

MINUTES
PLANNING BOARD/ZONING BYLAW STUDY COMMITTEE MEETING
April 1, 2013
Large Hearing Room – 7:00 p.m.

Present: Mezzadri (Chair), DiManno (Vice Chair), Nashawaty, (Clerk), Farmer, Eldredge, Patterson, Slowe (Alternate)
Absent: Malzone
Staff: Fortier, Gregory

Item #1: George Zografos, prospective tenant, 773 Main Street (Route 6A), Dennis, MA, is seeking modification to Special Permit No. 2008-34 MOD to further modify a portion of the interior space to allow the existing coffee service to be operated by Dunkin Donuts, which is an allowed retail use and not a prohibited "formula based business" as set forth in Section 5 Definitions because it will not maintain three or more features found in said definition under section 4.1.2 of the Dennis Zoning Bylaw. The property is located within the LB Zoning District at 773 Route 6A (Main Street), Dennis, MA (Assessor's Map 351-21). **(Continued from March 4, 2013.)**

Discussion: Ms. Patterson recused herself due to a conflict of interest. The applicant was present along with his attorney, Andrew Singer, who outlined the proposed project before the Board. The applicant is seeking to sell Dunkin Donuts products inside of Cape Farms Market (no sandwiches will be served). The only construction will take place inside, to lengthen the counter. Eventually, the applicant would like to add a sign outside, which will require their appearance before Old King's Highway. Mr. Singer noted that this is neither a formula based business nor a separate entity from the market. They intend to sell all products through two or three common registers, similar to the design at Ring Brothers in South Dennis. Employees will be cross-trained so that one handles the gas and the market register, and another handles the Dunkin Donuts service. They are also waiting on the results of a traffic study analysis which is due within two weeks.

Mr. Fortier noted that the Town has worked with Mass Highway, and an easement for a sidewalk has been granted. The Town also has work in that area and they are hoping to coordinate their construction with that of the sidewalk work. Mr. Mezzadri pointed out that the Cape Farms Market is currently violating a number of conditions from their previously approved Special Permit, including extensive signage in the window, non-biodegradable products, and failing to adequately remove trash. No additional permits can be granted until all violations have been addressed. Mr. Singer noted he will speak with Cape Farms.

Several people from the audience offered comments on this proposal. Primarily, residents are concerned about the impact of increased traffic in an already congested area, particularly near the Homestead Condo entrance to the south; compromising the historical integrity of the area; the threat of more trash and litter; the use of trademarks in the historical district, the impact of Dunkin Donuts on other small food businesses in the village, and inadequate parking.

Attorney David Reid, representing Homestead Condos, questioned whether this is, in fact, a formula based business, pointing out several aspects which would suggest it is. He pointed to the standardized menus, process of not baking on property, use of trademark signs, DD equipment inside, and meal tax. Mr. Reid also noted that this project may fall under the description of a fast food restaurant rather than a retail operation because the food is prepared for immediate consumption, not delayed use.

Mr. Fortier pointed out that the applicant needs to limit his changes to no more than three, as defined

by a formula based business, in order to potentially obtain approval. Ultimately the proposed project needs much work to reach a point of receiving approval. Meanwhile, the Board unanimously preferred to hold off their comments until the traffic study has been completed and reviewed with Town Department heads.

Vote: A Motion was made by Ms. Nashawaty and seconded by Mr. Eldredge to continue this matter to the May 6, 2013 hearing. **VOTE: 6-0-0.**

Item #2: Lea Howelett Trustee, Grand Cove Realty Trust, 645 Route 28, Dennisport, MA is seeking a Site Plan Review/Special Permit to modify an existing building for a gallery and restaurant and to add 36 10x10 outdoor retail canopies under sections 2.3.4.1.b, 3.1.3.2, and 3.1.6.6 and 8.5 under the Dennis Zoning Bylaw. The property is located within the DPVCB Zoning District at 635 Route 28, Dennisport, MA (Assessor's Map 90-69). **Continued from February 4, 2013 and March 4, 2013.**

Discussion: Charles Spiegel was present on behalf of the applicant. Mr. Mezzadri directed this issue to another continuance because updated plans were submitted at the last minute giving the Board no time to review them. He also noted this would be the last continuance granted, after which the applicant would need to withdraw and reapply if the matter was still unresolved. Mr. Fortier shared that Attorney Peter Freeman was considering representing the applicant; however, this has not yet been confirmed.

Vote: A Motion was made by Ms. Nashawaty and seconded by Ms. DiManno to Continue this matter to May 6, 2013. **VOTE: 7-0-0.**

Item #3: Carl & Jill Schoote, (Cap'n Kid Ice Cream Adventures) 138 Main Street, West Dennis, MA is seeking to operate a seasonal ice cream tour excursion under section 9.3.3 of the Dennis Zoning Bylaw. The property is located within the Mixed Use Marine District at Bass River Marina, 138 Main Street, West Dennis, MA (Assessor's Map 63-2).

Discussion: Carl and Jill Schoote were present. Mr. Schoote briefly reviewed their proposal to operate a seasonal, 20-seat tour boat out of Bass River Marina. As proposed, the operator is seeking hours, Monday – Friday, daytime, to correspond with lower demand periods at the Bass River Marina as well, and will be allotted ten parking spaces for this venture. The proposal is very similar to the Pirate's Adventure tour boat operation approved by the Planning Board in 2011. The only differences are a slightly larger boat, about 10 additional seats, and there will be no pirate battles on the water. A water cannon will be used, but no pirate-type music or "boarding" of the vessel by a pirate, as in the previously approved project.

The Board discussed the following conditions: (1) The proponent will coordinate operations with the Dennis Harbor Master and will abide by all Harbor Master licensing restrictions; (2) The applicant may operate the tour boat seven days a week between the hours of 10 am and 7 pm, with the last excursion leaving the dock no later than 6 pm; (3) The tour boat will operate south of the Highbank Road Bridge.

Vote: A Motion was made by Ms. Nashawaty and seconded by Ms. Farmer to approve the Special Permit with conditions noted above. **VOTE: 7-0-0.**

Attachments:

1. Town Planner's Staff Report
2. Reports From
Fire X

Natural Resources X_

Police _X__

Engineering X__

Health ___

Building _

Tax Collector _X_

Other: Letter from Harbormaster Department dated March 22, 2013.

3. Site Plan Titled:

4. Building Elevations Titled:

Item #4: Zoning Amendment: To see if the Town of Dennis will amend the Dennis Zoning By-law by adding a new Section 13 Special Requirements for Medical Marijuana Facilities for the purpose of allowing and regulating the location of these facilities in the Town of Dennis.

Discussion: Mr. Fortier briefly summarized the two previous discussions the Planning Board had with regard to amending this zoning bylaw. This amendment will protect the Town from medical marijuana facilities rising up anywhere outside of the industrial zone until further state regulations have been made. Further amendments to this bylaw can be made in the future, if necessary. Selectman Wayne Bergeron spoke in support of this issue.

Vote: A Motion was made by Ms. Nashawaty and seconded by Ms. Patterson to propose general approval of this zoning bylaw at Town Meeting. **VOTE 6-0-1 (DiManno abstained).**

Item #5: Zoning Amendment: To see if the Town of Dennis will amend the Dennis Zoning By-law by amending Section 5 Definitions by removing the Definition of Building Height which is based upon measuring from finished grade and replacing it with a new Definition of Building Height which will be based upon "average natural grade" as defined in the proposal.

Discussion: Mr. Fortier summarized the two previous discussions held by the Planning Board with regard to amending this bylaw. He explained that amending the bylaw on building height has been a topic of discussion since 2001. Crowes Pasture, seasonal, and hotel resorts have already been modified. Under this amendment, building height will now be measured from natural grade verses base flood elevation. This may reduce the amount of fill in some areas to prevent raising height. In others it will take away a penalty for being located in a flood zone. It also takes away filling the flood zone which displaces flood and adversely impact surrounding property. Mr. Eldredge had objected to the original draft so this was modified. However, he voiced his concerns that this amendment would limit the rights of owners to build as they wish on their land and will hurt owners of smaller and less desirable lots.

Mr. Kelley spoke in support of this proposal stating it corrects a longstanding problem. He pointed out that if an owner is aggrieved because of fill limitations, they can always seek the Zoning Board for relief.

Vote: A Motion was made by Ms. Farmer and seconded by Ms. DiManno to propose general approval of this zoning bylaw at Town Meeting. **VOTE: 5-2-0. (Eldredge and Patterson opposed).**

Additional Business:

1. Planning Board Member committee reports. None.
2. Review the Minutes of March 4, 2013: Approved as amended.
Review of Minutes of March 18, 2013: Approved as amended.

Planning Board meeting adjourned at 9:15 PM

The Board unanimously approved these minutes with edits on May 6, 2013

