

TOWN OF LONG ISLAND PLANNING BOARD
P.O. Box 263
Long Island, ME 04050
207-766- 5820

Planning Board Public Hearing Minutes
EBTAC, LLC Site Plan Amendment Request
October 27, 2009

Planning Board Members Present: Nancy Berges, Brad Brown, Tom Johnson, Michael Lingley,
Curt Murley, Ruth Peterson

Attendees: Connie and Warren Brayley, Bill Camden, Anthony Donovan, Ms. Donovan, Charles and Lorraine Doughty, Jeff Doughty, Leah Doughty, Phil and Lisa Fabiano, Will Hickok, Tom Hohn, Peggy Kilmer, Tom and Kim MacVane, Mike Maloney, Chris and Patti Papkee

Planning Board Chair Curt Murley called the hearing to order at 7:04 PM.

Chair Murley outlined the procedure of this public meeting, as follows:

1. Applicant's right to a hearing
2. Determination of interested parties within 100 ft. of the project
3. Determination of those parties adversely affected by amendment
4. Brief statement of application request
5. Presentation of case by applicant
6. Presentation of testimony by interested parties
 - a. proponents
 - b. opponents(The applicant will have the opportunity to refute or respond following each presentation.)
7. Comments from the public, including letters and e-mails

A motion was made by Brad Brown and seconded by Ruth Peterson to declare the applicant has the right, power and interest to appear before the Board in this matter and the Board has the jurisdiction over it. The motion was approved unanimously.

On behalf of EBTAC,LLC, Anthony Donovan has mailed certified letters to property owners within 100 feet of the EBTAC/ Garfield Street Project. They are listed below:

1. John and Nancy Norton
2. Spar Property – John Wary
3. McCalmon Enterprises
4. Carmen Robertson
5. Roman Catholic Bishop of Portland
6. Philip Fabiano
7. Anthony Donovan

EBTAC, LLC, represented by Anthony Donovan, has requested an amendment to the Findings of Facts and Conclusions, as issued by the Planning Board on September 14, 2004, for a retail service establishment. The applicant has requested that of the ten (10) conditions placed on the approval of this project, one be modified and one be struck.

Anthony Donovan presented EBTAC's request for an amendment to the conditions placed on the retail establishment, Capt. Perry's Catering and Cafe (Attachment #1, handout). He wants limits on inside and outside seating, as well as catering, to be expanded and limited according to state and local plumbing codes.

The requested amendment of Condition # 1 would allow for the preparation and sale of foodstuffs for

consumption off premises and would limit the on-site seating, currently at four customers, to a capacity dictated by the subsurface wastewater disposal system, per State and local plumbing codes. As stated in the presentation, increased seating would be allowed for 21 persons in the cafe/coffee shop, 70 seated outside for on-site functions and 150 meals for take-out for off-site catering events, on a daily basis.

The requested amendment of Condition # 5 would strike this condition, which now calls for no outdoor sales or outdoor storage on the property.

Chair Murley asked for any questions from Board members and interested parties. Nancy Berges asked for a clarification of the seating for the cafe. It will be for 21, as limited by the codes. Curt Murley asked if the larger building on the L-shaped lot (312) would be hooked up to the septic system. Mr. Donovan said it would not. Murley then asked if this lot could be sold as a residential lot, since it was grandfathered. Mr. Donovan confirmed this fact. The area of discussion involves three (3) separate lots: Lot 312 on Island Avenue, the Garfield Street residence and the site of Capt. Perry's Catering and Cafe.

Testimony from Interested Parties

- P. Fabiano: He is all for approving the amendments. He is concerned about the late night noise, but feels it can be controlled.
- C. Robertson: Sent an e-mail, dated Oct.13, 2009, opposing a change in the conditions, citing noise affecting her property, as well as that of the Spar condos and the Catholic Church (Attachment #2).

Comments and Questions from the Public

- B. Camden: Will there be music six days a week?
- A. Donovan: Not determined yet. May have a musical trio with guitar stand.
- B. Camden: Concerned about the noise disturbing his grandmother, who lives on the abutting property. He would like to see business thrive on this island, but noise is his primary concern.
- C, Brayley: What will happen to the two other buildings on the L-shaped lot?
- A. Donovan: The small pump house will remain. The larger building will remain until storage for its contents can be found. It is the applicant's intent to eventually remove the building.
- P. Kilmer: Feels a noise ordinance needs to be announced. It could be beneficial to the neighborhood to address the noise concerns. Would suggest to the selectmen to establish a noise ordinance if one does not exist.
- C. Murley: A noise ordinance is not part of the Land Use Ordinance, with which the Board is concerned.
- B. Brown: There is a noise ordinance on the State level. Building construction noise and dog barking are the only noises addressed at the local level. Disturbing the peace comes under State law and can be addressed by complaining to law enforcement.
- R. Peterson: If there is enough noise to bother the residents, law enforcement can ask the business to cease and desist.
- T. MacVane: Asked if this request is going to be decided on septic issues;
- C. Murley: Cannot say, but it is an important factor to consider.
- T. MacVane: Asked about parking.
- A. Donovan: Has provided off-street parking, based on the number of employees. There are 2 (two) spaces.

- M. Maloney: Asked about an e-mail from Rob Crawford, the Town attorney.
- C. Murley: An e-mail was received, but it was determined not to have been from the Town attorney, but from someone else who identified himself as Robb Crawford. (Attachment #3)
- R. Peterson: Had asked the Town Clerk, after receiving permission from the Chair, to phone the attorney's office for clarification purposes only.
- A. Donovan: Can anyone contact the Town attorney at anytime?
- C. Murley: No. Contact is supposed to be done through the Chair or as authorized by the Chair.
- R. Peterson: Is there any handicapped parking?
- A. Donovan: None is required, although there is handicapped accessibility.
- C. Murley: A number of other e-mail messages, most in favor of the request, were received from the following parties:
 - Carol Starbird Crawford for (Attachment #4)
 - Dennis Gears for (Attachment #5)
 - Mary Caliandro Kilgore for (Attachment #6)
 - Anil Melwani for (Attachment #7)
 - Joel Nice for (Attachment #8)
 - Carmen E. Robinson against (Attachment #9 – dated Oct. 25, 2009)
- C. Doughty: As a taxi driver on the Island, he has observed that many of his former customers have discontinued coming to the Island because of lack of a restaurant.
- L. Doughty: Stated that parking exists on Garfield St. opposite the cafe.
- A. Donovan: Pointed out all the commercial uses allowed in the IB zone. If the Board makes changes for one property in this zone, they have to be applied to all of them.

As there were no further comments, Chair Murley announced the end of public participation.

Brad Brown made a motion, which was seconded by Tom Johnson, to render a decision on EBTAC's request. There were five (5) Board members in favor of the motion, with one abstention. The motion carried.

Chair Murley stated that the Board needed to decide on the following two (2) items:

1. Modification of the wording of Condition #1 of Findings of Facts and Conclusions
2. Striking of Condition #5

Brad Brown made a motion to grant the applicant's request to strike Condition #5 of the previously approved Findings of Facts and Conclusions of Law of the EBTAC, LLC, Garfield Street Project. The motion was seconded by Tom Johnson and was passed unanimously.

Regarding the second question of modifying the language of Condition # 1, Chair Murley expressed concerns about the use of the lot for private parties in addition to the inside service. He feels the surrounding residences are so close, there does not seem to be a lot of room to accommodate 70 people. He also pointed out that the adjacent lot is not owned by EBTAC and could be sold as a residential lot. Brad Brown feels that 70 people is a small number with respect to some of the events held on private property during the summer months.

Brad Brown made a motion, which was seconded by Nancy Berges, to grant the request of the applicant to modify the language of Condition #5 of the previously approved Findings and Facts of Conclusions for the EBTAC, LLC, Garfield Street Project and also to change the language with respect to overhead utilities, which will be underground. The motion carried unanimously.

The meeting ended at approximately 8:30 PM.

Respectfully submitted,

Nancy M. Berges
Secretary, Long Island Planning Board

cc: Town Clerk
Board of Selectmen