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Continuation Hearing  
Southwest Harbor Board of Appeals  
February 11, 2010  
Pemetec School Cafeteria

I. Call to Order/Roll Call: The meeting was called to order at 6:03 p.m. Board members present: Lunn Sawyer, Jim Geary, Charles Morrill

II. Continuation: Applicant: Robert Bosserman, 148 Seawall Road; Purpose: to Appeal the issuance of a permit for renewal of previous permit # 1320 (1998) for a 26 seat restaurant.

The Public Hearing was closed at 10:08 p.m., Wednesday, February 10, 2010. The continuation hearing began on Thursday, February 11, 2010 at 6:00 p.m.

Sawyer: when there is a 26 seat restaurant, is that occupancy? CEO the basis is the seating and that should follow through with the State as well. More than 26 is not a problem. Permitting: If the Seaweed café was closed for 20 years, and 20 years from now someone wants to open a restaurant, is that OK? CEO that may be a judgement call, but it's last use was a restaurant. If someone buys it as a home, that is the last use. There is no abandonment clause in our ordinance. Collier said that the usual concept is if you had a restaurant in a completely residential zone, in some ordinances there is an abandonment clause for say 1 year or 1 ½ years, only with that clause would the permit for the restaurant be void.

Geary: Asked the CEO about the driveway being converted to a road with back lot access, please walk through the property and the transition that has taken place. CEO: the division of land was somewhere in the early 80's, a survey is around 1981 – three parcels predating the ordinance. The structure where the restaurant is, is also early 1980's. There were deeded Rights of Way (ROW) to other lots. This is the driveway next to the building. By our ordinance it now falls into the category of a road. The house behind the restaurant was built in the 1980's and in 2004 a building permit was allowed for the Mattingly's to build on the third lot. As the CEO looked at that, he questioned the issuing of the permit. There is a 25' ROW over a stream on the other side of the restaurant that accesses the back properties, and building setbacks from the stream is 25' –the CEO also questioned why someone would give a ROW over a stream, unless there wasn't a stream

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there at the time the ROW was granted. Geary: when formal access was granted on the driveway which turned it into a road to the third lot, it didn't turn in into a non conformity. CEO said when the ordinance came into effect, in 1988, it turned it into a non-conformity. The use is conforming, although it is a non-conforming lot in zone C. There was an office prior to the restaurant, and in 1998 it came to the Planning Board which then approved the restaurant use. CEO made a decision as he measured the parking area in the front it is no different than that approved by the Planning Board except that it took away a spot but allowed another parallel spot. Back parking allows for diagonal parking, and there are sufficient spots for the use. CEO has the authority to permit the signs, and the dumpster because it is under 250'.

Geary said it appears there was some sloppiness dealing with this issue going back to 1998, which he finds unusual. Having reviewed the LUO many times, he can't find anything that can be done about it today. There is a potentially troubling situation which could occur at the restaurant with the parking and the driveway, that may cause potential problems, but he said he doesn't know, that in respect to the CEO issuing a permit for a sign and a dumpster, that there is anything that the Board can do about the parking. There is a need for the property owner to consider being a good neighbor. He hears and feels the concerns for the neighbors of this property, as the usage has the additional use of live entertainment to potentially later hours in the evening, and there is a need for sensitivity on the part of the property owner on that issue. To the extent it can be relieved by buffering, we have no jurisdiction to mandate anything, but the message is those things are extremely important and can be addressed by the CEO. Other than asking for cooperation there appears to be nothing this Board can do. Morrill pointed out that the division of land took place before the ordinance was in place. The expansion of the road was not mandated because the division of property was already accomplished prior to the ordinance. Morrill would like to see the back parking lot extended north.

Sawyer said looking at the access of the property, it appears that the Seaweed Café should not have been permitted originally, and the development of the third lot compounded the problem. There appears to be nothing that the Board can do about this. Expansion of the back parking area would be an improvement.

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Geary said, going over the ordinance, there appears to be no jurisdiction of this Board to do anything about the permit for a dumpster and sign, and failing that, there is nothing the Board can do about the other issues that were raised.

It was Moved (Geary) and Seconded(Morrill) that the Board of Appeals denies the Bosserman appeal of the issuance of a permit for renewal of previous permit 1320 issued in 1998 for a 26 seat restaurant, because the permit that the CEO issued was related to a dumpster and a sign, and other conditions on the property are basically unchanged since the 1998 permit was issued. The Board of appeals has no jurisdiction to address the current parking and buffering on the property site. Vote: 3 – 0 Motion carried.

Collier accepts as a matter of fact that the CEO's testimony re Section II a 9 is the case. The Board accepts the testimony of the CEO as regards the standards outlined in Section II.a.9 of the SWH LUO, with the exception that he has required that the buffering be brought up to standard, and has found fewer parking spaces than was originally allocated. The Board found the testimony to be credible and based the decision of the Board upon that testimony.

Moved Morrill, Seconded Geary that The Board heard testimony from the CEO about the property, and he testified that it was not in compliance with the previously issued permit with respect to the buffering. He has required that the buffering be installed no later than June 1 2010 and looked at the parking and determined that it is in compliance with the ordinance and that there were no other deficiencies found on the property. Vote: 3 – 0 Motion passed.

Geary addressed the visitors and thanked them for their civil participation in this process. He expressed frustration that, personally, the process for relief comes to calling the police. Everyone here wants this to work, and hopes all can remain neighborly and succeed in the process.

The meeting was adjourned at 6:40 p.m.