



Raymond Zoning Board of Appeals
423 Webbs Mills Road
Raymond Broadcast Studio
MINUTES
Monday, September 28, 2015
7:00 pm

PUBLIC HEARING

Present: Chairman Larry Murch, Joanne Stinson, Steve Warshaw, and Joseph Sousa

Absent: Elden Lingwood

Staff: Jim Katsiaficas, Town Attorney; Chris Hanson, Code Officer; Jim Seymour, Town Planner

Applicants: David Kallin, *Esq.*,

Other: Natalie Burns, *Esq.* (Frye Island)

- 1. Call to order:** Chairman Murch called the meeting to order at 7:00pm.
- 2. Approval of Minutes August 17, 2015** – Approved Unanimously without discussion
- 3. Public Hearing:**

a) David Kallin, Esq. Et al.

Map/Lot: 002/011 & 070/060

Quarry Cove Road/ Cape Road/ Ferry Landing Road

LRR2 Zone

Reason: An appeal from the Planning Board's decisions on the Town of Frye Island's Major Site Plan and Shoreland Zoning Applications for the proposed Frye Island Park and Ride Facility

Chairman Murch summarized the matter under discussion. He spoke to the number of written communications received related to the Frye Island controversy and stated that they had been read and will be entered in the record by the board secretary.

Chairman Murch read the instructions to the board as stipulated in Procedural Order dated August 09, 2015 they were charge to to board will consider only the four issues innumerate in that order. After reading aloud the four issues, Mr. Murch stated his desired order for addressing those issues.

David Kallin, attorney with Drummund and Woodsum, representing the appellants, was

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recognized and addressed the meeting concerning the item identified as the Procedural Order. He stated that what was read was not the board's procedural order but a submission from Frye Island stating their view of the issues and suggested an alternate order of consideration. Mr. Murch requested the board's attorney, Jim Katsiaficas, of Perkins Thompson, address Mr. Kallin's remarks. After a brief exchange between Mr. Kallin and Mr. Katsiaficas, Mr. Katsiaficas suggested an order (#2, #1, # 3 #4) in which to address the four issues which was agreed to by the board without dissent. The board engage in a brief discussion to clarify the specifics to be considered in item two.

Mr. Katsiaficas suggested, and the board agreed, that, as an order of procedure, anyone addressing the meeting speak from a working microphone, identify himself/herself by name and address or affiliation.

ITEM #2 OF THE PROCEDURAL ORDER

Chairman Murch called upon David Kallin of Drummund and Woodsum, representing the appellants, to be first to address the session. Mr. Kallin presented the appellants' exhibits and arguments.

After opening the floor to public comment at the conclusion of Mr. Kallin's presentation, Mr. Murch called upon Natalie Burns of Jensen, Baird, Gardner, and Henry, counsel for Frye Island. Ms. Burns presented the Town of Frye Island's arguments.

At the conclusion of Ms. Burns presentation, Mr. Murch again opened the floor to public comment.

Following brief public comment, Mr. Murch asked Mr. Katsiaficas for guidance as to how to proceed. Mr. Katsiaficas defined the boards role, delineated the decisions to be made by the Zoning Appeals Board at this meeting regarding Item/Issue #Two and read the relevant ordinance sections. He posed a question to the board as to whether parking is the sole use of the parcel in question. Mr. Mark Gray of JAMM Civil Structure Engineering, the design engineer for Frye Island, responded from the floor concerning other use of the proposed parking area. Mr. Katsiaficas then continued with his description of the issues and responsibilities before the board, clarifying attorney facts, interpretations, and opinions.

Ms. Stinson and Mr. Warshaw questioned Mr. Gray regarding aspects of the driveway and pedestrian walkway design research and decisions. Ms. Stinson and Mr. Warshaw posed a question to Mr. Chris Hanson (Town of Raymond Code Enforcement Officer) concerning the definition of a driveway. Mr. Katsiaficas commented that the board was not disputing whether or not the passage in question was a driveway but were being asked to interpret the phrase "the driveway entrance to the parking lot". This board is being asked to decide the Planning Board was not wrong in determining that this was not a driveway entrance to the parking lot.

Mr. Murch asked if there was further comment or discussion then asked for a motion.

MOTION: Mr. Warshaw moved that the appeal of the group represented by Mr. Kallin be upheld on this issue.

SECONDED: Ms. Stinson seconded.

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DISCUSSION: None

VOTE: Mr. Warshaw and Ms. Stinson voted in favor of the motion. Mr. Murch and Mr. Sousa abstained. Mr. Katsiaficas advised that the rules of the board require a quorum of three and must have a majority of those present and voting. Since there are four members present, two is not a majority and the motion would fail.

DISCUSSION: Mr. Murch explained his reasons for abstention. Ms. Stinson voiced her concerns which led to her voting in favor of the motion. Mr. Warshaw explained his reasoning for supporting the motion. At the request of Mr. Murch Ms. Burns and Mr. Kallin each provided interpretation of the relevant ordinance and the site plan.

Joseph Sousa voiced his reason for abstaining: new to the board and insufficient time and information to make an informed decision. Mr. Kallin and Ms. Burns asked for guidance from Mr. Katsiaficas. Mr. Katsiaficas read and explained the Board's rules regarding quorums, majorities, abstention, and recusal.

Mr. Warshaw asked Mr. Gray “where is the entrance to the parking lot”.

Mr. Katsiaficas resumed the discussion concerning procedural matters focusing on allowable reasons for abstention and board procedure involving abstentions. Mr. Sousa stated his reasons.

MOTION: Ms. Stinson moved to allow the new member, Joe Sousa, to recuse himself from the issues.

SECONDED: Mr. Warshaw seconded.

VOTE: 3 in favor (Mr. Warshaw, Ms. Stinson, and Mr. Murch voted in favor of the motion.)

Mr. Katsiaficas advised that the board now had 3 members who count toward a quorum. At this time the board is considering only Section 16-G,6

MOTION: Mr. Murch referred to the motion stated as above. Mr. Warshaw and Ms. Stinson concurred.

SECONDED: Mr. Murch referred to the seconding of the motion. Mr. Warshaw and Ms. Stinson concurred

VOTE: 2 in favor of the motion and 1 abstention. Mr. Warshaw and Ms. Stinson voted in favor, Mr. Murch abstained. The motion carried.

Ms. Burns expressed objections to the validity of the quorum definition. After discussion and reference to a decision by the board of appeals page 55 and 70 the shoreland zoning provision section 16 administration decision of board by appeals, Ms. Burns agreed that Mr. Katsiaficas' was correct in his decision concerning constitution of a quorum.

Mr. Katsiaficas stated “We have a 2 nothing vote on that issue.”

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ITEM #1 OF THE PROCEDURAL ORDER

Mr. Katsiaficas stated the next issue to be addressed: Was the planning board's decision to waive the 300 foot requirement clearly contrary to the ordinance.

Mr. Kallin and Ms. Burns each presented his/her arguments followed by discussion among attorneys and board members.

MOTION: Mr. Warshaw moved - Nowhere is there permission to waive any of the provisions of the land use ordinance or the shoreland zoning ordinances related to the 300 foot requirement in the shoreland zoning ordinances for driveway entrances.

SECONDED: Ms. Stinson seconded

VOTE: Motion passed 3 to zero with Mr. Sousa's earlier recusal. (To clarify: Mr. Murch, Ms. Stinson, and Mr. Warshaw voted in support of the motion.)

Following a short recess the board determined to continue the Public Hearing on Tuesday, October 13, 2015 at 7:00PM

MOTION: Mr. Murch moved to Continue the Public hearing to October 13th at 7:00PM at the Raymond Broadcast Studio.

SECOND: Ms. Stinson seconded.

VOTE: Motion passed unanimously (4/0)

4. Board Communications: None

5. Code Enforcement Officer Comments: None

6. Adjournment: Board adjourned at approximately 9:27PM.