

Planning Board Public Hearing
Monday, March 29, 2010
Grace Gouveia Building, Room 6
26 Alden Street, Provincetown, MA 02657

Planning Board Members Present: Howard Burchman, Dorothy Palanza and Peter Page.
Excused Absent: Marianne Clements.
Staff Present: Maxine Notaro, Permit Coordinator.

Howard Burchman, Chairman called the meeting to order at 7:00 p.m.

Minutes of March 15, 2010

Motion: To endorse as presented.

Moved: Dorothy Palanza. Seconded: Marianne Clements. Voted: 4-0-0.

Site Visit 5:00 p.m.

7 Creek Round Hill Road to replace a retaining wall in the rear of the property

No on-site inspection performed due to inclement weather. The board members did individual site visits in advance of the meeting.

Meeting Agenda 6:00 p.m.

Request for Approval Not Required

Application by Chester N. Lay, RLS on behalf of Lora Papetsas for a perimeter plan at the property located at 101 Commercial Street, Provincetown MA.

Motion: To endorse the plans as presented.

Motion: Peter Page. Seconded: Dorothy Palanza. Voted: 4-0-0.

Public Hearings

Continued Case

Case #FY10-11 Site Plan Review

Application by **Deborah Paine, Inc. on behalf of Daniel Edward Ponton** under Article 2, Section 2320 of the Zoning Bylaws for High Elevation Protection District B. The applicant seeks approval to replace a retaining wall in the rear of the structure at the property located at 7 Creek Round Hill Road, Provincetown, MA (Res1 Zone).

Mike Winkler, crane operator, said the property will need leveling in some areas and the contours are then restored. The hill underneath will not be destroyed. He intends to bill up the pads with wood mats and crawl up on top.

Howard Burchman asked if the back wall eye beams were stable.

Deb Paine said they will install heavy duty sheet pilings in front and the eye beams will remain. There are a couple of Locus trees that will need to be removed.

Peter Page asked how much area would be needed between the sheet and the trees. Mike Winkler said roughly 19 inches. The intent is minimally disturbing the site because of the area in question.

Deb Paine explained the layout of the project, i.e. where the crane will go and she explained the landscape planting plan. The intent is to stabilize the bank and plant in November. Some plants will be Winterberry, Climbing Clematis and Tupelo.

Howard Burchman said the property is really steep and the only one that will really see anything is the immediate neighbor.

Mike Winkler pointed out on the existing site plan where the temporary work for the placement of the crane will be located. They will be replacing the new wall as close as possible to the existing wall.

Motion: To approve site plan DWG 1009sit drawn by East Cape Engineering and dated February 3, 2010 as presented.

Moved: Dorothy Palanza. Seconded: Peter Page. Voted: 3-0-1 (Marianne Clements).

Proposed Zoning Bylaw

Public hearing pursuant to MGL Chapter 40A on the following petitioned article on the April 5, 2010 Annual Town Meeting to amend the Provincetown Zoning By-law by adding the text below.

Formula Business Regulated District

To see if the Town will vote to amend the Provincetown Zoning Bylaws so as to add the following provisions with respect to Formula Business Establishments by adding the following:

Definition:

"Formula Business" means a type of retail sales establishment, restaurant, tavern, bar, or take-out food establishment which is under common ownership or control or is a franchise, and is one of ten or more businesses or establishments worldwide maintaining three or more of the following features:

- (a) Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- (b) Trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others, on products or as part of the store design, such as cups, napkins, bags, boxes, wrappers, straws, store signs or advertising devices.
- (c) Standardized signage and color scheme used throughout the interior or exterior of the establishment.
- (d) Standardized uniform, including but not limited to, aprons, pants, shirts, smocks or dresses, hat and pins (other than name tags).
- (e) Standardized facade and signage.

Purpose:

The purpose and intent of the Formula Business Regulated District (FBRD) is to address the adverse impact of standardized businesses on Provincetown's historic residential community. The proliferation of Formula Businesses will have a negative impact on the Town's economy, historical relevance, unique character and economic vitality.

(1) Location

The location of the Formula Business Regulated District (FBRD) shall encompass the Town of Provincetown.

(2) Permitted Uses

Any use permitted in the underlying zoning district shall be permitted, except for those specifically prohibited below in Section 3.

(3) Regulated Uses

Formula Business uses are regulated in the FBRD in order to maintain a unique retail and dining experience. Formula Businesses frustrate this goal by detracting from Provincetown's overall historic experience and threatening its tourist economy. The proposed use of any building or structure for a Formula Business establishment shall require both a Special Permit from the Zoning Board of Appeals

and a site plan approval of the Planning Board as well as the business license. The impact on the neighborhood and Town visual character and the impact on surrounding businesses of any Formula Business establishment shall be criteria for approval, or take any other action relative thereto.

(Submitted by Barbara Rushmore and others)

Howard Burchman explained the requirements as set forth by Chapter 40A. He stated, if town meeting does not pass this article, it could not be heard until two years from the date of town meeting. Also, the article would need a two-thirds vote to pass.

Barbara Rushmore said she felt as though the proposed article had not been publicized enough and that the board could have made more of an effort to make that happen.

David Gardner said the hearing was duly noticed.

Ms. Rushmore said she felt as though the process is not working right because it should have been noticed out sooner in order for her to make changes where necessary. She said she had discussed this with the board earlier on to hear objections or additions and doubted if the board members had even read the article.

Howard Burchman said he took exception to Ms. Rushmore's statements as to the board having or not having read the article prior to the hearing. He, as did all other members read the article in depth.

Barbara Rushmore said she was anxious to meet the requirements that the Attorney General would approve. He had approved two similar articles in other Cape towns. The point of regulating was to protect the businesses here in town. The proposed accomplishment is to restrict the possibility of chain stores such as McDonalds from moving into Provincetown. She was not trying to be too restrictive with the article propose and did not include things that the board might not like.

She included both Planning and Zoning approval in an attempt to prevent drive-throughs. Even though the banks have drive-in's they are not a food establishment. She was not trying to prohibit the businesses that the town needs such as Stop & Shop, Cumberland's, Tedeshci because they are a necessity. However, she does want to see the town retain its character of the small, individual businesses. She would like Provincetown to have the same ambiance; therefore, it is important to have the approval of the Planning Board.

David Garnder said this is a zoning article but the petition as written does not place it in the bylaw itself. They would need a recommendation as to where it could potentially fit in. It would probably mean creating a new section 2360 because it is drafted as a new district.

Howard Burchman said the article calls upon the Planning Board to do a Site Plan Review.

Barbara Rushmore said that refers to someone wanting to buy land and putting in a McDonalds.

Howard Burchman said the proposed bylaw says you have to have a Site Plan Review. What happens to those properties that already have an existing structure on it?

Barbara Rushmore said if there is nothing in the structure then the board members can say that.

Dorothy Palanza said the way the proposed bylaw is written any Formula Business would need to go before the Planning Board whether it is inside or out.

David Gardner said he did not believe this would fall under Planning Board purview.

Barbara Rushmore said the Formula Businesses would be decided by the Licensing Board.

David Gardner said the only thing that applies is the definition but the way written, what we do with a formula business falls a little short.

Howard Burchman said the criteria is open ended that gives huge discretion.

Barbara Rushmore said she was the proponent of the article; therefore, she can make it less restrictive. She could amend it to say site plan required if new construction.

Dorothy Palanza asked out this was going to work. If the idea is to keep chain stores from coming in, who will make that determination? What if they are using an existing store with legal signage?

Barbara Rushmore said any piece of property would require approvals.

Howard Burchman asked how this would prevent a, let's say, Cuffy's from coming in?

Barbara Rushmore said the large, low-priced chain would be driving the small businesses out of business. The purpose of the bylaw is to help the economy.

David Gardner said all except one T-shirt shop are seasonal businesses. Cuffy's is the one that is a year-round business. It's not a good example to use because they are open year-round and employ people.

The bylaw requires a lot of thought and a degree of clarity. You are asking the zoning board to establish a bylaw but there is no criterion to follow. Zoning is regulated to control land use and not the businesses. He explained to Ms. Rushmore that the proposed language does not give the language to make a determination.

Barbara Rushmore said she thinks it is quite clear on what and how she has it defined. It is clear about the impact.

Howard Burchman said he was not sure if there is a negative impact of Formula Businesses.

Barbara Rushmore said if public hearings are held, it gives the neighborhood the opportunity to speak to its impact or not. She said she approached the Business Guild but they only work on the consensus. She did not see why the article would not pass without the long list of criteria.

Howard Burchman said they appreciate the fact we live in a unique commercial downtown district but felt this article needed more work because of the existing businesses that could be considered a chain such as Ace Hardware, True Value, Cumberland Farms, Tedeschi's, Stop & Shop.

Barbara Rushmore said the existing businesses would be grandfathered.

David Gardner said there is nothing in the proposed article on grandfathering. All existing businesses would become non-conforming. The use itself becomes non-conforming. What would trigger their use to come in to get a special permit?

Barbara Rushmore said people have discussed with her that this could be a problem. There are other towns that have adopted this Formula Business bylaw. We need to look to protect the future.

Dorothy Palanza said felt it was problematic without specific guidelines.

Peter Page said it is a great idea because people believe in it and they should be to decide and vote on it. However, having been on zoning, it is difficult when you don't have the clear cut guidelines.

Marianne Clements said it is great but it needs more work because it has a lot of grey area.

Howard Burchman said in concept it is good but it needs more time to spend on tweaking it.

David Gardner said the other towns have it in the regulated district. They could have other things in their district that cover other issues.

Barbara Rushmore said she has spoken to people in Chatham and businesses owners here in town and they all think it is a great idea but no one is here to speak to it. As for the commission members, they all have a vote at town meeting and can vote there.

Howard Burchman said his concerns are procedural to get the language correct to accomplish what is intended here.

Motion: To recommend not approving.

There is a legitimate debate about formula businesses and does it belong in zoning.

Moved: Marianne moved to indefinitely postpone.

Seconded: Dorothy Palanza. Voted: 4-0-0.

Articles in the April 5, 2010 Annual and Special Town Meeting Warrants

PLANNING BOARD: Land Use or Development Articles

Public Hearing In accordance with §2-2-3 of the Provincetown Charter, to determine the number of Board members in favor or opposed to the petitioned articles concerning land use or development for the April 5, 2010 Annual and Special Town Meetings.

No public present. Board members voted on above article.

Adjournment

Motion to adjourn at 7:40 p.m.

Respectfully submitted,

Maxine Notaro

Permit Coordinator/Recording Secretary