Approved 7/22/14

CITY OF ROCKLAND
PLANNING BOARD
Minutes of Meeting
June 3, 2014

Board Present: Chairman E. Laustsen, W. Bodine, C. Jordan, A. Knickelbein (Alternate), K. Swan, and P. vanVuuren

Board Absent: None

Staff Present: Code Enforcement Officer J. Root, City Attorney K. Beal, and Secretary D. Sealey

The Chair called the meeting to order at 5:16 P.M. and reviewed the agenda.

Public Comment: Mayor Larry Pritchett addressed the Board, saying the City Council thanked them for their service, especially during the recent challenging projects.

Mayor Pritchett said the Downtown "DT" Zone had been amended in 2010, but there were now drafts of possible amendments to the zone. Since the council was neutral on this issue, it was asking for feedback from the Comprehensive Planning Commission, REDACT, and the Planning Board. The Mayor asked the PB to look at the proposed amendments and make suggestions and comments. He stressed that suggestions did not have to pertain only to the proffered amendments.

Mayor Pritchett then said it was a long-standing procedure to accept public comment on any subject. He said this needed to be open and fair to the applicant; therefore, the PB should not have information the applicant did not. The Mayor knew a rule change was being debated and said he appreciated the balance the PB was trying to maintain.

Communications: None

Old Business:

Liberty Hospitality of Maine, LLC – 520 Main Street – Request to Modify the Approved Landscape Plan at the Residences at Summer and Maine – Tax Map #4-A-3: Owner Robert Liberty and architect John Hansen presented a modified landscape plan to the board. Mr. Hansen said that at the time of the original approval Mr. Liberty was waiting for City landscaping across the street to be completed so his could complement it. Now that it was completed, Mr. Liberty did not like it because he had thought it would be more intensely vegetated and include a fence.

Mr. Liberty now wanted to install 8' fence sections with 4' posts and saddle planters so there would be flowers on both sides of the fence. Placement of the fence would cause a reduction in the number of plants, but there would now be 4 daylilies at each fencepost and a juniper in the middle of each section under the planters. Mr. Hansen said this would cost more initially but would last longer. Mr. Liberty said this would provide a year-round appearance due to the fence and a feeling more residential than commercial. He noted these landscape changes would not change parking arrangements in any way.

Mr. Hansen said evergreens near the southerly end toward summer St. had been removed due to concern that people would back cars into them. Mr. Liberty stated that the public took the spaces on that end for parking and he was not going to police this use. He stated that City plowing killed in-ground plants and these planters would be removed in winter. Chair Laustsen said the PB's main concern was that car headlights not bother nearby residents and he felt the addition of the fence should take care of that.

Chair Laustsen read aloud three suggested additional findings to be added to the original approval.

ACTION: Mr. Bodine made a motion to approve the findings.
Carried 5-0-0

ACTION: Mr. Swan made a motion to approve the revision to the Site Plan.
5-0-0

New Business:

Discuss Amending the Planning Board By-Laws Regarding Public Comment: City Attorney Kevin Beal said he had observed at recent PB meetings that public comment was accepted on any issue the public wanted to raise. Considering the semi-judicial nature of the proceedings, he felt it was important that not only the public to be allowed to comment, but also that applicants learn of such comments. Currently staff had been making more effort to see that applicants received copies of submissions relating to their applications; however, mechanisms were needed to assure the same for verbal comments offered. Mr. Beal said the public comment section of the meetings was really a privilege the PB afforded the public, rather than a fundamental right. Technically, public hearings were the vehicle for the public to express comments on an application. The City Attorney suggested that the by-laws might be the place to define regulations concerning verbal comment.

CEO Root noted that meetings were recorded and asked if that would be sufficient for an applicant who wanted to hear public comments. Mr. Beal responded that this would accomplish the goal of an applicant hearing the information, but questioned whether there was sufficient staff and the mechanical capacity to get it done. Ms. Knickelbein said asking that comments be submitted in writing denied people the opportunity to voice their comments publicly. Mr. Root noted that an applicant would not have the opportunity to respond if someone said something in error during public comment. Mr. Jordan added that comments might be ignored if people presented them at the wrong time.

City Attorney Beal said he was concerned that if an applicant did not hear all comments a determination might be made based on something of which he was not aware or had not had the opportunity to rebut. Since applicants invested a lot in their applications, it was important for the board to be conscious of this. The MMA Manual left public comment up to the board and stated it was a privilege rather than a fundamental right.

Furthermore, the City Attorney said, an applicant might appeal on the basis of not receiving due process since public comment could be considered ex-parte communication if the applicant were not present to hear it. Mr. Root said the public should be encouraged to send all emails to the Code Office. Mr. Beal said that the public should be notified about any changes to policy and informed this was not an attempt to deny them the opportunity to speak, but to regulate when they could speak. Ms. vanVuuren stated that the public needed more education on PB procedures and responsibilities. Mr. Beal suggested this could be written up and posted on line. Mayor Pritchett said the board might have to clarify what comments were acceptable as well as a timeframe for comments.

Mr. Beal said if the board decided to limit public comment, it could consider receiving public comment more often when an application was presented, but not in a formal public hearing. The Chair would control this public comment. The Mayor suggested that public comment could be allowed after the applicant's presentation and board members' questions. There was a suggestion that if this were implemented only questions would be entertained.

Several suggestions were made, such as tightening up the process on applicant's presenting new information at meetings and enforcing cutoff deadlines for written communications so board members saw them prior to meetings. The Board decided to continue with current methods until new policies were written up.

Mr. Bodine did not want to limit public comment to items on the agenda. Though he acknowledged that repetition of opinions was a problem, he felt it was important that people be able to speak out. Returning to the question of public comment when the applicant was not present, Ms. vanVuuren felt it was dangerous to start cutting off when the public could speak. Mr. Swan stressed that the public must be informed of any revisions made to the way public comment was received.

Chair Laustsen asked Mr. Beal to fix the language in the PB by-laws under Section 1 of Article VI, as well as to come up with ideas to structure the meetings. The Board asked that the Code Office enforce the requirement that submissions by the public must be received by the Friday noon prior to a Tuesday meeting, and applicants' submissions by 5 P.M. of the Wednesday prior to a meeting. Board members also asked that no emails be forwarded to them.

Previous Meetings' Minutes: May 20 & May 27, 2014

ACTION: Mr. Jordan made a motion to approve the 5/20/14 minutes with changes.
Carried 5-0-0

ACTION: Ms. vanVuuren made a motion to approve the 5/27/14 minutes with changes.
Carried 5-0-0

Adjournment: Ms. vanVuuren made a motion to adjourn the meeting at 7:38 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah Sealey
Recording Secretary