

**Parsonsfield Planning Board of Appeals
Public Hearing
Monday, June 12 at 6:00
Minutes (Final)**

Appeals Board Members in Attendance:

Don Winslow, chair
Michael Sandahl
Tim Greene

CEO David Bower in Attendance

Planning Board Chair Carl Nance in Attendance

Also in Attendance:

Edward Griggs, Austin Turner of Bohler Engineering, Patrick Netreba, S. Tiffany Brendt, Louis Aubuchont, Ed Libby, Tammy LaVoie, Cliff Krolick, Lynda Sudlow, Dan Davis, Gerard Clifford, Andrew Hamilton of Eaton Peabody, Lee Jay Feldman of SMPDC

The purpose of this Public Hearing was to review the appeal applications and hear public comments on the Dollar General project.

The meeting was called to order at 6:13 by Chairman Winslow.

Definition of Standing

Lee Jay Feldman: Applicants need to meet two requirements. First, did the applicant participate in the planning meetings, and second, has the applicant shown they meet the “particularized injury” test, where they are directly affected by the proposed project.

Andrew Hamilton: The Libby and Perry applications meet the particularized injury test, but based on the minutes, they did not speak to the Planning Board. The Aubuchont and Brendt applications meet the participation requirement, but did not meet the particularized injury test, as they live 3 miles away from the site and are not directly affected by the proposed project. Although the applicants take issue with the economic competition which may occur, these concerns are general in nature and will not cause direct injury. Regarding the letters from Porter citizens, they would not meet the standards in this case. Furthermore, applications cannot be combined so that they meet the standards between them; each must meet the standard on its own merit. Mr. Hamilton believes the Planning Board’s decision to approve the project is correct.

Comments

Gerard Clifford: The Planning Board did not have the authority to grant a waiver on parking. He referred to the Maine Supreme Court Case *Jarrett vs. Limington*. The town is getting bad advice from SMPDC and the Legal Services Department of MMA (Maine Municipal Association).

Tammy LaVoie: (Ms. LaVoie spoke on behalf of her parents who are abutters to the project.) Her parents are 83 and 84 years old and have recently lost two sons, so they haven’t been participating because of personal difficulties. Ms. LaVoie is concerned her parents’ property value is going to plummet.

(Hard to make out individual comments from the audience here.)

Tim Greene: Admonished the group to calm down and keep everything civil.

Tiffany Brendt: She believes the term “aggrieved party” in the local ordinance is being misinterpreted. Appendix A of the Zoning Ordinance, “Aggrieved Party” is defined as:

“A person whose land is directly affected by the grant or denial of a permit or variance under this Ordinance, or a person whose land abuts or is across a road or street or stream from land for which a permit or variance has been granted, or is within 500 feet of the property for which a permit or variance has been granted.”

Ms. Brendt sold real estate for nine years in New Jersey. In her experience, a warehouse building without a pitched roof at the entrance to the village area will bring down property values.

Michael Sandahl: Asked Ms. Brendt for data to support her statement.

Cliff Krolick: Has nothing against Dollar General, but thinks they are trying to put an elephant on a postage stamp. Why are we trying to push a monster on a lot that’s not big enough?

Mr. Hamilton’s responses to comments

Regarding Mr. Clifford’s comment about the parking waiver, Mr. Hamilton is familiar with *Jarrett vs. Limington*. This case refers to the Board’s authority in subdivision projects, and the Dollar General project does not fall under the subdivision ordinance. The applicant has shown that they don’t need all the parking spaces, and the Planning Board has the authority to issue a parking waiver in this case.

With respect to Ms. LaVoie, he is sympathetic to her family’s difficulties, but participation is a strong element in the appeals process. A letter to abutters was mailed in February; Ms. LaVoie said they didn’t hear anything about the project until April.

It troubles Mr. Hamilton that Mr. Aubuchont is a Planning Board member and Ms. Brendt is a Selectman and they are voicing dissatisfaction on a decision by the Planning Board. Ms. Brendt stated they are not acting in an official capacity, but as private citizens. (Mr. Aubuchont is a former alternate member of the Planning Board and resigned before the Board approved the project in March.)

More Discussion

Flooding

Ed Libby: Was in Florida and didn’t know about the Dollar General project until recently, but he is concerned that it will cause flooding.

Austin Turner: The issue of water drainage was discussed in detail during the hearing process, and the project meets or exceeds Maine DEP standards. There was confusion during the hearing process about the shoreland zoning vs. the wetlands lines but they are independent.

Ms. Brendt: This project is in the wetland inventory.

David Bower: Maine State law has provisions that allow a certain amount of wetland to be encroached.

Parking Waiver

Ms. Brendt: Article II. Table 4, page 27 of LUDO regarding minimum parking spaces for retail, requires one space for every 150 square feet of sales area. What happens if the tenant abandons the lease? The building is 7500 square feet with only 25 parking spaces. How do we rent to another tenant?

Mr. Aubuchont: The Board had granted a parking waiver for the bakery in October, and at the time, Mr. Aubuchont had asked David about parking. Mr. Bower said there are no provisions in the ordinance for the giving of parking waivers.

Mr. Bower: Didn't say the Board couldn't grant a waiver. His issue was there was no drawing that showed appropriate spaces, and he wanted a definition of the parking plan.

(Lot of arguing here – can't make out specifics)

Mr. Krolick: It seems like it's coming down to personal feelings. There are people that should have been given more time to look at the law. There are too many flies in the ointment and we should start this process over.

Mr. Sandahl: There is always going to be personal opinion; we need to be fair and consistent in applying the ordinance.

Mr. Clifford: There have been so many inconsistencies with communication and people are upset they haven't been involved in the process as taxpayers. We are asking the law be abided. He fears property values will go down and that we are going to be like Massachusetts.

Mr. Hamilton noted the meeting could go on all night, and suggested they go back and see whether there is standing with appellants. He referred to the Board of Appeals Manual, bottom of page 32: Is there a quorum? Were notices given? Timeliness of appeal? The timeline does not suggest that nobody could get the information. He did a search for Parsonsfield.org and found Planning Board minutes posted online, so he doesn't completely understand the lack of notice.

(Comments from the audience about how meeting minutes were not posted when people checked.)

Ms. Brendt and Mr. Aubuchont definitely participated, but do not meet the other standard. To meet standing, both tests must apply.

Ms. LaVoie: She put in the appeal as soon as she found out.

Mr. Clifford: He has attended Planning Board meetings and isn't allowed to speak.

Carl Nance: According to the rules, the Planning Board hears the applicants at the meetings. We get a lot of opinions and people go off on tangents and the discussion gets away from reviewing the applications. The Public Hearings are an opportunity for the people to speak. We have to follow the rules we are given.

(More audience comments about how meeting minutes were not posted.)

Mr. Sandahl: Went online several weeks ago and the minutes were there.

Mr. Libby: We've had several dry years and the water table is low. If any farmer ever said that isn't a wetland they would get laughed at.

Mr. Aubuchont: At our meetings, we always let people speak.

Mr. Libby: I've seen water wash out Devereux Road. It doesn't make any sense.

Mr. Krolick: We've been struggling for 3-4 years to get reliable internet service. The costs are high to get involved in this stuff. A lot of people don't have access to get to computers. We depend on the local newspapers, flyers, and stopping by the Town Hall. People probably didn't know what was going on. He understands, but we need to slow down; there were a lot of missteps.

Mr. Clifford: The Appeals Board made a mistake. The ad in the Shopper's Guide doesn't say anything about Dollar General. (Text sent to the Shopping Guide specified Dollar General, but it wasn't printed.)

Mr. Libby: Water went into people's homes on Elm Street. Dooley's flooding was because they filled in the wetlands.

Don Winslow: That brook has been moved.

Mr. Nance: The whole purpose of the parking waiver was to not fill in the wetlands.

Mr. Hamilton: Tried to steer the discussion back to reviewing the standing of the applicants. Happy to go back to page 32-34 of the Appeals Manual and just talk about the appeals submitted by Perry, Libby, Brendt and Aubuchont.

Mr. Aubuchont: At the first Planning Board meeting, he asked Mr. Turner for hydrological report. Why didn't the Planning Board see the report?

Mr. Turner: We spoke at great length about the stormwater drainage system; the designs meet and exceed the State standards. One of the first tasks was to have a certified wetlands scientist examine the site. He reported on subsurface conditions, vegetation, soil composition, and a number of other factors. They provided wetlands information, flagged the existing hydrology of the area, and thoroughly evaluated the site.

Mr. Aubuchont: Why didn't the Planning Board see the reports?

Mr. Turner: They are filed with the original application.

Mr. Clifford: He's gone on site and hasn't seen flags.

Mr. Turner: Starting in October, 2016, they have provided all requested reports. The information provided to the Planning Board was thorough and lengthy. Included were drainage reports and supplemental information. He sent the reports to Mr. Bower, who acted as the liaison to the Board.

Ms. Brendt: Lighting, traffic and parking reports were provided, but we didn't see an alternate site report or neighborhood impact report.

Mr. Turner: The collective documents form the report. This was discussed with the Planning Board at great length, and Jamel and the Planning Board agreed the whole constituted a report.

Mr. Aubuchont: Spoke with Breanna Gerson at MMA, who told him that the special exceptions need to be revoked.

Mr. Libby: asked Lou to read a brief regarding parking.

Mr. Greene: We're not here to discuss any of that; we're just here to figure out if these applications have standing.

(Public discussion ends)

Mr. Winslow: As chairman of the Board of Appeals, we need to decide what to do next.

Mr. Nance: The Planning Board did what we thought was right.

Mr. Winslow: (To the Board) Do you want to decide tonight or at a future meeting?

Mr. Sandahl: We have enough information to come to a conclusion.

Mr. Greene: We have enough to decide on the standing. He's not even sure if the abutters are particularly injured. We don't have any basis that the property values would be devalued. Walker Chevrolet was basically the same thing, and the village didn't suffer from it.

Mr. Sandahl: We live in a rural area and we know communication can be tough. We can debate the thoroughness of the applications, but he didn't see clear, concise written statements in the appeals applications.

Mr. Greene: The onus is on the appellant to provide the documents to support the appeal application.

Mr. Sandahl: The Planning Board did a good job. The Findings of Fact wrapped up a lot of the open issues that were there.

Mr. Greene: We should take each application individually and see if they meet standing.

Board discussion

Mr. Sandahl regarding Brendt application: Personal injury doesn't hold up, just general injury and she doesn't live in the neighborhood. All three Board members agree the Brendt application does not meet standing.

(Comment from Mr. Libby: Still not clear on the request and why. He didn't participate in the meetings and claims hardship since he wasn't here in the wintertime.)

Mr. Greene: The applicants are asking questions, but they don't say specifically why they are going to be injured.

(Comment from Mr. Aubuchont: Has same concerns as far as being in the area not being directly impacted.)

Mr. Greene: There are open ended questions in the application, but no clear statement of why he is appealing.

Vote:

Mr. Sandahl motioned that the appeals as written are denied, and the Board is standing by the decision of the Planning Board. Mr. Winslow seconded the motion. All three board members were in favor.

Mr. Bower: The appellants will be formally advised of the decision within 35 days of the closing of the hearing.

Hearing adjourned a 7:31.