

**Town of Rockport Planning Board
PUBLIC HEARING
Wednesday, January 13, 2010 – 7:00 p.m.
Rockport Opera House Downstairs Meeting Room
Meeting Televised on Channel 22**

Present: Kerry Leichtman, Chairman
John Alexander
Terri S. Mackenzie
Frederic W. Coulon
Mark W. Masterson
John W. Priestley

Also Present: Thomas M. Ford, Planning Director
Nancy Ninnis, Recording Secretary

AGENDA

OLD BUSINESS

1. **Richard A. Nightingale**, 32 Wellington Drive, Rockport, ME 04856
Request: Subdivision revision to Bay Ridge Phase II to reconfigure Map 6, Lot 19 and provide access to Lot 19 by a right-of-way and utility easement over Lots 21 and 17 (continued from the 12/10/08 and 6/17/09 meetings). The Board will review the four conditions of approval added to the draft Mylar. Represented by Landmark Corporation.
Property: End of Terrier Circle – Tax Map 6, Lot 19
District #904 – Residential District

2. **John Bridges**, 1033 Commercial Street, Rockport, ME 04856
Request: Site plan review for a 168 sq. ft. takeout restaurant.
Property: 1033 Commercial Street – Tax Map 3, Lot 10
District #907 Modified – Mixed Business/Residential District

OTHER BUSINESS

3. Review and Approval of Minutes

SITE WALKS

1033 Commercial Street, Rockport

The meeting was called to order at 7:05 p.m.

Chairman Leichtman: I would like to again thank David Marceau and Gartley & Dorksy for providing a series of wastewater design workshops, which have been quite educational. I would also like to welcome Terri Mackenzie as a new Planning Board member.

I. RICHARD A. NIGHTINGALE

Representation: Mark Ingraham, Landmark Corporation
219 Meadow Street, Rockport, ME 04856
Tel: 207-236-6757; Fax: 207-236-3175
Re: End of Terrier Circle – Tax Map 13, Lot 70
District #904 – Residential District

Request: Proposed subdivision revision to Bay Ridge Phase II to reconfigure Map 6, Lot 19 and provide access to Lot 19 by a right-of-way and utility easement over Lots 21 and 17 (continued from the 12/10/08, 6/17/09 and 10/21/09 meetings).

Chairman Leichtman: This matter is continued from the December 10, 2008, June 17, 2009 and October 21, 2009 meetings. A site walk was taken on June 17, 2009 and on October 21, 2009 the Board voted to approve the subdivision revision with three conditions. However, since four conditions are shown on the plan, I assume we need to discuss the fourth condition and vote again.

Planning Director Ford: That would be the prudent course of action to take. The verbiage on the plan is slightly different from the three conditions discussed at the last meeting and you should ask the applicant to explain the differences.

PRESENTATION:

Mark Ingraham: I represent Richard Nightingale and James Munroe in an amendment of the Bay Ridge Phase II Subdivision. The conditions of approval appear on the plan next to the signature block. We have been in discussions with Attorney Samuel G. Cohen, who represents the abutters Ronald and Linda Bovasso, and may also have incorporated the fourth condition, but I am not sure which is which.

1. At the request of the Bovassos, the applicants decided to limit the construction of any home on Lot 50 as amended to a building envelope as shown on the plan that is agreeable to the parties.
2. Lot 50 as amended shall not be further divided.
3. Only four lots shall be accessed over the Munroe and Bovasso right-of-way, and Lot 50 as amended will be one of those four lots.
4. We originally had a reference that Lot 50 would be subject to the subdivision restrictive covenants by book and page, but since those covenants omit Lot 50, I drafted the language shown that references the elimination of Covenant No. 7, which excepted Lot 50, so that Lot 50 will now be subject to the restrictive covenants.

The Planning Office can hold the Mylar until we have provided the recorded document proving that the amendment of the restrictive covenants has been accomplished.

Chairman Leichtman: I think that answers the question why four conditions of approval are shown on the plan.

PUBLIC COMMENT:

Attorney Samuel G. Cohen: As I indicated at the last meeting, my clients still believe that the restriction in their deed means that no lots can be located northeasterly of the Bovasso lot. However, as indicated by Mark Ingraham, we have been in a lot of discussions and I drafted an agreement that incorporates these four agreements that would run with the land and be enforceable by the parties to the deed. Accordingly, if there were a violation, my clients could bring suit which would prevent

Richard Nightingale and James Munroe from coming in to further amend this plan. Mark Ingraham has communicated with Richard Nightingale in Florida, who has reviewed the plan and approved it. James Munroe is also in Florida, but has not been available. We tentatively withdraw our objection and ask the Board that the plan be held until all parties have signed the agreement.

Chairman Leichtman: I think that's outside the Board's jurisdiction.

Planning Director Ford: It sounds like a private contractual agreement between the parties.

Attorney Cohen: We are not waiving our objection and request that the minutes reflect that we are not consenting at this time.

Chairman Leichtman: The agenda refers to Lot 19. Is that a typographical error?

Planning Director Ford: Lots 19 and 50 are the same lot. Lot 50 is now the 911 designation.

Mr. Coulon: The plan just refers to the covenants and restrictions as amended.

Chairman Leichtman: The plan won't be released until the amended restrictive covenants are recorded, and that will be a condition of approval.

Mr. Masterson: It would be simpler to put on the plan "except for the article that excludes Lot 50 from the covenants." It would be fine if they also want to redo the covenants.

Mr. Priestley: I don't think that will work. No. 7 has to be removed.

Attorney Cohen: Does it have to go to a meeting of the homeowners association?

Chairman Leichtman: I think we have established that there really isn't an association, just pretty much a social group. I think this is a matter for the developer.

Planning Director Ford: I agree that the covenants need to be changed.

Chairman Leichtman: Changed so that Lot 50 shall be subject to the Bay Ridge restrictive covenants.

Mr. Priestley: Mark Ingraham's plan has that language on it.

Mark Ingraham: The amended restrictive covenants will be recorded before this plan is recorded.

MOTION – John Priestley/SECOND – Fred Coulon: To approve the application of Richard Nightingale to amend the subdivision plan of Bay Ridge Phase II to include an easement from Terrier Circle to the property line wall located North 25°40' West to the edge of the approved subdivision, represented by Landmark Corporation, as shown on plan entitled "Subdivision Amendment of Lot 50 – Bay Ridge Phase II as recorded in Plan Cabinet 8, Sheet 162" dated September 25, 2008, revised December 9, 2008, on property at Tax Map 6, Lot 19 in District #904, contingent on submission to the Planning Office of the recorded amended restrictive covenants, specifically that No. 7 be deleted, before the Mylar is released for recording.

VOTE:	John Alexander	Yes
	Fredric Coulon	Yes

Kerry Leichtman	Yes
Mark Masterson	Yes
Terri Mackenzie	Yes
John Priestley	Yes

The motion was passed 6-0-0 and two copies of the Mylar and two copies of the plan were signed.

I. JOHN BRIDGES

Representation: John Bridges, 1033 Commercial Street, Rockport, ME 04856
Tel: 207-594-2650

Re: 1033 Commercial Street – Tax Map 3, Lot 10
District #907 Modified – Mixed Business/Residential District

Request: Site plan review for a 168 sq. ft. takeout restaurant.

Chairman Leichtman: We took a site walk at the property this afternoon.

PRESENTATION:

John Bridges: I appreciate the opportunity to address the feedback I heard on the site walk today and to discuss my business plan. I am excited about getting back into the food business and hope to open by March 15. I will be renovating the structure the Board saw and I have provided copies of my draft menu that will include soups and sandwiches fresh made and strictly takeout. I understand the Police Chief provided some input, and I have discussed the traffic flow with Chief Kelley. The project will also include a clean sweep of the roadside portion of the property and I will be finding another space for the vehicles on the property. I will clean up the property and beautify it with whiskey barrels and plantings. With regard to the suggestion of cement barriers to define the pedestrian area in front of the food stand, I thought using whiskey barrels with a low fence could be used instead to avoid a possible tripping hazard. I have submitted an application to the Department of Transportation. My State Health Code application is pending and my tax number and other permits are in place.

Chairman Leichtman: There will be no on-site dining?

John Bridges: I have no plans for that.

Ms. Mackenzie: I think all my questions with regard to ingress and egress have been answered.

Mr. Masterson: You had two prior businesses locally?

John Bridges: For two years I ran the Glen Cove Café across the street where the Willow Street Bakery is now, and prior to that I ran a restaurant in Connecticut.

Chairman Leichtman: I found no deficiencies with regard to completeness of the plan.

MOTION – John Alexander/SECOND – Terri Mackenzie: To find as complete the application of John Bridges for site plan review for a 168 sq. ft. takeout restaurant at 1033 Commercial Street on property at Tax Map 3, Lot 10 in District #907 Modified.

VOTE:	John Alexander	Yes
	Fredric Coulon	Yes
	Kerry Leichtman	Yes
	Mark Masterson	Yes
	Terri Mackenzie	Yes
	John Priestley	Yes

The motion was passed 6-0-0.

Ms. Mackenzie: Are there any special plans for signage at the entrance and exit similar to EBS on Union Street?

John Bridges: Yes, within the dynamics of what is allowed, which I understand is the responsibility of the Code Enforcement Officer and I will be working with him.

Ms. Mackenzie: I have had a lot of personal experience going in and out of this driveway at all times of the year and at all times during the day, so I can say that going out is not as daunting as it may appear. The sight lines are quite excellent. Even at heavy traffic times there doesn't seem to be a lot of traffic or speed and it seems reasonable to even make a left turn. It is less daunting than getting out of Fresh Off the Farm or the Market Basket, but I would be concerned that exit signs be very conspicuous so that half paying attention drivers won't go in the wrong way.

Chairman Leichtman: I was going to suggest a sign saying no left turn, but you don't think that's necessary?

Ms. Mackenzie: My larger concern is that traffic heading north won't make the mistake of going in the exit.

Mr. Alexander: There was a note from Chief Kelley that he would like to discuss the property site plan with the Planning Board.

Planning Director Ford: I did speak with Chief Kelley and the applicant also discussed it with him, but I didn't understand his reference to Brewster Point.

Chairman Leichtman: I thought he was just referring to general traffic congestion in the area.

Planning Director Ford: Chief Kelley received the agenda and knew about the meeting, which is the appropriate venue for him to communicate with the Planning Board.

John Bridges: Chief Kelley's primary concern was drivers who zoom around people heading south who stop to turn left onto Warrenton Street, which would be a hazard for people slowing down to turn into my property. I think my driveway is a reasonable distance beyond that point, but drivers would have to be aware of people turning off.

Mr. Priestley: Fresh Off the Farm has a very broad entrance and exit so that one car doesn't plug up the traffic flow, so I agree that signage is very important here.

Mr. Coulon: I am concerned about southbound traffic stopping to make a left turn and people passing them on the right. I am concerned that people heading north and making a left turn to enter the

premises at the same time as people heading south using the breakdown lane to pass stopped cars could cause a serious accident.

Mr. Alexander: If that is the issue Chief Kelley was referring to, I live on Warrenton Street and don't see that as a problem going both ways.

Chairman Leichtman: When Prism Glass was established we included a restriction that no customers could park on Route 1. Has that worked out?

Planning Director Ford: I haven't heard of any issues.

Mr. Priestley: How far is the driveway from the intersection?

Chairman Leichtman: I think it's about 250 to 300 feet.

Mr. Priestley: I think that distance is a bit marginal.

Mr. Coulon: Have there been public questions about the safety of that intersection if Brewster Point and the Samoset were built out? I am interested in the 100-foot rule because it requires that driveways be 100 feet from an uncontrolled intersection on Route 1.

Chairman Leichtman: If they are pulling into the breakdown lane, I think people will reduce speed, and I can't hold the project hostage to the occasional terrible driver. My focus on this application is if the applicant is clear about controlling traffic in and out of the property so it doesn't get bogged down in Route 1 traffic.

Mr. Masterson: If there is a no left turn rule coming out of the property onto Route 1, how far south would people have to go to turn around and head north?

Ms. Mackenzie: How is that any different from any other business along here?

Chairman Leichtman: Point well taken.

Mr. Priestley: There could be a backup problem with cars waiting to make a left turn.

Ms. Mackenzie: I have made left turns in many different conditions and personally never had a problem doing so. While I am not advocating for the applicant, the lines of sight in both directions are quite generous.

Planning Director Ford: The biggest impediment to making left turns onto Route 1 is the speed of traffic between the hospital and Cody's, not in more congested areas like this.

Mr. Alexander: I think a left turn out of his driveway is safer than from Warrenton Street.

Mr. Coulon: The parking spaces shown on your plan should be 9x18 rather than 9x16 and I don't see any handicapped parking spaces, which are 12x18. The plan designates 37 feet from the edge of pavement and it says 35 feet.

John Bridges: That's a typographical error, as it was originally going to be 35 feet.

Chairman Leichtman: The standard for the Modified 907 District is 25 to 35 feet.

Mr. Coulon: You are also suggesting putting an overhang on the building, which has to be taken into consideration. There should be one parking space for every 35 seats, but there is no on-premises seating. How is the number of parking spaces calculated?

John Bridges: Since there are no seats, I tried to be as functional as possible.

Mr. Coulon: What do you think the business flow will be?

John Bridges: I don't expect a huge amount of business in March, so if I have five customers in an hour I will be delighted. I am a sole proprietorship, so twenty customers an hour in the summer would be all I can handle. My written statement says 35 an hour as a maximum.

Mr. Masterson: Traffic would also be spiked at meal times.

Mr. Coulon: My major concern is the possibility of traffic backed up on Route 1, so I want to see adequate parking spaces. The plan shows underground electric.

John Bridges: I will get a professional assessment on running a 50 amp line from the residence to the shed to be metered off the house.

Mr. Coulon: Was the monument there when you purchased the property?

John Bridges: I only have rudimentary knowledge of that. I understand that it was put in place by the Glen Cove Garden Club and I would like to see it rededicated and moved to the Glen Cove Rest Stop, where it would be better appreciated. That would also free up that area for parking.

Planning Director Ford: The Town Manager knows about the monument and will meet with me and the Public Works Director to see if anyone has any knowledge about it and if it makes sense to move it.

Mr. Coulon: I suggest starting with the Historical Society. If it has historical significance that is publicized, that could increase traffic to your property.

Chairman Leichtman: Has anyone ever stopped to see it?

John Bridges: No, not specifically. A gentleman across the street used to put up the flag, but he died, so it really has been underappreciated.

Mr. Priestley: The shack won't have water or septic, so the load will be carried by the house.

Planning Director Ford: The property is on public sewer and water.

Mr. Alexander: In Maine you are not allowed to run grey water onto the ground. Does the trailer have a holding tank?

John Bridges: Yes. I will have a freshwater holding tank, as the code requires a three-bay sink and a hand washing sink. The water will come from and to the residence and will not be dumped on the ground.

Mr. Coulon: How will waste removal be handled?

John Bridges: By Robinson Waste Service once a week. There will be cans adjacent to the tongue of the trailer on the north side in a small enclosure.

Chairman Leichtman: You will need metal cans or you will have a raccoon problem.

John Bridges: That shouldn't be a problem because the cans will be in a wooden enclosure.

Mr. Masterson: How will you handle grease?

John Bridges: I will configure the business so I won't need a fryolator, so there will be very little liquid waste.

Ms. Mackenzie: With regard to traffic flow, how long will people need to wait for food once they order? You have a very extensive menu for a one-person operation.

John Bridges: I will encourage people to call ahead as much as possible. I have been advised to keep it simple with eight or nine different styles of hotdogs and salads that have a lot of commonalities. I will have a 14-foot sandwich board with wells for items that can be readily accessed, so I can put out a large number of items. The menu items seem different, but they use similar ingredients, and this is just the first draft of the menu.

Ms. Mackenzie: You might want to start with a reduced menu and see how it goes.

Chairman Leichtman: You may have people pulling in while others are backing out, so the more people you have waiting for food, the more chance there is for the creation of congestion.

John Bridges: I am absolutely prepared to revise the menu until I find that balance, but I am drawing on nine years of experience in running a restaurant. I am confident that I can find that balance and find a way to create a good traffic flow, including widening the entrance if necessary. I thought about having dinner specials on specific days of the week.

Ms. Mackenzie: Apart from right in front of the shack, will there be any other places for people to stand out of the traffic flow while not encouraging them to stay and eat?

Chairman Leichtman: If the shack could be located where the resident parking is shown now, that could eliminate that problem as well as the problem of people pulling in while someone else is backing out. That would separate people from cars. And you didn't show us a landscaping plan.

John Bridges: I don't intend much beyond the whiskey barrels with flowers, and I would like to keep the fence.

Chairman Leichtman: Section 1000 explains the landscaping requirements beyond flowers in pots. The purpose is to make Route 1 attractive and it requires a variety of color. You already have trees. I think the requirements can be met if you include plantings around the fence.

John Bridges: We all benefit when it looks nice.

Mr. Coulon: I think you should take the suggestion about relocating the building to solve both the parking and landscaping problems.

Chairman Leichtman: I would like to vote to continue to give the applicant a month to consider our suggestions. I appreciate your being so open to changes in light of what we have discussed. I think this is a really good discussion, so you can come back in a month with a plan you really want to defend. I originally didn't think there was enough room for all this going on, but my opinion has changed and I think it can happen.

John Bridges: Could I have a little more direction on the building?

Chairman Leichtman: I suggest locating it partially into the resident parking area. And I am not hearing negativity from the Board, just concerns.

Mr. Coulon: You should think about the side and front setbacks in locating the snack shack.

Ms. Mackenzie: Was this site chosen for a specific reason, such as proximity to the house?

John Bridges: Proximity to the house was one reason, but it was more traffic flow. I had originally sited it along the fence, but that was too close to the road and in the setback. This spot seemed to be the most appropriate by a process of elimination.

Chairman Leichtman: You may very well choose to come back next month with the same plan and explain your reasoning.

Mr. Alexander: Is it within the Board's scope to say the applicant can't put it in one spot, but can put it in another as a public safety issue?

Chairman Leichtman: Yes.

Mr. Alexander: What are the dimensions and shape of the building itself?

John Bridges: It is an 8-foot by 29-foot box with a three-foot tongue. I plan to add vinyl siding in a color complementary to the house, yellow or white. I will have a peaked roof with one side at a shallower pitch than the other to provide a roof extension for shelter and a steeper pitch on the back side. The roof will have green asphalt shingles to match the house.

Mr. Priestley: This is a snack shack – it's supposed to look like a snack shack.

Planning Director Ford: Is there anything that would work that would be an extension of the house?

John Bridges: That would not be feasible.

Mr. Coulon: Are there any easements on the property?

John Bridges: There are a couple that don't apply to the project, but that portion of the property has since been sold to a neighbor along the north side where the monument is.

Mr. Masterson: Are you going to put windows in the box?

John Bridges: I first thought I would have an order window and a pickup window, but I may just go with one window for both and one window for chip display, so my rendering is still accurate.

Ms. Mackenzie: Was the neighbor with the easement notified, and do abutters get copies of the plan?

Planning Director Ford: He was notified, but we don't provide copies of the plan.

MOTION – Kerry Leichtman/SECOND – John Alexander: To continue to the next meeting review of the application of John Bridges for site plan review for a 168 sq. ft. takeout restaurant at 1033 Commercial Street on property at Tax Map 3, Lot 10 in District #907 Modified.

VOTE:	John Alexander	Yes
	Fredric Coulon	Yes
	Kerry Leichtman	Yes
	Mark Masterson	Yes
	Terri Mackenzie	Yes
	John Priestley	No

The motion was passed 5-1-0.

Chairman Leichtman: Will this delay create a hardship for you?

John Bridges: A little because I can't continue construction of the trailer until I know where it is going to be.

Ms. Mackenzie: If we approve the plan tonight as it is and it turns out there are difficulties because of points that have been raised, would it be easy for you to move the shack?

John Bridges: It's just a matter of carpentry. I would like to have the Board vote on it tonight if it would pass, but if not I would be happy to wait.

Mr. Alexander: Your concern is about public safety?

Chairman Leichtman: It is.

Mr. Alexander: Then I think we should give the applicant the chance to think it through and defend it if it stays where it is.

Chairman Leichtman: I want to emphasize that no one is looking to stop the project.

Ms. Mackenzie: When do you think the DOT application will be finalized?

John Bridges: They said two weeks.

Chairman Leichtman: We will let it sit. We really appreciate your cooperation in working with the Board on these issues.

III. REVIEW AND APPROVAL OF MINUTES

Chairman Leichtman: Corrections should be made to pages 4 and 5.

MOTION – Kerry Leichtman/SECOND – John Priestley: To approve the minutes of the Planning Board meeting of December 16, 2009 as amended. The motion was passed 6-0-0.

The meeting was adjourned at 8:50 p.m.

The next meeting of the Planning Board has been scheduled for Wednesday, February 10, 2010.

Nancy Ninnis
Recording Secretary