APPROVED

Town of Rockport Planning Board

Wednesday, January 13, 2016 – 5:30 P.M.
Rockport Opera House Downstairs Meeting Room
Meeting Televised on Channel 22

Board Present: Chair John Alexander, Howard "Tony" Bates, Warren Erickson, Terri MacKenzie, Thomas Murphy, James Ostheimer, and John Viehman

Board Absent: None

Staff Present: Planning and Development Director James Francomano, CEO Scott Bickford, and Videographer Tom Goodwin

I. Roll Call

Chair John Alexander called the meeting to order at 5:30 P.M.

II. New Business

A.Heiwa Soy Beanery d/b/a Tofoodio, LLC – 201 West Street - Preliminary Site Plan Application for Light Manufacturing and Retail Uses – Map 26/Lot 7-1: Applicant Jeff Wolovitz said he wanted to relocate all manufacturing aspects of his business from Belfast to Rockport. He manufactured tofu and sold it wholesale throughout the state. The building (the old West St. Market) was about 2,600 sq.ft. and he planned to use about two-thirds of the space for his business and the remaining space for a food-related tenant.

Chair Alexander explained that the reason the applicant had to come before the Board was that the building had been empty for a couple of years and Change of Use of a commercial building required Site Plan approval. He said the Board wanted to see landscaping and lighting plans when the applicant returned for Site Plan Review.

A walk-in cooler had been mentioned and the Board would need to know if this changed the footprint of the building. Mr. Wolovitz said there would be an 8'X10' walk-in cooler that would be attached to the exterior in the northeast corner next to the shipping/receiving area. It would be exterior to the building but accessible from the interior. Ms. MacKenzie advised the applicant to be sure the cooler would not encroach on the rear setback.

Chair Alexander said the more landscaping the better and referred the applicant to descriptions in the code. Mr. Wolovitz said the visibility of the building was important to him and he wanted people driving by to know there was a tofu business there; therefore, he did not want to hide the building behind landscaping. Chair Alexander said the ordinance described the minimum landscaping requirements and anything beyond those would be welcome.

Planner Francomano brought to the attention of the Board the fact that the manufacture of tofu had a by-product of a whey-like substance that could be challenging for the wastewater system to absorb. However, to verify this Woodward & Curran was reviewing the applicant's claims on the quantity and

strength of this proposed waste stream. That data would be available before the next meeting. Mr. Murphy ascertained that the underground gas tanks previously on the site had been removed.

[Chair Alexander said the next three items, all concerning the Bay Ridge Phase 4 Subdivision, would be reviewed and discussed without a decision until the end because there might be interconnected issues. Tony Bates and Terri MacKenzie both advised that they would be recusing themselves from voting on these issues and left it to the Board as to whether they could participate in the discussions nevertheless. Chair Alexander invited them both to ask questions and make comments.]

B. Dick Nightingale - Bay Ridge Phase 4 Subdivision - Application for Lot Boundary Adjustment as Amendment to Final Plan Approved June 2004: The applicant was represented by land surveyor Mark Ingraham, who said Phase 4 of the Bay Ridge Subdivision had been approved in June 2004 and included Lot 12, sale of which was now pending. Lots 12 and 13 had been reviewed in an amendment to move the road in February 2006.

Mr. Nightingale had now build a spec house on and developed Lot 12, which was now under contract. He wanted to change the lot line so as to keep a small triangular piece to go with the remaining land he owned to the west of Lot 12. This triangle would provide 68' of road frontage, allowing access off Hawthorne Point Rd. to the remaining land next to Lot 12.

Chair Alexander said the Board would be looking at Article 9.1 – 9.3 of the Subdivision Ordinance, which limited the scope of review to those portions of the plan that were proposed to be changed. Mr. Francomano said it was his position that there were no consequent impacts from this proposed change.

The Chair called for public comment, but none was forthcoming.

C. David Moore – Hawthorne Drive – Proposal to Merge Lots 5 & 6 of Bay Ridge Phase 4 Subdivision: Applicant David Moore joined Mark Ingraham in front of the Board. Mr. Ingraham explained that Mr. Moore proposed to merge Lots 5 & 6 on Hawthorne Drive with his abutting property with frontage on Chickawaukee Pond Road.

Mr. Francomano asked Mr. Ingraham to address the possible tax implications of combining the three lots. The surveyor said they were currently being assessed individually. Combining the lots would remove 5 & 6 from the subdivision. Mr. Erickson asked if Hawthorne Dr. would continue to be primary access to Lots 5 & 6 if they were removed from the subdivision. Mr. Moore responded that access to the two lots, as proposed, would be from Chickawaukee Pond Road.

Mr. Viehman asked how the proposed removal of the two lots from the subdivision would impact the subdivision's homeowners' association. Mr. Francomano said Mr. Nightingale still owned too many of the lots for an HOA to function He said he felt there were two separate decisions here: one to combine the lots and the second to remove them from the subdivision. The Town Attorney had suggested the applicant retain an attorney to explain to the Board any possible impact on the subdivision covenants. Called upon for his opinion, CEO Bickford said the covenants became a civil issue and the lot owners would have to deal with that.

Mr. Murphy said that, more fully understanding what was intended with this application, he would like recommendation from legal counsel as to the Board's rights and responsibilities regarding these issues. Chair Alexander said he felt the Board would agree that the three lots could be merged, but removing them from the subdivision became a legal issue. Mr. Francomano said the Town Attorney's opinion was that going forward would require a lot of research. She felt the Planning Board could not injure other members of the HOA, even if the HOA were not yet formed. Mr. Francomano said the person wishing to

make these changes must have right, title, and interest to do so. Chair Alexander felt the PB could not approve the combination of the lots without the HOA's agreement.

The Chair called for public comment.

Eric Belley said it was not a possibility that the three lots could be combined and remain part of the subdivision. Mark Ingraham said Mr. Nightingale owned 13 of the subdivision lots and, when informed of Mr. Moore's proposal, said he did not have a problem with Lots 5 & 6 being removed. Mr. Murphy said he would need to see that in writing, along with opinions from the Town Attorney and Mr. Nightingale's attorney.

D. Dick Nightingale - Bay Ridge Phase 4 Subdivision - Proposal to Further Amend the Final Plan to Increase the Width of a ROW Across Lot 5 to Serve Additional Lands not Included in the Approved Subdivision:

Mr. Ingraham explained that Mr. Nightingale had deeded to his daughter 2 back lots with access via a 30' wide ROW from Hawthorne Drive. The Chair asked CEO Bickford to explain the situation. Mr. Bickford said the PB originally approved a private way plan for the subdivision that was too small. The change now proposed was intended to rectify everything. There were 2 options on the table: one was as depicted on the plan – a private way plan to access the two lots at the end of the road.

Chair Alexander paraphrased that the PB had approved a 30' ROW to a certain point and a 50' ROW was now being proposed past that point. Mr. Bickford said it needed to be recorded as a private way. He explained it was 50', rather than 40', because the land Mr. Moore had purchased was the third lot to be accessed off the private way. Mr. Bickford said this new plan would make all the problems go away. The private way to Stacy Nightingale's lot had to be 30', but Mr. Nightingale had another lot beyond that, which required a 50' private way. There was lengthy discussion required to fully explain the situation.

The Chair called for public comment.

_____ Grey asked what impact, from a tax and ownership perspective, this private way would have on him as a lot owner. Chair Alexander said the Board could not advise him on that.

Mr. Francomano suggested looking at the Land Use Ordinance 805.3 "Private Way" so the PB would understand why this could not be fixed by the Code Office. He noted the table regulating the number of lots served by ROW and private ways.

Chair Alexander then moved back to Agenda Item II.B and asked for a motion.

ACTION: Thomas Murphy made a motion, seconded by Warren Erickson, to approve the Bay Ridge Phase 4 Subdivision application for an amendment to the final plan approved by the Planning Board in June 2004. Applicant Dick Nightingale proposes a lot boundary adjustment to fulfill a condition of a pending sale of Lot 12, an undeveloped lot on Hawthorne Drive.
Carried 5-0-2 (Mr. Bates and Ms. MacKenzie abstained)

The PB then moved to Agenda Item II.C.

ACTION: Thomas Murphy made a motion, seconded by Warren Erickson, to table this item until we have sufficient evidence of right, title, and interest and opinion from counsel.
Carried 5-0-2 (Mr. Bates and Ms. MacKenzie abstained)

Chair Alexander said that when this issue came back before the PB they wanted to see documents from the developer and all lot owners saying this was an acceptable way for them to proceed. Mr. Francomano suggested rather that the PB had found the applicant had not met the burden of demonstrating sufficient right, title, and interest in the lands affected by the proposed change. Chair Alexander agreed this was more properly stated.

The PB then moved to Agenda Item II.D.

ACTION: Thomas Murphy made a motion, seconded by Warren Erickson, to table this item so that the parties have the ability to realize all the ramifications on their side and come back prepared to say everybody is happy and would accept this.
Carried 5-0-2 (Mr. Bates and Ms. MacKenzie abstained)

III. Discussion – Proposed Amendments to Bylaws Last Discussed at the Board's Regular Meeting of August 12, 2015. Chair Alexander said the PB needed to vote whether to approve the proposed changes to the by-laws. Mr. Francomano said the discussion must happen at one meeting and be voted on at the next meeting. Since a meeting had intervened since the discussion, this meeting would require discussion so the changes could be voted on at the very next meeting.

Planner Francomano said he would like to propose changing the day and time of the PB meetings. He said it was challenging for the PB to meet in the same week as the Select Board and he also thought the PB's meeting on the same night as the ZBA might be productive for applicants. The Select Board had said it did not want to limit the ZBA's jurisdiction over special exceptions, which also required site plan approval. He suggested both boards meet on the 4th Wednesday of the month: the ZBA at 5:30 P.M. and the PB at 7:00 P.M. If there were no ZBA meeting scheduled, the PB would meet at 5:30 P.M. The Board agreed to this and planned to vote on the revised by-laws next month.

IV. Discussion – ORC Work Plan Item 6 "Architectural Review": Chair Alexander said the Board would not deal with this tonight.

V. Minutes From the Board's Workshop Meeting of November 18, 2015.

ACTION: Thomas Murphy made a motion, seconded by John Alexander, to approve the minutes of the 11/18/15 meeting.
Motion and second withdrawn

Ms. MacKenzie said she had not attended the meeting but had submitted a memorandum prior to it. She felt this should be included as part of the minutes. The Chair suggested denying the motion so the additional material could be added and voted on next month.

ACTION: Thomas Murphy made a motion, seconded by _____, to table the minutes of the 11/18/15 meeting.
Carried 7-0-0

Chair Alexander said that reading through previous minutes and going to the MMA workshop made him realize that the PB minutes must include Findings of Fact because that was what would be looked at if a decision went before a higher authority. The Chair felt all the dialogue that was included in the minutes was not really needed; rather, some headlines were needed and the minutes must be the same format each time, thus making them easier for members and the public to follow. He suggested they ask the recording secretary to use headings, such as what is the item being discussed, any issues, any contentious issues, Findings of Fact, and the vote.

Tony Bates said the Board had a video of exactly what happened at each meeting. Mr. Francomano stated that written minutes took precedence in court proceedings over video because the PB's vote to approve the minutes the next month confirmed what had been said. He was surprised to hear the MMA had said the Findings of Fact could not be interpolated from the written minutes. He felt the secretary might not be comfortable with interpreting the Board's intentions.

Select Board member Tracy Murphy said the town hired a note-taker because the board was quasi-judicial, which meant that the Board's conversation was what was needed. As far as Findings of Fact, Ms. Murphy said that could be done by staff. Chair Alexander said the MMA workshop leader had said the minutes did not need to include all the "he said, she said". Ms. Tracy said she would want the Town Attorney to weigh in on this before the minutes were changed. CEO Bickford said the details in the minutes were what he referred back to, even years later, for details when there was a question that would not be answered by the Findings of Fact. He felt the recording secretary knew when something should be written down and knew when to ignore the extraneous parts of the discussion.

Chair Alexander said the minutes would continue as now, with a line added for Findings of Fact. Mr. Francomano asked the Board's level of comfort with the Findings of Fact being written before the meeting and voted on at the meeting; otherwise, the Findings of Fact would be written after an approval and not approved until the next meeting. The Board agreed to try this. There was further discussion.

VI. Adjournment

The meeting adjourned at 7:36 P.M.

Written from the video and respectfully submitted,

Deborah Sealey
Recording Secretary