

John Thurlow

From: Pine Point Residents Association [pine-point-beach@maine.rr.com]
Sent: Monday, December 21, 2009 10:15 PM
To: john@thurlow.com
Subject: News from Pine Point Residents Association

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Pine Point Residents Association



REMINDER & UPDATE

Town Manager's Task Force on the Design of the Beach Access Tuesday Night (22nd) at Engine 4, 6:30-8:00

The Town Manager has scheduled 3 meetings for "public input" on his Task Force's plans for the Beach Access area on the Trumans' old parking strip and the Town land next to the Beachwalk and the "drop off."

More information and the "plan" is on the Association's website.

Citizens have objected to the timing and format of these forums.

It was recommended the Town mail the plan to residents, many of whom receive mail at their winter residence, with a return envelope for comments. Still no reply.

The other forums are:

Thursday, January 7 6:30 - 8:00 PM at Engine 4
Tuesday, January 12 7:00 - 8:30 PM at Town Hall

More information and to view the PLAN

www.pinepointbeach.com

COUNCIL ASKED TO DIRECT TOWN MANAGER TO HOLD UP DEEDS, LEGAL ANALYSIS REQUIRED ON ZONING BOARD QUESTION.

Council Chair asks Manager for legal opinion at around 2:00 p.m. the same day as the Council meeting. Opinion arrives by e-mail to Mr. Hall at 4:07 the same day, Apparently went unread by

the three recipients. Council told three hours later by Manager he expects the opinion soon.

Statement By Judy Shirk, Sue Perrino at Council Meeting Wednesday, December 16, 2009.

I am speaking for a small group of my neighbors who have been working to provide information and persuade the Planning Board to consider some ideas during their review of the Lighthouse motel's site plan.

You probably know the Planning Board gave them final approval last Monday. They have been waiting for approval before conveying deeds, of course. When the deeds are conveyed then Depot Street's discontinuance will take effect.

Right now, the status of this property is the same as it has always been. That could change tomorrow based on the previous Council's vote last July.

During our group's work we learned something from an attorney that apparently has been a major oversight all throughout this process. It was an oversight which probably should have been obvious to everyone, including Town officials, planning and code staff, Council members and even citizens. But we all recognize the uniqueness of this transaction and I suppose we can understand how it was overlooked. We now ask you to attend to it.

To digress for a minute, I remind you and the community that the motel owners will be receiving an additional 6,700 square feet of land in this trade. Many residents lobbied for an equal trade, but the former Council voted a proportional swap which resulted in closing Depot St.

I came before you at the first meeting of the new Council last month asking you to consider rescinding the 4-3 vote because the Council majority on this issue had clearly changed, but that request has not appeared on the agenda and once the deeds are conveyed, that will be a moot point.

Now let me get to the point. The discovery that is now so obvious is the fact that the excess land the Town is conveying expands the Truman property by over 6700 SF. That's more than twice the size of the town parcel next to the Beachwalk. Most of this expansion will be added to a commercial parking lot. In fact, based on the plans approved by the Planning Board, it looks like the parking lot will almost double in size. Along with the actual land expansion, there will be additional amenities added to the site such as stone pillars, lighting, and signage. Now whether their lot expands by thirty or forty or fifty percent, the fact of the matter is that it is an expansion of a non-conforming commercial use. I would like to repeat that. It is an expansion of a non-conforming commercial use.

I will also remind you that this 22 unit motel, which converted to a condotel and may soon have 22 separate unit owners sits on one-third of an acre of land in the residential zone. There is also an office building on the tiny site and 18 inches of frontage on Depot Street. It is seriously non-conforming.

Of course, the expansion of a non-conforming commercial property won't actually happen until they own the additional land, and that is what the Council must consider tonight, before it's too late.

No, it's not on your agenda, but you can add it. Your rules allow that. Or you can informally give Mr. Hall direction during Council comments to delay signing deeds now that it is clear that an important public process must happen.

The Zoning Board of Appeals has a very important role. It must be respected. And no matter what opinion comes down from other legal minds, I don't think any reasonable person could accept that expanding a commercial parking lot for a motel in a residential zone does not meet the spirit and intent of our Zoning ordinance. The goal of zoning is to

encourage non-conforming properties to move toward conformity over time, is it not? Variances are allowed for specific reasons, but clear standards have to be met so the characters of our neighborhoods are not negatively impacted.

Please ask the Code Enforcement Officer to investigate this and report it at your next meeting. If the Town attorney writes an opinion, release that please but consider getting a second one.

If the Trumans realize that this very import question, which has gone un-asked and un-answered up to this the 11th hour, is being investigated, they may not see it in their best interest to complete this transaction before the Zoning Board of Appeals reviews their application for a variance. They know the Town is only willing to give them a quit claim deed for our property and not a warranty deed because of title questions. And the stakes are high.

Finally, it may interest you to know that, ironically, it will be six years ago next month that the Trumans applied to the Zoning Board for variances to expand their motel and convert to condos. They knew then what we know today. The Zoning Board has a legal role. The Board of Appeals sent them away to work with the neighborhood and they held several meetings that summer which resulted in a beautiful plan most everyone liked.

So we have come full circle. Everyone can and should be forgiven for this oversight. But as was said earlier, the Zoning ordinance is clear, and the Zoning Board must be respected for their role. The title must be clear for the motel owners.

What cannot be forgiven is if this next step in the process is not honored, no matter what legal technicalities might be found to dismiss it. Common sense must prevail. And a precedent has been set.

This night is not unlike that dramatic vote in July when one vote made all the difference. I ask the same thing as was asked many times then. Let's just slow this down and do it right. There is a solution for everyone. Holding a public forum for the Task Force plan two nights before Christmas eve is an example of how rushing important decisions won't make good policy. I ask you to direct the manager tonight to sign no deeds or agreements until this major development is thoroughly investigated.

One closing thought which is related. This town like most in Maine is facing an economic crisis. Another reason to put everything on hold, including the road reconstruction, development of the town land, and the land swap, is to use those funds to help get us out of this mess. Sure, we may lose a little grant money, but most of it is our money that has been allocated. I hope that advice will appeal to you conservatives.

Thank you

Zoning Ordinance References

Section III. NONCONFORMANCE

A. CONTINUATION OF NON-CONFORMANCE

Any lawful use of buildings, structures, land, or parts thereof existing at the time of adoption or amendment of this Ordinance, and made non-conforming by the provisions of this Ordinance or any amendments thereto, may be continued, subject to the provisions of this Section.

B. NON-CONFORMING LOTS OF RECORD

In any district, a single lot of record at the effective date of adoption or amendment of this Ordinance may be built upon even though such lot fails to meet the minimum requirements for lot area or lot width which are applicable in the district, provided such lot is in separate ownership and

not of continuous frontage with any other lot or lots in the same ownership. Such lot shall conform to all other requirements, not involving lot area or lot width, for the district in which it is located, unless a variance from such other requirements is obtained from the Board of Appeals pursuant to Section V, B, 3 of this Ordinance.

C. NON-CONFORMING BUILDINGS OR STRUCTURES

1. No building or structure which is non-conforming with respect to the Space and Bulk requirements of this Ordinance may be expanded, enlarged or increased in height unless such expanded or enlarged portion complies with the Space and Bulk requirements of this Ordinance or the Board of Appeals grants relief from such requirements by variance under Section V, B, 3 or by limited reduction of yard size under Section V, B, 5 of this Ordinance, except that installation of one or more dormers on a dwelling shall not be considered an expansion, enlargement or increase in height provided that (1) dormer or dormers are set in a minimum of 12 inches from each end of the roof and from the exterior face of the story immediately below the roof, (2) the aggregate length of all dormers, measured along their faces, does not exceed the total length of the ridge of the roof less 24 inches, and (3) the height of the ridge is not increased. (8/06/97) (6/21/00)

2. Should any non-conforming building or structure be destroyed or damaged by any means beyond the control of the owner, it shall be rebuilt or restored within a period of one year or thereafter conform with the Space and Bulk requirements of this Ordinance unless the Board of Appeals grants relief from such requirements by variance under Section V, B, 3 or by limited reduction of yard size under Section V, B, 5 of this Ordinance. If a non-conforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the Space and Bulk requirements of this Ordinance unless the Board of Appeals grants relief from such requirements by variance under Section V, B, 3 or by limited reduction of yard size under Section V, B, 5 of this Ordinance. (06/21/00)

3. Notwithstanding any space and bulk requirements of this Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district where it is located.

Section III. NONCONFORMANCE

4. Any nonconforming building or structure which existed on or before March 1, 1985 may continue to be used and occupied, even though its original construction may have violated the Space and Bulk requirements of the Zoning Ordinance in effect at the time of construction, if it appears from the Town's records that:

- (i) A building permit was issued for the building or structure; and
- (ii) Since March 1, 1985, there has been no expansion or enlargement of the building or structure or alteration of the dimensions of the lot on which the building or structure is located which increased the non-conformity beyond that existing on March 1, 1985. (1/05/94)

5. Notwithstanding Section III(C)(1) above, a nonconforming building or structure located in the General Business, B-2, or the Industrial District, I, may be expanded or enlarged by increasing the height of the building, provided the following requirements are met:

- (i) the building was constructed on or before March 1, 1985;
- (ii) the height increase does not exceed 100% of the building height existing prior to any increase in height allowed pursuant to this subsection (5); and
- (iii) the expansion or enlargement occurs entirely within the footprint of the existing building. (09/20/00)

D. NON-CONFORMING USES OF LAND

1. No non-conforming use of land shall be enlarged or increased nor extended to occupy a greater

area of land than that occupied at the effective date of adoption or amendment of this Ordinance.

2. No non-conforming use of land shall be moved in whole or in part to any portion of the lot, which was not occupied by such use at the effective date of adoption of this Ordinance.

3. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

E. NON-CONFORMING USES OF STRUCTURE

1. No existing structure devoted to a non-conforming use shall be enlarged, extended, or expanded except in changing the use of the structure to conforming use.

2. Any non-conforming use may be extended throughout any parts of a building, which were manifestly in existence and arranged or designed for such use at the time of the adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.

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3. If a non-conforming use of a structure is superseded by a permitted use, the non-conforming use shall not thereafter be resumed.

4. If any non-conforming use of a structure ceases for any reason for a period of more than one year, any subsequent use of such structure shall conform to the regulations specified by this Ordinance for the District in which such structure is located.

F. APPEALS FROM RESTRICTIONS ON NON-CONFORMING USES

1. Notwithstanding the provisions of subsection D and E of this Section, a non-conforming use of land, buildings or structures may be enlarged, extended, expanded, resumed, or converted to another non-conforming use on the lot which it occupied at the effective date of adoption or amendment of the Ordinance, upon approval by the Board of Appeals pursuant to the procedures of Section V, C of this Ordinance.

The Board of Appeals may not approve any such enlargement, extension, expansion or resumption or conversion to another non-conforming use, unless it finds that:

(a) the impact and effects of the enlargement, extension, expansion, resumption or conversion to another non-conforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the non-conforming use before the proposed enlargement, extension, expansion, resumption or conversion to another non-conforming use; and (b) the enlarged, extended, expanded, resumed or conversion to another non-conforming use will comply with the standards for Special Exceptions contained in Section IV, I of this Ordinance.

E-MAIL EXCHANGES

From: Thomas Hall [<mailto:THall@ci.scarborough.me.us>]
Sent: Thursday, December 17, 2009 12:12 PM
To: pgrmar1@aol.com
Subject: FW: Lighthouse Inn

Mr. Rovner - As promised, below please find the opinion of Chris Vaniotis, Town Attorney regarding the question of "expansion of a non-conforming use". Tom

Thomas Hall,
Scarborough Town Manager

-----Original Message-----

From: Dan Bacon

Sent: Thursday, December 17, 2009 11:48 AM

To: Thomas Hall

Subject: FW: Lighthouse Inn

Dan Bacon

Town of Scarborough

From: Chris Vaniotis [<mailto:cvaniotis@bernsteinshur.com>]

Sent: Wed 12/16/2009 4:07 PM

To: Thomas Hall

Cc: Dan Bacon; David Grysk

Subject: Lighthouse Inn

Tom,

I am writing to follow up on discussions I had previously with Planning and Code Enforcement staff about whether the proposed relocation of the parking for the Lighthouse Inn, which obtained Planning Board site plan approval Monday night, would also require review and approval by the Board of Appeals under Section III.F of the Scarborough Zoning Ordinance. My conclusion is that Board of Appeals approval is not required in these circumstances.

Section III of the Zoning Ordinance imposes a number of restrictions on nonconforming uses. However, with approval from the Board of Appeals under

Section III.F, "a non-conforming use of land, buildings or structures may be enlarged, extended, expanded, resumed [after lapse through nonuse or abandonment] or converted to another non-conforming use...." The Lighthouse Inn is a nonconforming use, because hotels and motels are not allowed in the zoning district. However, neither the use nor the building in which the use is conducted is being enlarged, extended, expanded or converted to another nonconforming use. Off-street parking is allowed in all zoning districts, and the number of parking spaces which will remain to serve the Lighthouse Inn after the relocation of the parking meets the ordinance requirement for hotels/motels.

The substance of what the Planning Board site plan approval allows is a relocation of parking, to bring it closer to the building it serves. If anything, that is the opposite of an enlargement, extension or expansion of a nonconforming use. Accordingly, in my view the proposed relocation and reconfiguration of the parking is not prohibited by the ordinance limitations on nonconforming uses, and therefore Board of Appeals approval under Section III.F is not required.

Chris Vaniotis

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Disclaimer

The "Pine Point Residents Association" is an informal group of citizens who gather to deliberate local issues and present Position Statements to government officials. We only represent our members' collective positions. The Pine Point Ladies Auxiliary, Friends of Pine Point, Pillsbury Shores Association, and the various local established homeowners associations are different organizations. The Group also maintains an confidential e-mail list to share information with members and non-members who request mailings. We do not release the addresses of members on this list unless requested or authorized to do so by our members. Anyone who wants to be removed from this list can reply and request so in the subject line.

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