

**D-R-A-F-T**  
**Town of Rockport Planning Board**  
**Wednesday, May 13, 2015 – 5:30 P.M.**  
**Rockport Opera House Downstairs Meeting Room**  
**Meeting Televised on Channel 22**

**Board Present:** Chair John Alexander, Tony Bates, Terrie MacKenzie, Thomas Murphy, James Ostheimer, and Sarah Price

**Board Absent:** John Viehman

**Staff Present:** Planning and Development Director James Francomano, Videographer Tom Goodwin, and Recording Secretary Deborah Sealey

Chair John Alexander called the meeting to order at 5:33 P.M. He said the board's job was made easier by Planner Francomano's supply of information on things that needed to be considered before the meeting. The Chair requested an informal meeting to discuss ordinance questions at the end of this regular meeting.

**I. Old Business**

**Russell and Joanne Spear – 673 West Street - Application for Change of Use for a Take-Out Food Stand – Map 18 / Lot 55:**

Russell Spear explained that he and his wife would like to add a 10' X 12' stick-built building to their property for purposes of selling cold drinks, hot dogs, and hamburgers. They had things lined up to open July 1, but could not do much without PB approval, he said.

Chair Alexander said the PB had just completed a site walk of the property and asked if there were any questions from board members: there were none. Ms. MacKenzie offered a supplemental aerial photo of the location because it had not been included in the submittals. Mr. Spear agreed this could be added to his application packet. After a brief discussion, Chair Alexander noted that a survey had not been offered and was not required.

Ms. Price noted that the site plan showed contours at intervals of 5', not the required 2'; therefore, the 2' requirement would have to be waived. She also pointed out that photos had not been included with the map. Chair Alexander said he felt the PB had the necessary photos. Tony Bates said he would like a clearer understanding of what photos the PB required with applications and would like that put on the agenda for later.

**ACTION:** Sarah Price made a motion, seconded by Tony Bates, to accept the 5' contours and waive the requirement for 2' contours.  
Carried 6-0-0

**ACTION:** Tony Bates made a motion, seconded by Thomas Murphy, to waive the requirement for photos.  
Carried 6-0-0

Tony Bates said neither soils information nor a stormwater drainage plan were in the packet. Mr. Spear replied that they had an existing parking lot for their home occupation of “Canvas, Etc.” and would now be enlarging it by an additional 25’ X 30’. Mr. Francomano said a drainage plan would be necessary only if there were going to be extensive fill or a foundation. The proposed lot area was shown on the plan and the applicant had stated that the coverage of the total lot would still be only 12.3%: thus, Mr. Francomano said, it would result in an insignificant amount of new impervious.

**ACTION:** Thomas Murphy made a motion, seconded by Terrie MacKenzie, to waive the requirement for soils information on this application.  
Carried 6-0-0

Chair Alexander said the project would need DEP approval and a license from DHHS. Ms. Price said Mr. Francomano had recommended State Fire Marshall approval be a condition of PB approval. Mr. Francomano responded that the CEO had told him this would not be necessary. Mr. Spear noted that he had a MDOT entrance permit.

The Chair asked if the application was complete, with all of the requirements of the written application included in the package. Ms. Price said a plan was usually labeled, but this one was labeled as two separate attachments, the first of which showed property lines, parking, and abutters (except those across the street). Mr. Francomano suggested this be called the regulatory Site Plan. Chair Alexander confirmed that this would no longer be an attachment, but would become the Site Plan.

**ACTION:** Thomas Murphy made a motion, seconded by Tony Bates, that the application is complete.  
Carried 6-0-0

Section 1305 (Performance Standards): Chair Alexander read aloud subsection 1305.1 and asked if the applicant’s description of the landscaping was written on the plan and was sufficient. Mr. Murphy said there was a landscaping statement on the plan. Tony Bates said the applicant would be adding two azaleas and a purple smoke bush as a minimum.

Section 1305.3 (Vehicular Access): Chair Alexander said there was an issue with the fact that the ordinance said the driveway must be 75’ in length. He had thought this requirement could be waived, but Mr. Francomano said that they might be waived under Section 1306, so it depended on the board’s approach. The planner said that from the edge of the pavement to the nose of the last car could be read as 81’ on the plan.

**ACTION:** John Alexander made a motion, seconded by Terrie MacKenzie, to accept that the 81’ driveway on the scale drawing is acceptable and meets the requirements of the ordinance.  
Motion Failed

Tony Bates suggested it would be cleaner if the PB waived the driveway requirement. Mr. Murphy agreed. Ms. MacKenzie said it was best to avoid waivers because they set precedents. Tony Bates felt the board was fudging to think the entire length was the driveway and considered the spot where cars started parking to be the end of the driveway. Mr. Francomano interpreted the ordinance to mean the 75’ was to avoid queuing of vehicles on Route 1 or 90 and read aloud the definition of “driveway” as an access way.

**ACTION:** Tony Bates made a motion, seconded by Thomas Murphy, to waive the requirement of a 75’ driveway under the provisions allowed (Section 1306) as being an unnecessary burden on the applicant.  
Carried 6-0-0

Chair Alexander continued with Section 1305.4 (Parking and Circulation): Ms. MacKenzie asked how many parking spaces the PB could waive. Mr. Francomano read from the ordinance that the number of spaces must be appropriate to the planned use. Tony Bates asked Mr. Spear if he expected his two businesses to have different peak hours. Mr. Spear replied that they would be open at the same time, but he could not predict when people would come to the canvas business. Mr. Murphy ascertained that in the current busy season they averaged 3 customers each day.

Ms. MacKenzie asked if the PB could waive the number of parking spaces to less than shown: could they require only 4 spaces? Chair Alexander replied that the planner had said they could waive it down to whatever they wanted. Mr. Francomano said shared parking was allowed, so the overlap could be counted.

Ms. MacKenzie asked the applicant for some details to define the MDOT easement. Mr. Francomano said it was MDOT's property, but the exercise of the right was subject to a lot of tradition. The fact that Dave Allen issued the permit without clarifying the status demonstrated how causal they were; however, there was no question that it was MDOT's property to that line and the applicant had been getting the benefit as long as the canvas business had been operating. Mr. Murphy said the board should not include parking on someone else's property as part of the required parking area. Ms. MacKenzie concurred.

**ACTION:** Terrie MacKenzie made a motion, seconded by Thomas Murphy, to waive the number of required parking spaces down to 6 from 8.  
Carried 4-2-0 (Sarah Price and Tony Bates voted against)

Tony Bates said he was concerned that there were not a lot of opportunities for take-out food in that area and parking might become a problem if the business was very successful. Mr. Francomano said the board could add conditions of approval, but then enforcement became the issue: staff could not babysit the property. Ms. Price saw a tendency to dismiss the ordinance with no good-sense reason: the board asked why not, rather than why. She said she did not have enough information to cut the ordinance requirement by one-quarter. Additionally, it was necessary to have turnaround space for delivery trucks. Ms. Price said this needed to be taken seriously because Rte. 90 was dangerous. She asked for an estimate of the number of customers and the parking needed, saying she wanted to be sure everyone was aware of the ordinance, which required 2 spaces for the dwelling and 2 for the home occupation, which could be shared with the takeout stand and also could be allowed to block in employees.

Mr. Spear said there would be 1 employee for the take-out business, but none in the canvas shop. He said they had 2 private parking spaces and also room for an employee vehicle. Mr. Murphy said they should not take deliveries during peak hours. Mr. Francomano said the ordinance required 25 spaces, rather than 8. Ms. Price asked what the board anticipated would happen with any overflow. Ms. MacKenzie responded that the PB could waive any of the above. She said 25 spaces was absurd for a small take-out, so the PB was following the ordinance.

Chair Alexander continued on through Section 1305, reading the section titles. Tony Bates quoted the applicant as having said a larger sign would be permitted and the minutes of the pre-application meeting stated there could be a second sign. Mr. Spear responded that the only additional signs planned would be mobile signs. Mr. Alexander said this was a new commercial venture, so a sign could be added. Ms. MacKenzie thought only one sign was allowed per parcel. Tony Bates said there could be a second sign if the first business didn't use its allowed sign square footage. There was some discussion of the question. Mr. Francomano said this would be handled by a CEO permit.

Moving on, the chair asked if there were any issues with emergency access on the plan; he noted the fire chief had said there was no problem.

Section 1000 (Performance Standards): The ordinance required a landscape plan by a qualified person. Chair Alexander referred to the applicant's statement on landscaping and Mr. Murphy said this was more than sufficient.

Ms. Price said lighting needed to be on the site plan and the chair asked the applicant to add the details of the lighting before the board signed the plan. Ms. Price asked, considering the front yard as a buffer zone, if the buffer and the setback could be the same. Mr. Francomano replied that the front setback was only 15' from the ROW. The applicant had learned that MDOT owned land closer to the building than expected. He said he couldn't tell if the front setback was the same as the buffer. The planner said it was a matter of interpretation whether the plan was in compliance with Section 1002.3(5). Tony Bates said the azalea bushes were far enough back.

Ms. MacKenzie noted that the plan showed the sign as located on the MDOT ROW and asked if that were okay. Mr. Spear said it was not without an MDOT permit, for which he had applied. Mr. Murphy said the sign was currently in the ROW, so it was not the PB's problem.

Chair Alexander told the applicant the PB encouraged a 5-1/2 to 12 roof pitch. Mr. Spear confirmed it would be a shingled wooden building with vinyl siding.

Ms. Price wanted to discuss pedestrian traffic under Section 1305.4. She said there was no walkway on the plan and nothing, such as railway ties, to stop cars. She wanted to know if this was acceptable. Mr. Spear said he would be utilizing railway ties or cement and the chair asked him to stipulate that on the plan.

Ms. Price wanted people to be aware that no parking was allowed in the MDOT ROW or the breakdown lane. Ms. MacKenzie said this was inherent in the permit. Mr. Francomano stated that Section 808.1 said the PB must provide its own access management plan for Routes 1 and 90.

**ACTION:** Thomas Murphy made a motion, seconded by Tony Bates, that the Planning Board issue its own access permit in exactly the same words used by the MDOT permit.  
Carried 6-0-0

Chair Alexander invited public comment at 7:12 P.M. There was none.

**ACTION:** Thomas Murphy made a motion, seconded by Terrie MacKenzie, to approve the Site Plan application for a new food stand to be opened at 673 West Street (Map 18 / Lot 55), with the following conditions: 1) the applicant attains all required permits, 2) lighting information is put on the plan, 3) labeled on the plan would be the line that shows vehicle buffers, 4) the 2 parking spaces on the MDOT ROW are removed from the plan, 5) abutters' properties must be shown on the plan or on an attachment.  
Carried 5-1-0 (Sarah Price voted against)

## **II. Approval of Minutes of the 4/8/15 Meeting**

**ACTION:** Thomas Murphy made a motion, seconded by Sarah Price, to approve the minutes of the 4/8/15 meeting as amended.  
Carried 5-0-1 (Tony Bates abstained)

## **III. Adjournment**

The meeting adjourned at 7:27 P.M.

Respectfully submitted,

Deborah Sealey  
Recording Secretary