

**TOWN OF KITTEERY
PLANNING BOARD MEETING**

Thursday, September 15, 2005

APPROVED
Council Chambers

Meeting called to order at: 6:18 p.m.

Present: Chairman Russell White, Janet Gagner, Ernest Evancic, Scott Mangiafico, Ron Ledgett
Also Present: Mark Eyeran, Planner Jim Noel, Councilor Frank Dennett, Councilor Glenn Schwaery, Councilor Leo Guy, Town Manager Jon Carter, Earldean Wells, Debbie (owner of Dan's Crossing)

1. ROLL CALL

Roll call noted.

2. APPROVAL OF PREVIOUS MEETING MINUTES

Moved to Old Business.

3. WORKSHOP DISCUSSION WITH TOWN COUNCIL: 6:15-8:30

See Action Items 9-15-05.

4. PUBLIC COMMENT ON NON-AGENDA MATTERS (20 MINUTES)

None.

5. PUBLIC HEARING: COASTAL ARCHITECTS FOR WE CARE CLEANERS, 17 WENTWORTH ST. APPLICANT IS REQUESTING A MODIFICATION TO AN APPROVED PLAN. PLAN WAS ORIGINALLY APPROVED IN JUNE 2004. MAP 4, LOTS 91-2, 92 ZONED KITTEERY FORESIDE.

Chairman White introduces the application. He asks for an updated plan.

Applicant says it was submitted September 1.

Planner Noel passed them out at the last meeting, but he may have another copy.

Applicant is here to ask for a minor adjustment to an approved site plan. The approved site plan shows the two buildings that they are proposing to separate. The approved plan shows a 10' piece taken off the Sotariss building. There has been a change of heart with the owner of the Sotariss building. She has asked that they cut 11' off the We Care building, which is a two-story block building. They have changed that and the new plan shows that they are cutting 11' off that building. There has been a change in the property line. It used to extend 5' away from the Sotariss building. It now goes along it, then jogs around two parking spaces. They gave her two parking spaces. This fulfills her need for a 5,000 sf lot and her need for two parking spaces.

That's a happy situation. They went back through the ZBA and the ZBA approved it. They are back now at the Planning Board because it is a minor change. There is a second issue that they need to address – meeting the zoning ordinance for the Sotarís building and their parking requirements. Attorney Jack McGee will speak as to that. The owner of the Sotarís Trust would like to have a written guarantee that what they are doing tonight will not disrupt her parking requirements.

Mr. Ledgett asks if he means that it will not disrupt her grandfathered status.

Applicant says that the Board went through it last time and determined there is no grandfathered status. The ordinance does not support that. Jim contacted the attorney for MME and the long and short of that was that what is being proposed won't affect her business. They looked at the zoning ordinance and she does not need five parking spaces, but this will give her five - two from them and three supplied by an easement from a neighbor.

Mr. Ledgett asks if we are approving a subdivision here.

Applicant says that technically they are taking three lots and making them into two.

Chairman White asks if the change to the previous plan is that the property line stays the same except for the parking lot jog and the profile of the back building is decreased by 11'.

Applicant says that is correct.

Mr. Mangiafíco asks for a complete plan because the one that has been provided is missing Note 1 on the top.

Applicant says that to fit it on an 11'x17', he had to cut part of the sheet, so he cut the Landscape Plan and Note 1.

Mr. Mangiafíco says that the plan was never signed by Chairman White and we do not know if there have been any changes because it was never signed by Chairman White.

Chairman White thinks that he final plan was never completed and brought back. The negotiations took a while and were inconclusive for quite a while. His understanding is that a final plan will be prepared with such additional notes as we may need.

Applicant says that he did adjust the plan to reflect the eight conditions, except this one, which they are bringing back.

Chairman White says this was an amendment to a plan that was approved at a meeting, but that was never signed.

Mr. Ledgett wants to know originally why the plan came to us.

Chairman White says that they were dividing two lots.

Mr. Ledgett says it was a subdivision.

Applicant says it was a condominium.

Mr. Ledgett says one of the issues for us is to make sure we are not creating a nonconforming lot in the new configuration.

Applicant says that they have given the Sotarís building 5,000 sf to meet a legal lot size.

Mr. Ledgett asks if the code requirements have changed since the initial approval.

Planner Noel says yes.

Mr. Mangiafíco says this got in under the old rules.

Mr. Ledgett would like to know which rules apply to this modification.

Planner Noel would suggest that it would be the old standards because, as Mr. Rodonets pointed out at the previous hearing, this is an approved plan, but the clock did not start with respect to the plan expiring because the Mylar was not signed. If the applicant had provided a Mylar and the Chairman had signed it, then this plan would have expired.

Chairman White says that there is sort of a hole in the ordinance. We don't see it much. Most

people get it back to us as soon as possible, so this has never been a concern. He agrees with Jim that the old rules apply here. It's an unusual situation. Basically, what we are looking at is the shape and size of the lots. That's the only issue that he sees and additional certain notes to the plan. The presentation is complete. This is a public hearing and he would like to hear from any members of the public who wish to speak.

Elaine Peverly would like clarification with respect to the present lane that goes through the cemetery as to how many parking spaces she is being allowed in there.

Applicant says there will be no parking spaces in there. What they have done is they have taken the road on the cemetery and taken it off of there. They do not have any parking or road on the cemetery. They were asked to leave the pavement on the cemetery.

Mr. Ledgett says if the ordinance has not changed, he does not see any issues here.

Mrs. Peverly had thought that somebody would have researched where those lots were and how many burials were in that area.

Chairman White thinks the exact bounds of the cemetery were lost.

Mrs. Peverly says that there are records that somebody could research. She is concerned because it does have historic aspects as far as the cemetery is concerned and she wants to make sure that it is properly taken care of beforehand. The town did put some posts in at one time. She would like to be careful that nothing disturbs the ones that were left. She believes there are some left under the pavement.

Applicant says that they had a surveyor go out and he put some pins on the pavement. They had a surveyor go out and find the old boundaries.

Mrs. Peverly could give a whole sheet of things she thought should be looked at a year ago.

Chairman White has not reviewed the minutes from when this was here a year and a half ago.

Mrs. Peverly thinks that when there is something that historic, people should do everything that should be done beforehand.

Chairman White remembers that as part of the approval, we discussed this exhaustively and did require some work be done. He would want to make sure that those requirements were followed. We said to make the situation no worse and to improve the buffering. Chairman White thinks that he does remember that we imposed conditions on the research and delineation of the cemetery.

Mrs. Peverly thinks it is so important for our town. We can't afford to have anything obliterated. Jack McGee is here as the representative of Sotaris Real Estate, LLC. He would like to give a brief caption of what has been going on behind the scenes. There has not been any direct interface between Sotaris and the Arnolds and Rodonets. Sotaris is in favor of the subdivision plan as presented, but unless it receives certain comfort levels that it can continue to operate Town Pizza as it has been operated for 20 years, it will not follow through with subdivision. Negotiations did lead Mr. Rodonets to add to the plan the language concerning grandfather usage of parking. Sotaris did not understand that the Board had rejected the grandfather usage. Mrs. Minimis, the principal of Sotaris, just wants to receive confirmation from someone that this will not be viewed as a new lot. Attorney McGee thought this proceeding was just to obtain that confirmation. Something was clearly lost in the translation. He is not going to say that Sotaris will insist on a confirmation of parking from this Board for approval to the plan. He will say that there are other conditions that will require confirmation. This will need a stringent review by Maine attorneys to see whether there are any adverse effects. He hopes the Board will consider a positive vote. Attorney McGee would like language that states that "the Board finds and approves that as part of the subdivision, that parking shall be deemed sufficient for Town

Pizza...” He would imagine that the Easterly Plan shows five parking spots, maybe six. Applicant says it shows an easement for three and ownership of two.

Attorney McGee says that the Sotaris lot will have two parking spaces on the north side of the lot and there is a strip of land to the southerly side that is designated for parking. He understands that to translate into three parking spaces. His understanding is that the Planning Board regulates parking. He would like the Planning Board to recognize the parking as sufficient for the restaurant as it currently exists. He would ask the Planning Board to consider that as part of the updating of the plan.

Chairman White says what we are here on right now is an amendment to an approved plan. We are limited to looking at what was previously approved, seeing if it is a minor change to an approved plan, and imposing any additional change that plan would require. He does not think that we can go back and reopen the approval process. In the previous proposal, how many parking spaces did Sotaris have and what is the change here?

Attorney McGee believes the original plan showed two parking spaces, half fee-owned and half easement, and now the spaces would be totally fee.

Applicant corrects to say that there were three.

Mr. Mangiafico asks how many square feet Sotaris has.

Attorney McGee believes he has 800 total and half or less is devoted to the public.

Planner Noel has been to the pizza shop. He came up with 800 sf gross area with customer access.

Mr. Mangiafico asks what is used by the public. You need one parking space for every 100 sf.

Planner Noel has a total of 800 sf.

Attorney McGee believes there is a letter of August 24, 2004, from the Planner that mentions a credit of three spaces.

Planner Noel reviews the letter and reads from it. Within the letter, he indicated that the attorney suggested that if there were no trigger for review caused by the changing of the lot line, then the attorney did not believe there would be a problem with the parking. The business would normally require eight parking spaces. It would be exempt from providing the first three parking spaces, leaving five required.

Chairman White says it looks like five spaces are sufficient. We do not have evidence before us of her right to use the three spaces, so we can't do a formal finding, but Attorney McGee did get a favorable opinion from the Planner.

Attorney McGee would just like a statement from some public body in Kittery that they are OK. The letter would seem to say that they are OK, but it is based on assumptions that cannot be confirmed.

Chairman White says that Attorney McGee is looking for an advisory opinion and we don't do those. He states that Attorney McGee really does not want us to review this because it is possible there are nonconformities and so long as there is no threshold of review that is tripped, they are OK. If it were going to be tripped for review in this matter, it would have been. The issue has not been brought forward by Planner Noel or anyone else. It looks to him like we do not have the evidence to say rest assured.

Attorney McGee asks if the CEO works under the supervision of Planner Noel.

Planner Noel indicates that they are coworkers.

Attorney McGee says that presumably she would hold the same opinion as the Planner.

Planner Noel would not say whether or not that is correct.

Attorney McGee says that if it were to have been done, it would have been better to have been

done from the start, is what it appears the Board is saying.

Chairman White agrees. He asks for any further public comment. The cemetery issue has been raised as has the parking issue. He asks for thoughts anyone may have on these issues.

Mr. Mangiafico had some questions. Do we feel that all the conditions were met on the plan we are approving tonight? When you look at the original approval and public access from Dane St approved on the plan, it says the public may use the fire lane as access, so as long as it is on the plan, that is OK. He does not see a note for signage to say that this is public access. Is that going to be painted on there?

Applicant says that September 7, 2004, he wrote a letter.

Mr. Mangiafico does not see the words public access on there up along Wentworth Street. That's supposed to be public access to the cemetery. There is a section of property owned by the applicant. It needs to have a note on it so that people are able to get to the cemetery.

Chairman White says the public access is to get to Wentworth tomb. It is crossing a portion of the cemetery that has been paved over and driven over that will not be driven over any longer.

Mrs. Peverly says that the dimensions given to her brought the original cemetery over to 2' from the wall of the building.

Planner Noel says the building is coming down.

Applicant says that it is 2' away on one side and right beside it on the other. They will not be pulling up the foundation as a result.

Mr. Mangiafico tells him where it should note public access.

Applicant will add that note.

Mr. Mangiafico says that parking spaces 14 and 15 will be removed. Will that be vegetated area?

Applicant says yes, they will make that grass with plantings.

Mr. Mangiafico asks if the snow dump will be in the open with grass.

Applicant says yes.

Mr. Mangiafico says that the fire lane needs a note that says no parking. The fire chief specifically wanted that.

Applicant says that is on the approved plan.

Chairman White says it's on the updated one as well.

Mr. Mangiafico has a question as to what will prevent people from driving and parking where they always have. Maybe someone should go to the town to do something there. Mr. Mangiafico was one for pulling up some asphalt.

Chairman White does not think we can go there without a different procedure.

Mr. Mangiafico thinks that a municipal authority could do something.

Chairman White thinks in terms of marking it as a lane, he does not know if there is anything else we can do.

Mr. Mangiafico asks if we can put "no parking" between where the stripe is for the access way and where the fire lane is.

Chairman White thinks that we could have some vertical signs set in a base.

Mr. Mangiafico thinks that it could be painted on the asphalt. He would like to have it there. The applicant could put signs in too.

Chairman White thinks that painted asphalt is not attractive. He asks for the thoughts of the Board.

Mr. Ledgett thinks flower pot signs would be good.

Ms. Gagner thinks if the town wanted to do chains around the cemetery, that would be a good

idea, but it needs to be done by the cemetery committee of the town.

Mr. Arnold says someone has been knocking those posts over. He has not done it. He thinks the flower pot idea would be great. He could plant around the sign. If they bump into that, they'll have a problem.

Mr. Mangiafico says that we could ask that they put something along the border on their property, but that's still within 25'.

Chairman White wants to steer clear of any digging.

Mr. Mangiafico says having reviewed the Kittery Land Use and Development Code and the Kittery Comprehensive Plan, he moves that we allow the application for the modification to an approved plan with respect to a plan approved 6/24/04 drawn by Coastal Architects, revised on 7/12/04 and 9/7/04 and 4/26/05 for tax map 4, lot 92 and tax map 4, lot 91-2. The modification is a lot line change to the subdivision of the property, lot 91 being divided, and the size of the building changed. The approval is with the following conditions: 1. That the public pedestrian access to Dane Cemetery from Wentworth Street be noted on the property as discussed and that no parking signs in some form or fashion be added to the Dane Cemetery property.

Mr. Ledgett seconds.

All in favor.

Chairman White says that aggrieved parties may appeal this matter to the York County Superior Court in 45 days. He also asks that the applicant accept the approved minutes as findings of fact.

Mr. Mangiafico also moves that Chairman White sign the plan for the Planning Board this time.

Mr. Ledgett seconds.

All in favor.

6. OLD BUSINESS - REVIEW PREVIOUS MEETING MINUTES

N/A.

7. PLANNER'S TIME

N/A.

8. ADJOURNMENT

Mr. Ledgett moves to adjourn at 9:44 pm and Mr. Mangiafico seconds.

All in favor.