

Minutes
Bar Harbor Board of Appeals
October 9, 2018
Council Chambers - Municipal Building
93 Cottage Street
7:00 PM

I. CALL TO ORDER

The Chair called the meeting to order at 7:04 PM. Members present: Ellen Dohmen, Chair; Kay Stevens-Rosa, Member; Roger Samuel, Vice Chair; Robert Webber, Member; Linda Martin, Secretary; and Michael Siklosi, Associate Member.

Also present: Janna Richards, Planning Director; Angela Chamberlain, Code Enforcement Officer; Bill Kelly, Board Attorney; Tom St. Germain, Appellant; and Dan Pileggi, Attorney for the Appellant.

II. ADOPTION OF THE AGENDA

Mr. Samuel moved to adopt the agenda as prepared. Mr. Siklosi seconded the motion and the Board voted 6-0 to approve the motion.

III. EXCUSED ABSENCES

There were none.

IV. APPROVAL OF MINUTES

a. September 12, 2017

Mr. Samuel moved to amend the minutes by adding language indicating that Mr. Samuel chaired the meeting in the absence of Ms. Dohmen. Mr. Siklosi seconded the motion and the Board voted 6-0 to approve the motion.

Mr. Siklosi moved to approve the September 12, 2017 minutes as amended. Mr. Samuel seconded the motion and the Board voted 5-0-1 to approve the motion with Ms. Dohmen abstaining.

b. September 11, 2018

Mr. Samuel noted that the minutes should be amended to reflect that Ms. Stevens-Rosa was not present so she should be marked as an unexcused absence. He added that page two of the minutes should reflect Mr. Coplton's name is "Samuel", not

"Sam", and identify that he is of Coplon Associates. Mr. Samuel asked that it be clarified that Mr. Michael Archer was speaking on behalf of his wife because she owns the property abutting the project. Mr. Samuel suggested that the minutes be amended to say "his wife's property" when Mr. Archer was speaking on his wife's behalf. Ms. Dohmen asked that all incorrect spellings of her last name be corrected as well.

Mr. Webber moved to approve the September 11, 2018 minutes as amended. Mr. Siklosi seconded the motion and the Board voted 5-0-1 to approve the motion with Ms. Stevens-Rosa abstaining.

V. REGULAR BUSINESS

a. Public Hearing: AB-2013-03 – Administrative Appeal

Applicant: Jack Russell's Steakhouse and Brewery

Project Location: 102 Eden Street, Bar Harbor Tax Map 101, Lot 010-000

Application: The applicant requests that the Appeals Board hold a public hearing for an administrative appeal of the Planning Board's July 18, 2018 written decision pertaining to a Major Site Plan, application SP-2018-01, pursuant to section 125-103 of the Bar Harbor Land Use Ordinance.

Mr. Samuel stated that while he had not attended the prior meeting on this application, he did read the minutes and the decisions, and watched the televised recording of the hearing. The applicant noted that he did not object to Mr. Samuel participating in the proceedings.

It was noted by Staff that Mr. Siklosi was not able to vote as he is an Associate member of the Board.

Mr. Pileggi introduced himself and gave a brief overview. He described how the Planning Board refused to grant Mr. St. Germain any parking credits for being on a bus route despite his testimony and the record before the Planning Board. Mr. Pileggi noted that numerous inn owners sent emails testifying that their customers often walked to Jack Russell's, and inn owners in town emailed that their patrons often took the Island Explorer bus to Mr. St. Germain's restaurant. He added that Mr. St. Germain provided adequate documentation to the Planning Board that he was on the Downeast Transportation bus route and there was an Island Explorer bus stop directly outside the restaurant on Mr. St. Germain's property. Mr. Pileggi argued that the Planning Board did not consider these facts.

Mr. Pileggi further pointed out that the Planning Board did not make any factual findings, and he said the record clearly reflects the Planning Board's attorney advising them that they could do the findings later.

Ms. Dohmen asked the applicant to address the word "may" in section 125-67 D. which states "Parking requirements may also be reduced, as determined by the

Planning Board, for properties that are located on a regularly scheduled bus route.” Mr. Pileggi noted that the may refers to the number of spaces credited, not the standard itself.

Mr. Pileggi ended his presentation stating that the Appeals Board has the authority in section 125-103 D. (1)(l)[1] to reverse the Planning Board’s decision. He pointed out that the Appeals Board’s authority is not just limited to remanding the issue back to the Planning Board, they also have the authority to reverse the decision and grant the waivers as requested by his client.

Ms. Dohmen asked Ms. Richards if she had anything to add. Ms. Richards noted that there was nothing additional that wasn’t part of the transcript or minutes.

Mr. Kelly explained some relevant case law that the Board could consider in making their decision. He summarized that the case law states that there must be motions, and findings of fact, and conclusions made by motion to support decisions. He noted that factual findings are required for the Board to understand what the final decision was based on. He further added that the findings needs to be in the transcript so the Appeals Board could clearly see what facts the Planning Board relied upon to make their decisions.

Mr. Kelly advised the Board to consider health, safety, and welfare when considering whether it is appropriate to waive the six spaces.

The Chair opened the public hearing. No one spoke. The Chair closed the public hearing.

Mr. Kelly suggested the Board first consider whether the record supports the Planning Board’s finding, then decide if the record compels the Board to find it’s safe to grant the waiver request based on the evidence.

Ms. Dohmen shared some thoughts she wanted the Board to take note of. She noted that on page 5 of the minutes of the Planning Board, Mr. Fitzpatrick argued that waiving the spaces would be risky because cars would enter the site, not find a space, then exit the site to search for another spot. Ms. Dohmen pointed out that this would be the same exit site if the customer entered the site, found a parking spot, then left the site after dining. She noted that the location of the exit was not changed using that argument. She further noted that the Planning Board approved a parking agreement with the neighboring property which meant cars would enter the site, if no space was found, they would exit the site then enter the adjacent site and walk to the restaurant, which actually results in more overall trips.

Mr. Siklosi asked if there had been any accidents in front of the restaurant that Mr. St. Germain knew of. Mr. St. Germain stated that he knew of no accidents in the 22 years he was the proprietor of the restaurant other than one he was involved in when he was hit from behind while waiting to enter his site from Route 3.

Ms. Stevens-Rosa added that health, safety, and welfare needs to be looked at more broadly. She cited global warming issues and used this as an example of how important it is to promote the use of busses.

Mr. Webber also noted the absence of a finding that the bus schedule must be year round and nothing in the ordinance to support the argument that it had to be on a year round, regularly scheduled bus route.

Ms. Dohmen also pointed out that on page 32 of the transcript, Ms. Richards told the Planning Board that they needed to make findings in regards to health, safety, and welfare; and they did not.

Mr. Kelly asked Ms. Richards if the transcript was the complete transcript. She said yes. He asked if the Planning Board had the written decision prior to the meeting. Ms. Richards said no. Mr. Kelley asked if the Planning Board met again after July 18, 2018 to make findings and motions. Ms. Richards said no.

Mr. Samuel moved to find that the Planning Board did not present any findings of fact to substantiate their decision and that to support this conclusion, the Appeals Board reviewed the transcript, which is verbatim, and there are neither any motions of findings of fact to be found within the transcript. Ms. Martin seconded the motion and the Board voted 5-0 to approve the motion.

Ms. Stevens-Rosa moved to find that there are no findings of fact in the record to support the six findings of fact listed in the Planning Board's July 18, 2018 decision. Mr. Samuel seconded the motion and the Board voted 5-0 to approve the motion.

Ms. Martin moved to find that:

- 1. Section 125-67 D of the Bar Harbor Land Use Ordinance provides the right for a parking reduction for properties that are located on a regularly scheduled bus route;*
- 2. The location is safe as it enters Route 3 (Eden Street) based on an understanding of DOT authorizing entrance permits;*
- 3. There is a significant advantage to the public welfare to promote reduction of CO2 and other internal combustion emissions;*
- 4. There are multiple bus routes that serve or pass this property;*
- 5. There are sidewalks on both sides of the street serving the property;*
- 6. There are hotels within walking distance and there was evidence presented from hotel owners stating that their patrons do walk to Jack Russell's Steakhouse and Brewery, as well as evidence that patrons of hotels take the bus to Jack Russell's Steakhouse and Brewery;*

7. *It appears that it is safer to use the bus and limit parking instead of using offsite parking and walking in the dark and other conditions to get to the premises;*
8. *There was no discussion at the Planning Board level to consider a reduction of fewer than six parking spaces;*
9. *There is evidence that the parking lot is half-full or at least that there is adequate parking even during the summer season supporting that the bus is being used;*
10. *In the off-season, the bus routes are not in operation and there is still adequate parking and not an overflow of parking;*
11. *The applicant testified that there were no accidents during his time of ownership and no other evidence was submitted to the contrary regarding accidents on-site.*

Mr. Webber seconded the motion and the Board voted 5-0 to approve the motion.

Mr. Samuel moved that based on the above noted findings and in accordance with Section 125-103 D(1)(l)[1], the Appeals Board approves the applicant's request for a modification for a six parking space reduction as submitted and as supported by Section 125-67 D of the Land Use Ordinance. The record compels the finding that this site is safe; and, therefore, the six parking space reduction modification is hereby granted, reversing the Planning Board's decision of July 18, 2018. Mr. Webber seconded the motion and the Board voted 5-0 to approve the motion.

VI. OTHER BUSINESS

- a. **2019 Calendar** - A draft of the 2019 Calendar is prepared for the Board's review and adoption.

Ms. Martin moved to approve the 2019 calendar as prepared. Mr. Samuel seconded the motion and the Board voted 6-0 to approve the motion.

VII. ADJOURNMENT

Mr. Siklosi moved to adjourn the meeting at 9:28 PM. Ms. Stevens-Rosa seconded the motion and the Board voted 6-0 to approve the motion.


Linda Martin, Appeals Board Secretary

April 9, 2019
Date