t in place.

Livak said he could take the 26 acres and put it on the market. Hanson agreed and stated, “I cannot give a permit as the property has a dwelling. “

There then ensued a conversation about the numbering system. Perella asked Hanson if he could just act on his own to assign new numbers. Altermatt disagreed, stating, “You can’t just make up a number.” Hanson also said he would not change tax map numbers, but would talk with the Listers about the addition of letters for separate parcels that are merged into a single tax map number – per state requirements.

Livak said he could put the 26 acres in a different name and put a yurt on it and then transfer it back "and voila! There's a yurt on the property." Cummings asked for clarification: this is viewed as one lot for tax purposes and three lots for zoning?

Livak said he wanted the 9-1-1 number to be used for parcel ID. Hanson responded that the 11 other towns he has served as ZA use the tax map number.

Smith asked if merger could happen if there was no attempt to make the merger.

Everyone agreed that 5.9.2 has to be rewritten.

Smith asked if the DRB could say that their own regs are unlawful. Cummings responded, "Our role is to apply the regs as written." The Board discussed its role if the members or some of them decided that the regulation was wrong. Hanson advised that the Board's role was to propose a rewrite and take it to the HPC.

Perella then said, "We are not obligated to enforce a reg that we think is unlawful." Smith questioned this: "We have deliberative authority not to follow the reg?" Perella then said the mechanics of the DRB allowed it to not enforce a reg it believed was unlawful. After more speculation about whether it should or should not enforce a reg that the Board thinks is unlawful, Hanson confirmed that having a road through a lot doesn't make it less conforming.

More inconclusive discussion about merger of lots, numbering of lots that are merged by the Listers and how these would all be reflected separately on a single tax bill, Livak asked, "What is the DRB going to do about my appeal?" He then requested a continuance and said the discussion was onerous and wanted this conveyed to the Planning Commission.

The Board decided to continue the hearing to a date to be determined.

Public Comment: No public was present.

Minutes of October 14, 2014: Postponed to next meeting

Mail – Bill White application: Ed Hanson is working with White and will determine the next step for any review before the DRB. He said the David Zabalski (ANR) may put the case on hold to allow for the mobile home to be moved. Also, the house needs a change of use from a residence to a storage building.

Adjournment: The meeting adjourned at 10:23 pm. John Altermatt moved to adjourn; Jeanine Carr seconded.

DRAFT MINUTES POSTED ON THE WEBSITE: November 2, 2014

UNAPPROVED MINUTES TO THE DRB: November 9, 2014

MINUTES APPROVED: March 10, 2015

APPROVED MINUTES TO THE TOWN CLERK: March 11, 2015