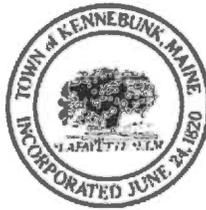


Town of Kennebunk, Maine



KENNEBUNK SITE PLAN REVIEW BOARD Thursday January 21, 2016 MINUTES

MEMBERS PRESENT: Gary *Dugas*, Chair; Jeanne *Dunn*; Philip *Parker*; Brenda *Robinson*, and Kristi *Kenney*

MEMBERS ABSENT: Matt *Fagginger-Auer*

FROM THE TOWN: Judith *Bernstein*, Town Planner
Chris *Osterrieder*, Town Engineer

ALSO PRESENT: Stephen G. *Doe*, RLA, LEED-AP, Senior Landscape Architect, Sebago Technics
Stephen S. *Sawyer Jr.*, P.E. Vice President-Transportation, Sebago Technics
Sarah *Johnson*, Owner/Manager, Sarlo Enterprises, LLC
Lori *Vela*, Owner/Manager, Sarlo Enterprises, LLC
Ralph W. *Austin*, Attorney, Sarlo Enterprises, LLC
Loren *Goodrich*, Franchisee, Aroma Joes
Frank *Crabtree*, PE, LEED-AP, BD+C, Manager, Civil Engineering Dept. Harriman Associates
Dan *Robbins*, Senior Project Manager, Harriman Associates
Kevin P. *Crowley*, Ph.D., Interim Superintendent of Schools, RSU21
Chris *MacClinchy*, Chair, Planning Board
Edward *Karytko*, Member, Board of Selectmen

1. Open Meeting

The Chair opened the meeting at 5:58 p.m.
The Board members introduced themselves.

2. Approval of Minutes of Previous Meeting

Due to the short review time available, *Dugas* asked the Board to consider the minutes of December 17, 2015 at the next meeting.

Due to the absence of regular member Matt *Fagginger-Auer*, *Dugas* appointed alternate member Kristi *Kenney* as a voting member for this meeting.

Dugas proceeded to the next agenda item.

3. **Site Plan Application of RSU 21 for Proposed Renovation and Enlargement of High School Building(s), Parking, Driveways and Recreation Facilities**

Bernstein reviewed the project as detailed in her memo of January 15, 2016 "*Summary of January 21, 2016, Agenda*" (provided to the Board in the site plan packet). She identified the applicant, owner, site location, and nature of the request. Packet contents of note included:

- A revised set of plans from last month's meeting;
- Reviews from the Town Engineer, Fire Chief, and Police Chief; and
- Harriman Associates provided signoff documents from Water and Sewer Districts.

She recommended a project summary review from Harriman Associates

Frank **Crabtree**, Manager, Civil Engineering Dept. Harriman Associates, introduced himself and proceeded with a brief overview of the project. Highlights consisted of recent drawing additions not depicted on the documents provided to the Board and included the following:

- The crosswalk on the southerly end of the site moves to Colonial Drive;
- The two flashing beacons are moved closer to school property to be within 300 ft.;
- Flashing crosswalk signs, one on either side, are added to both crosswalk locations; and
- The current bus entrance drive is being changed to exit only and will be restricted to busses only during peak periods of the day. This will be accomplished by signage and will be subject to re-evaluation a few weeks after full operation has begun.

Robinson thanked **Crabtree** for paving the walkways to the athletic fields.

Dunn asked for a status of the neighbor with the garage on the property line and the neighbor with possible headlight glare from the exit drive.

Crabtree replied that Kevin P. **Crowley**, Interim Superintendent of Schools, RSU21 met with the neighbors and a letter has been provided in the package.

Crowley confirmed the meetings and reported the following status:

- No issue with the headlight glare neighbor, they will wait and see if a problem exist; and
- The neighbor with the garage on school property was not receptive to a land exchange.

Bernstein asked **Crabtree** to expand on the circulation for parents picking up students during peak periods of the day when buses only can exit the south drive.

Crabtree demonstrated the pattern using the drawing.

Dunn asked if the crossing guard would still be utilized.

Crowley replied in the affirmative.

Bernstein asked **Crabtree** to summarize the landscape plan.

Crabtree provided the following update:

- Plant screening has been added to the parking lot areas in addition to the already existing 5% coverage; and
- Most of the trees on Fletcher Street will be maintained.

Dugas asked the Board members if they had any more questions.

Robinson noted that a letter from the Sewer District was not on KSD Letterhead.

Bernstein explained that KSD emails do not contain the Letterhead but they follow up with a mailed paper copy. She produced the paper copy that KSD had sent and showed it to the Board for their examination.

There being no further comments regarding this agenda item, **Dugas** asked for a motion concerning Article 11, Section 8(2)(c) landscape buffer.

Bernstein suggested the Board consider the DEP temporary waiver first and recommended the temporary waiver be conditioned as follows: *"no building permits shall be issued until a copy of the DEP approval has been filed with the Town."*

A motion was made to grant a temporary waiver of DEP site location approval.

MOVED: Kenney
SECONDED: Robinson
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

A motion was made to grant a waiver of Article 11, Section 8(2)(c) landscape buffer.

MOVED: Kenney
SECONDED: Robinson
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

A motion was made to grant a waiver of Article 11, Section 8(6)(d) regarding the limit of two driveways.

MOVED: Kenney
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

A motion was made to grant a waiver of Article 11, Section 8(6)(c) regarding driveway being less than 200 feet to Colonial Drive intersection.

MOVED: Kenney
SECONDED: Dunn
DISCUSSION: **Bernstein** recommended citing the basis for the waiver requests that were submitted by the applicant.

Kenney cited the following basis from the Harriman Letter Response to Site Plan Review Board comments from December 17, 2015 meeting, dated January 7, 2016, Waiver Request, page 5, item 8:

"The distance from the edge of Colonial Drive to the edge of the relocated south driveway will be approximately 145 feet. Since the existing south driveway separation is currently only 115 feet, this relocation will improve the traffic flow".

Kenney stated that this waiver will make a non-conforming condition less non-conforming.

MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Dugas recommended citing the basis for the previous three granted waivers.

Referring to the temporary waiver granted for DEP site location approval, **Kenney** stated that, for the record, the temporary waiver of the DEP site location approval was based on an anticipated time delay of the DEP response and is conditioned with building permits not being issued until the Town receives a copy of the DEP approval.

Referring to the waiver granted for Article 11, Section 8(2)(c) landscape buffer, **Kenney** cited the following basis from the Harriman Letter Response to Site Plan Review Board comments from December 17, 2015 meeting, dated January 7, 2016, Waiver Request, page 4, item 6:

"The 15' wide paved exit driveway along the south property line is primarily a repaving of the existing driveway in the same location. The driveway edge is between 5 ft. to 7 ft. from the south property line. Along the property line is a combination of existing chain link fence and mature deciduous trees, with an area of solid wood fence near the Orendorf/Caputo residence. A solid wood fence can be placed along the property line of the Colonial Drive residences, but there is no space for additional landscape plantings. There is an existing mature vegetated buffer along the property line of all the Woodhaven Drive residences".

Referring to the waiver granted for Article 11, Section 8(6)(d) regarding the limit of two driveways, **Kenney** cited the following basis from the Harriman Letter Response to Site Plan Review Board comments from December 17, 2015 meeting, dated January 7, 2016, Waiver Request, page 4, item 7:

"Currently, the site has three driveways, and the one centered on the school building will remain in its present location. This waiver request will not cause any detrimental impacts to traffic on Fletcher Street, as concluded by the Traffic Impact Study by Gorrill-Palmer Engineers, dated October 2015".

Dunn noted that the Fire Department wanted the center driveway for access to the building.

Robinson asked if a waiver had been granted for the high intensity soil survey.

Dugas replied in the affirmative.

There being no further comments regarding this agenda item, **Dugas** proceeded to address the Findings of Fact.

**Town of Kennebunk
Site Plan Review Board**

FINDINGS OF FACT

1. Project Name: RSU #21 High School Additions
2. Date of Action Taken: January 21, 2016
3. Site Location: 89 Fletcher St.
4. Zoning District: Village Residential & Shoreland Overlay
5. Lot Size: 49.3 acres
6. Building Size: 2.71 acres
7. Assessor's Map: 047 Lot: 001
8. Existing Property Owner: RSU #21

9. Proposed Property Owner: RSU #21
10. Applicant: Bruce Randolph, RSU 21 Business Manager
11. The applicant has shown legal interest in the property by deed, option or purchase and sale agreement, or other device (circle one).
12. The Kennebunk Site Plan Review Board has reviewed the above noted proposal utilizing the set of approval criteria in Article 11, Section 8 of the Kennebunk Zoning Ordinance as summarized below and determined.

Approval Criterion # 1

The plan preserves the natural landscape insofar as practical and adequately uses the natural features of the site and/or new landscaping to define, soften, and screen the impacts of development.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.
None

Approval Criterion # 2

For a nonresidential project, effective buffers are maintained or created between it and adjoining residential properties and residential zoning districts.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.
A waiver of Article 11, Section 8(2)(c) landscape buffer has been previously granted.

Approval Criterion # 3

Filling, excavation and earth moving activity is carried out in a way that keeps erosion and sedimentation to a minimum.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.
None

Approval Criterion # 4

Adequate provision has been made for surface drainage, so that removal of storm waters will not have an unreasonably adverse effect on neighboring properties, downstream water quality, soil erosion, or the public storm drainage system.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.
None

Approval Criterion # 5

Adequate provision has been made for water supply and sewage disposal.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

None

Approval Criterion # 6

The site plan provides for safe access to and egress from public and private streets, with adequate parking and internal circulation.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

A waiver of Article 11, Section 8(6)(d) regarding the limit of two driveways has been previously granted.

A waiver of Article 11, Section 8(6)(c) regarding the driveway being less than 200 feet to Colonial Drive intersection has been previously granted.

Approval Criterion # 7

Vehicular access to the site will be on roads which have adequate capacity to accommodate any additional traffic generated by the development.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

None

Approval Criterion # 8

The site plan provides for safe pedestrian circulation, both on-site and off-site.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

None

Approval Criterion # 9

Exterior lighting does not adversely affect neighboring properties or streets.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

None

Approval Criterion # 10

Electrical and telephone utility lines and components serving the site will be placed in a manner that is not hazardous or unsightly.

**Criterion is: met X, not met _____, or not applicable _____ with the following conditions, waivers, and/or comments.
None**

A motion was made to accept the Findings of Fact.

MOVED: Parker
SECONDED: Kenney
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Dugas noted that "In their review, the Board finds that the criteria of Article 11, Section 8 of the Zoning Ordinance have been met with the conditions and/or waivers noted above".

A motion was made to approve the Site Plan.

MOVED: Robinson
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Bernstein requested 3 sets of plans for signature.
Crabtree agreed.

Dugas asked the Board members if any ex parte discussions or statements have occurred with any of the Board members regarding opinions of the next agenda item. If so, it needs to be discussed before proceeding. No Board members responded in the affirmative.

Dugas proceeded to the next agenda item.

4. Site Plan Application of Proposed Aroma Joes Restaurant/Drive-Through at 76 Portland Road by Sarlo Enterprises, LLC

Bernstein reviewed the project as detailed in her memo of January 15, 2016 "Summary of January 21, 2016, Agenda" (provided to the Board in the site plan packet). She identified the applicant, owner, site location, and nature of the request. Packet contents of note included:

- Reviews from the Town Engineer, Fire Chief, and Police Chief;
- Maine Traffic Resources peer review;
- Code Enforcement Officer Use Determination email of December 28, 2015; and
- Town Attorney Waiver Authority letter of December 29, 2015.

Bernstein introduced Steve *Doe*, Senior Landscape Architect, Sebago Technics, and suggested he provided a summary of any changes that were made after the public hearing of December 17, 2015, or any additional information that he wants to present, prior to her review of the Town Planner comments.

Outlining his presentation, **Doe** introduced himself and stated that he intended to review the following subjects:

- A review of the Town Planner's comments; and
- Presentation of the Supplemental Submission filed on January 7, 2016.

Doe began a review of the Town Planner's comments noted in her memo of January 15, 2016, topics addressed included the following.

(1) Sign color

- a) The original submittal contained black and white sign illustrations. **Doe** presented a color version of the signs depicting their location on the site.

Bernstein stated that she has not forwarded the new color version to the CEO to make a judgment that all signage depicted on the new color version meets the Town's standard for maximum allowable.

Doe agreed that the ruling is required.

(2) Supplemental Submission typo error regarding off-street parking requirements.

- a) The Submission document stated that "off-street parking requirements are not applicable." **Doe** noted the error, stating that the off-street parking requirements are applicable and have been met. He added that the parking requirements have actually been exceeded.

(3) Screening of outside "mechanical units" facing Route 1 and Ross Road.

- a) **Doe** stated that a proposed evergreen screening of 4 ft. high Hicks Yews planted 2 ½ ft. on center will provide an effective screen. The detail is noted on the landscape plan.

(4) Selection of which alternative color option schemes will be used.

- a) **Doe** stated that this comment will be addressed in his Supplemental Submission review.

Doe began a review of Site Plan Review Application-Supplemental Submission Aroma Joe's, 76 Portland Road, Kennebunk submitted by Sebago Technics and dated January 7, 2016, topics addressed included the following.

(1) Landscape plan revisions

- a) Replaced the "White Pine" buffer along the Morin property with a combination of "Fir" and "Spruce" trees.
- b) Replaced the evergreen and deciduous shrubs buffer between the drive-through lane and Route 1 with 3 evergreen trees, Arborvitae, ornamental grasses, and flowering shrubs.
- c) Added a screen of Arborvitae in front of the fence around the dumpster maintaining the existing Viburnum shrubs in the foreground.

(2) Color scheme options

- a) Two options, utilizing the color palette from Historic Colors of America Palette by California Paints were presented:
 - 'Biloxi'
 - 'Lexington'

(3) Performance standards of Articles 10 and 11

- a) A written narrative (included as Attachment 2) indicates how this project meets the performance standards of Article 10, Section 23, D. and Article 11, Section 8. This narrative includes a copy of the Town's Approval Standards and Criteria followed by the

applicant's responses in *italics*.

- (4) Temporary waiver of Kennebunk Sewer District approval
 - a) No substantial sewer connection design issues exist with KSD.
 - b) The Sewer District has requested additional connection detail which may affect future service.
 - c) Sanitary sewer manhole access is required in order to obtain the requested data.
 - d) This design is currently being prepared.
 - e) A temporary waiver of KSD concurrence is requested to be made a condition of approval.
- (5) Legal opinion of zoning issues
 - a) A letter (included as Attachment 3) from Ralph W. **Austin**, Attorney, Sarlo Enterprises, LLC, dated January 4, 2016, addresses two zoning issues:
 1. Waiver of Performance Standard Criteria; and
 2. Drive-through Service areas as accessory use.

Concluding his review, **Doe** asked the Board if they had any questions.

Kenney remarked that she still had dumpster location concerns, but the added screening was an improvement.

Regarding the dumpster location, **Doe** provided the following rationale:

- Keeping odor and noise to a minimum, an isolated placement, as far as possible from the abutting residential zone, was chosen;
- A 6 foot fence and heavy landscaping provide adequate screening from Route 1;
- The location meets all setback requirements; and
- Truck access is optimal.

Dugas noted that the Board needed to review design standards and consider requested waivers.

Bernstein remarked that the applicant has provided responses to each design standard in Attachment 2, Compliance with Performance Standards of the Supplemental Submission letter dated January 7, 2016 which the Board could use in their deliberation, or they could use item 4g. Design Criteria (provided to the Board in the site plan packet).

Dugas acknowledged and started a review of item 4g. Article 10, Page 64, Part D. Mixed Uses and Nonresidential Uses, Section 23 Design Review Standards, Paragraph D. Design Criteria

1. Site Layout and Design –

a) Site Design for new buildings and infill development –

Kenney acknowledged prior consideration of this section several times resulting in added changes and suggested that the standard is met.

Dugas agreed and moved to the next topic.

b) Site Features –

Internal Traffic Flow and Connections to Adjacent Sites - To ensure safety of motorists, delivery trucks, bicyclists... the site plan shall clearly delineate internal traffic patterns for both vehicles and pedestrians...

- o The standard is met.

Shared Driveway Access –

Dugas remarked that this item was briefly discussed.

Bernstein noted that the Town does not have a rear connection plan similar to the one on the other side of Portland Road.

Dugas agreed and moved to the next topic.

Connections to abutting streets - Where a development abuts or receives its primary site access from Route 1, the Board may require that the site provide a connection to an abutting street or R.O.W...

Dugas remarked that this item was just discussed and moved to the next topic.

Parking - Where new off-street parking areas are proposed, they shall be located to the side or the rear of the principal building, and no parking shall be located closer than 25 feet of Route 1 R.O.W. ...

- The standard is met.

Pedestrian and Bicycle Movement - The circulation plan shall provide safe pedestrian and bicycle movement - both within the site and to abutting sites and public sidewalks...

Bernstein questioned where a sidewalk connection would be located. She surmised that a connection would either be located at a crosswalk or the sidewalk extended.

Referring to the site plan drawing, **Doe** indicated where the proposed sidewalk connections are located.

Bernstein stated that a “kick in” (cost sharing) for the proposed sidewalk along the Route 1 frontage is required and recommended that a statement to that effect be included as a condition of approval.

Dugas explained that the applicant is required to provide any cost sharing funds at this time as a condition of approval.

Osterrieder provided the following clarification:

- An estimate for a sidewalk from the entrance to ‘Coastal Woods Development’ to Ross Road was calculated when the planning Board reviewed the development’s application;
- The value was prorated to the lot frontage; and
- The same calculation would apply to the lot frontage for this project.

Kenney suggested that an estimate be attached to the condition rather than leaving the amount open.

Osterrieder agreed, adding that a detailed estimate has been prepared.

Dugas moved to the next topic.

Service Areas - Service areas (e.g. solid waste/recycling facilities etc....) shall be located to the side or rear of the building and, wherever possible, shall be hidden and incorporated into the design of the building - with maximum screening from public view.

- The standard is met.

For the record, **Kenney** suggested that a statement such as “*although the waste dumpster is not in an ideal location, it’s preferable to be further away from the residential abutters*” be added as acknowledgement that the dumpster site is the best placement for abutters.

Dugas moved to the next topic.

Roof Top Equipment - Where rooftop utility and/or equipment areas are necessary, they shall be hidden and incorporated into the architecture of building...

Doe replied that no roof top equipment is used in this application.
Dugas moved to the next topic.

Landscaping - A Landscape Plan, conforming to the standards of Article 11, Section 6.B. (7) and Article 11, Section 8. (1) and (2) of this Ordinance - as well as the standards of this Section, shall be provided as part of any plan involving new building construction... Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest to site.

Existing mature trees...shall be evaluated and, when determined to be in good condition, shall be retained... The plan shall include one shade tree per 30 linear feet... for the length of the property line...

- o The standard is met.

Doe noted that the large Maple tree is going to be retained and the applicant has added trees along Ross Road which was not required.

Dugas moved to the next topic.

Advertising Features - The size, number, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from or adversely affect the design, appearance, and environmental and aesthetic qualities of proposed building and structures and the surrounding properties.

Bernstein questioned whether the signage color will match the chosen palette color.

Doe replied in the affirmative, clarifying that 'signage' refers to the sign post, pylon sign, and any support elements.

Dugas noted that more discussion can take place when the standard addressing color is reached and moved to the next topic.

Snow Storage - Provisions shall be made for adequate snow storage in the design of all parking areas...

- o The standard is met.

Dugas moved to the next topic.

- c) **Additional Standards for Auto oriented uses and Drive -Throughs** – Shall orient the building close to Route 1.....shall locate all the automobile-related activities such as parking, fuel pumps, drive through windows and drive through lanes to the side or rear of the building - with no such auto oriented activities to be located between the building and Route 1. Drive-through facilities are permitted only as accessory uses to a permitted use within the zoning district, and not as a principal use...

Dugas asked if all Board members had read item 4c of the site plan packet (Code Enforcement Officer Use Determination email of December 28, 2015).

Referring to the Natalie L. **Burns** email of December 24, 2015, regarding 'use determination',

Bernstein reiterated that the Town Attorney has determined that *use classification, under the Ordinance, should be done by the Code Enforcement Officer and that ruling should be provided to the Board.*

Parker remarked that the Town Attorney, Code Enforcement Officer, and the Applicant's Attorney's comments all contradict the work of the Planning Board.

Bernstein asked **Parker** to explain what he meant by contradict.

Parker responded that the Town Attorney now has a different interpretation of the zoning ordinance than when the issue was voted on last November.

Bernstein replied that zoning standards are not always written clearly enough to be interpreted the way they were intended.

Parker responded that the issue has confusion and contradiction and needs to be addressed.

Bernstein agreed, but added that a discussion regarding those issues can't take place at this hearing.

Parker acknowledged and provided the following observations:

- This lot will always be a legal, non-conforming use;
- The two major issues are the 200 ft. setback and primary/accessory use of the property; and
- The Board is charged with health, safety, and welfare of the town.

Kenney asked if the issues should be discussed now or continue on.

Parker stated that he has no doubt that the applicant has, in good faith, done all the things that are required; but it comes down to those two major issues at this location which should be discussed.

Dugas asked the Board if they wanted to have a discussion or move on.

Kenney suggested finishing the design review standards.

Bernstein agreed, adding that the Board could return to any of the issues.

Dugas noted that the auto oriented use and drive-through standard has been met and moved to the next topic.

Queuing and Circulation - Each drive-through or queuing lane shall be separated from the general circulation lanes necessary either for entering or exiting the property or for providing interior circulation within the property...

- The standard is met.

Pedestrian Circulation - Pedestrian safety shall be an important consideration in the design of access routes leading to or from auto - oriented uses....

- The standard is met.

Facility Design - Drive-through operations and other automobile-oriented facilities shall be designed with facade and roofline elements that reduce their scale and are consistent with the architectural character of the main building.

- The standard is met.

Traffic Standards - All streets and intersections to be impacted by a proposed drive-through facility shall show that they will meet the Maine DOT Level of Service Standards after development and shall provide evidence of such conformance as part of the review process. No vehicular entrance to or exit from a drive-through facility shall be located within two hundred feet (200) of a street intersection. Entrances to drive-through facilities shall be located off of interior roadways, interior drives, or parking areas... Queuing lane(s) shall be designed so they do not result in vehicles needing to back into or block public streets.

Dugas asked if any Board members wanted to discuss this issue.

Kenney noted that any business wanting to locate on this site will require a waiver for this criterion.

Osterrieder provided the following clarification:

- Residential projects have a 100 ft. limit, non-residential projects have a 200 ft. limit;
- This property does not have adequate frontage for a non-residential project; and
- Any non-residential project coming to this site will require a waiver of the 200 ft. limit.

Regarding off site circulation, **Kenney** stated that the Board should rely on the facts documented by the professional and not on any personal opinions or likes / dislikes of the project. The facts show that the proposed project will not decrease the level of service, that it meets the criteria, and that a waiver should be granted.

Speaking out of order, Chris **MacClinchy**, Chair, Planning Board, suggested that there are two criteria. **Austin** objected to the **MacClinchy** remarks because the hearing is closed to public comment. Continuing his remarks, **MacClinchy** stated that the two criteria are Article 10 and Article 11 which are different.

Dugas deferred the comments to **Osterrieder**.

Stating that he was in favor of **Osterrieder** addressing the point, **MacClinchy** stated that Article 10 design review criterion of 200 feet for a drive-thru facility was not addressed by the Town Attorney.

MacClinchy further stated that the Town Attorney addressed Article 11 for Site Plan review in general and that he would be happy to discuss the issue.

Austin repeated his objection to the **MacClinchy** remarks because the hearing is closed to public.

Acknowledging that the public portion of the hearing was closed, a motion was made to allow the public to address this issue due to the seriousness of the matter and because the Board has received unexpected opinions from the Town Attorney and Code Enforcement Officer.

MOVED: Parker

Austin remarked that the public spoke at length at the last meeting and the Board has their input.

Dugas replied that he would prefer to stay on procedure and asked the Town Planner if she had any input.

Bernstein responded "*the fact that the requirement is in two sections just means that the Board will have to act on the waiver twice.*" She added that the two sections are not different standards and that the Board is currently considering Article 10 having not addressed Article 11 yet.

MacClinchy reiterated that the Town Attorney addressed only Article 11 and did not address Article 10 which is the drive-through facility only (located within two hundred feet) and the Board can decide not to grant the waiver but other uses can happen at that site and meet the Article 10 criteria.

Bernstein replied in the negative.

Austin remarked that as Chairman of the Planning Board, **MacClinchy** knows the procedures about public hearings.

MacClinchy responded that the Planning Board often grants the public time to ask relevant questions even if it's outside the public hearing.

Bernstein stated that the only uses permitted for that property are commercial and for a commercial use, there is no way to locate a driveway to meet the 200 ft. standard under Article 11 Site Review Standard or the Design Standard section of Article 10.

Dugas verified with **Bernstein** that the waiver should be voted on now, while they are considering the Design Standard section of Article 10, and then again while they are considering Article 11 Site Review Standards.

Bernstein replied in the affirmative.

Osterrieder reminded the Board that:

- For this issue, waiver criteria is the same for both in terms of the standard that you are looking at;
- The idea that a use could happen on the property is not drive-through related is correct;
- Whatever use happens on that property is always going to have to meet Article 11; and
- Perhaps the general health, safety, and welfare for a drive-through does have a different standard; therefore, they shouldn't be combined, giving the assumption that if you approve one you also approved the other.

Robinson stated that she is not in favor of waiving the traffic standards. She said:
"I think the Planning Board has put a lot of time and energy into creating what they have created. It may not be perfect, we may need some revisions, but they really worked hard and listened to people in the town with specific reasons and that's what the standard says. When you put that together with some mixed reviews from Maine DOT, they are generally positive but there are some concerns in there, and some concerns from Bob Mackenzie about the traffic on the road and the queuing, etc., and the other issues that we know exist, waiving this [traffic standard] doesn't make sense to me. It seems to violate all of the hard work that the Planning Board put into place and the wishes of the people who came to those hearings."

Responding to **Robinson's** comments, **Austin** provided the following facts:

- The waiver request is not meant to question the Planning Board's hard work;
- The site doesn't have 200 ft. of frontage;
- If the Board does not allow the site to have a driveway in the location shown, it will be contradicting another section of the Ordinance which requires, under the Route 1 traffic study, the site to have an exit on Ross Road at that area;
- All submitted traffic reviews, including the Town Traffic Engineer, declared that the proposed project will not be unsafe; consequently, granting the waiver does not adversely affect the Town's health, safety, or welfare; and
- Not granting the waiver makes the property virtually unusable.

Offering a rebuttal, **Robinson** submitted the following remarks taken from various sections of the Maine Traffic Resources, Traffic Peer Review for Aroma Joe's on Ross Road, submitted by Diane W.

Morabito, Maine Traffic Resources, Town Traffic Engineer, dated September 9, 2015.

- Traffic volume accounts did not include the commercial driveway opposite Ross Road.
- Aroma Joe's is expected to generate approximately 60 entering and 60 exiting trips.
- MTR does not concur with the trip assignments that were produced by Sebago Technics.
- The capacity analysis results showed very little queue on Ross Road.

Robinson submitted that the queuing on Ross Road was a concern of the Town Police Chief.

- Intersection operations were observed for ½ hour, from 8:30 to 9:00 AM. Traffic counts indicated this to be the highest half hour.

Robinson doubted the validity of traffic counts being the highest during the ½ hour from 8:30 to 9:00 AM because people have to be at work at 8:00 AM or 9:00 AM.

- The existing AM peak hour levels of service are generally good (LOS "D" or better) for all lane movements with one exception, left-turns off Ross Road.
- Of greater importance to the proposed Aroma Joe's are the queue lengths.
- This queue is projected to be 162' under no-build volumes and 170' under build volumes. This shows that Aroma Joe's will not significantly impact the queue length on Ross Road.

Robinson submitted that the queue length is growing because the study was conducted in August, 2015.

- Accident data was not obtained for Route 1 in the vicinity of Ross Road.
- There are no high crash.... [*locations within this extended study area so there is no need for any further accident review or*]... analysis.
- Sebago Technics reported... [*that*]...the sight distance...
- MTR did not perform a field review to verify the sight distance or posted speed limits.
- The abutter definition includes all direct abutters and those across private or public right-of-ways. The abutter list in the application only listed two abutters; one on Ross Road and one on Route 1. Hence it appears that only direct abutters were noticed of the application, not those across Ross Road or Route 1. A remedy for this error must be determined with Maine DOT

since the abutter notifications are required to be performed at least seven days prior to the Scoping Meeting.

Robinson made an assumption that the abutter situation was not remedied because the Farragut residents have not been present and they have a right of way onto Route 1.

Robinson summarized her rebuttal stating *"I think there's enough question in this. It's not clear cut to me, there's this and there's that, and there's this and there's that, and some of it is good and some of it leaves it open to question. I think we have to take this as a package and look at it."*

Stephen S. **Sawyer** Jr., P.E. Vice President-Transportation, Sebago Technics introduced himself.

Osterrieder asked if he could interrupt and clarify the Traffic Peer Review, submitted by Diane W. **Morabito** before the **Sawyer** discussion begins.

Sawyer agreed.

Osterrieder stated *"When Diane conducted her review of this; the application had not gone before the DOT for the scoping meeting. What she was doing was conducting a review of the analysis. Some of the things that she cites that you [Robinson] talked about, like sight lines that's required as part of their traffic permit submission which was done and approved by DOT. She is not taking ownership for anything. What she was doing was providing a peer review. So she is telling you what she didn't do, not that those things are deficient."*

Osterrieder cautioned that if the Board was going to focus on concerns, they should first look to what has been approved by DOT and then look for a follow-up supplement document from Diane.

Sawyer agreed and began a discussion of the traffic issues from the Aroma Joe's point of view, highlights included;

- ME DOT is not concerned about the traffic issue because they have granted a permit;
- The Town Traffic Engineer has no concerns regarding any changes in LOS; and
- The 200 ft. limit is over and above what is necessary to provide a safe entrance.

Referencing the Portland Road Traffic Management Study of 2008, **Sawyer** commented that the site is shown on the study, and is allowed one (1) right turn entrance/exit to/from Route 1, and one entrance/exit to/from Ross Road. Aroma Joes elected not to utilize a Portland Road access but did incorporate the Ross Road access at the location depicted in the management study.

Robinson disagreed. Citing the summary of the **Morabito** Traffic Peer Review, **Robinson** submitted the following excerpts:

- Aroma Joe's is not expected to have a significant impact on either level of service or queue lengths;
- It is important to note that based upon field observations and our analysis that left-turn exits from Aroma Joe's will occasionally be blocked by the Ross Road queue at the Route 1

Sawyer presented an explanation of queue lengths discussing the "5% Rule" and emphasizing that adjustment to the intersection signal timing could be made if conditions warranted a change, which could be made a condition of approval.

Parker raised the possibility of acquiring the abutting property on Portland Road to ease the traffic circulation concern.

Robinson summarized her position with the following statement, *"...You [the applicant] are working very hard and put tons of time and effort and so forth, into trying to sell the Site Plan Review Board on a project that doesn't belong on this piece of property...We have to put that issue on the table that the wellbeing of the people in the town of Kennebunk and the safety have to be taken into consideration*

and it may be that nothing goes on that property..."

Kenney remarked that the Board members should evaluate the facts that are presented base on the exact project submitted with no consideration given to any issues that could, should, or might happen. The decision should be based on the facts given to the Board by the applicant and the professionals, not personal opinion.

Dunn agreed, pointing out that although the Morabito Traffic Peer Review did have some minor differences, it had the same results, which was that traffic at the intersection does not change.

Dugas reiterated the following facts:

- There is no way a driveway can be located 200 ft. from the intersection on this lot and the waiver is reasonable in order to locate a driveway there; and
- The applicant is required to meet the ME DOT Level of Service standards after development and according to the Morabito Traffic Peer Review, Aroma Joe's is not expected to have a significant impact on either level of service or queue lengths at the signalized intersection of Route 1.

Doe emphasized that the Morabito Traffic Peer Review stated that the Aroma Joe's Driveway will operate at LOS "B" overall. Recalling the day of the site walk, **Doe** said that at the end of the meeting, he observed all 10 cars of the site walk attendees exited the site within 30 seconds at approximately 4:30 pm. All, with the exception of 2, turned left on exiting.

Commenting on **Dugas's** previous statement, **Sawyer** explained that no entering traffic will be blocked because the drive way is on the right side of Ross Road, the issue would be making a left exit out of the site.

Robinson remarked that the Planning Board has decided that the standard will be 200 ft. and that they have the authority to impose that standard.

Stating that it is relevant to consider the industry standard, **Austin** reasoned that if the industry standard is 120 ft. and the Board grants a waiver down from 200 ft. to 170 ft, you are within the realm of not impacting the safety of the town.

Kenney suggested taking a vote on the waiver of Article 11, Section 8(6)(c) regarding driveways being less than 200 feet to intersections.

Dugas asked for a motion.

A motion was made to grant a waiver of the 200 foot distance from the intersection with the Police Department requested condition that the traffic flow be reviewed after 1 year of operation to determine if any issues have developed and if any adjustments to the traffic signal are required.

MOVED: **Kenney**

SECONDED: **Dunn**

DISCUSSION: **Kenney** clarified the time period as 1 year from occupancy.

MODS: **None**

VOTE: **3 in favor, 2 opposed (Parker, Robinson); the motion failed for not meeting the required 4/5 vote.**

Austin requested that the Board continue considering all the criteria in order to determine if other issues exist.

Dugas continued his review of Article 10, Page 64, Part D. Mixed Uses and Nonresidential Uses, Section 23 Design Review Standards, Paragraph D. Design Criteria

Buffer / Screening - Landscaped buffers in addition to walls and/or fences shall be used to soften the visual impact of parking areas, service areas, commercial buildings...

- The standard is met.

2. Building Design - The Town encourages high quality architectural design that is inspired by Kennebunk's traditional building style. The following standards shall be addressed as part of the proposed building design.

- **Architecture** - The goal of these standards is to produce architecture that draws its inspiration from traditional New England vernacular. Traditional building styles and materials shall be used in a way to accommodate contemporary building needs.
 - The standard is met.
- **Scale of Building(s)** - The scale of a building depends on its overall size, the mass of it in relationship to the open space around it, and the sizes of its doors, windows, porches etc.
 - The standard is met.
- **Height** - Heights of new buildings and reconstruction of existing buildings should be visually compatible with the heights of the buildings in the neighborhood...
 - The standard is met.
- **Roof Shape** - The shape and proportion of the roof shall be articulated so as to lend visual interest and reduce the apparent size of new building(s)...
 - The standard is met.
- **National Franchises** - National franchises (e.g., restaurants, service stations, retail stores,) are welcome and permitted forms of land use otherwise permitted in some of the zoning districts covering the Route One corridor. Since the design of these buildings can contribute to a loss of identity for Kennebunk by repeating the generic architectural forms that are repeated throughout the country, buildings that are stylized to the point where the structure is a form of advertising are not permitted.
 - The standard is met.
- **Facade Design and Materials** - The first impression that a building gives is very important. All buildings shall present an inviting, human scaled facade to the street... Buildings with Rt. 1 frontage shall have at least one entrance to the building along the Route 1 frontage.

All sides of a building should receive design consideration. Blank walls...

 - The standard is met.
- **Canopies** - Canopies should incorporate features to help them fit the scale and architectural character of the building...
 - The standard is met.

- **Primary Entrance** - The primary building entrance shall face the street unless the applicant can demonstrate that the circumstances of a given application merit an alternative orientation...
 - The standard is met.
- **Street Corners** - Buildings located on street corners are important because these high visibility locations help define the character of both streets, therefore the building facades along both streets shall be articulated. No parking, vehicular travel ways, or service areas shall be located between the building and the property lines along both streets.
 - The standard is met.

Kenney suggested delaying consideration of the next criteria (**Signage**) until after consideration is given to the criteria regarding **Color**.

Dugas agreed and moved ahead to **Color** Criteria.

- **Color** - Colors used on building exteriors should integrate a building's various design elements or features. The use of bright colors should be avoided. Softer, muted or earth-toned colors are preferred. Colors should be compatible with the architectural character of surrounding buildings and neighborhood, unless such surrounding buildings are not in conformance with these design standards. To view examples of acceptable paint choices please see Historic Colors of America Palette by California Paints.
 - The standard is met with Color Option 'B'.

Dugas moved back to **Signage** Criteria.

- **Signage**
Kenney suggested having the structure of the signs match the color of Option 'B'.
Robinson agreed with the suggestion.
Doe summarized that the writing on the sign will remain 'Aroma Joes Blue' but the sign structure will match color Option 'B'.
 - The standard is met.
- **Lighting** - The proposed lighting plan shall be consistent with the architectural style of the principal building and shall conform to the standards of Art 10, Section 6.
 - The standard is met.

Returning to the **Signage** criteria, **Robinson** asked for clarification regarding the awning color. **Doe** replied that the sign post, pylon sign, and any support elements will be the awning color. **Robinson** agreed.

Kenney asked **Bernstein** how the Board should vote on the Design Standards if one of the Design criteria has not been approved.

Bernstein replied that the overall vote should be 'no' because one criteria has not been met.

Austin requested the Board word the motion as: "all criteria have been met except the 200 ft. driveway standard."

Kenney noted that the motion should also contain reference to: "Option 'B' paint color."

Dugas asked for a motion.

A motion was made declaring that all items of Article 10 Design Standards have been met except for the criteria regarding the vehicular entrance to or exit from a drive-through facility not being located within two hundred feet (200) of a street intersection entrance, additional conditions shall be:

- 1) Paint color Option B will be used as presented by Sebago Technics; and
- 2) Signage, with the exception of the 'Aroma Joes' logo, will be dark blue that matches the awnings

MOVED: *Robinson*

SECONDED: *Kenney*

DISCUSSION: *Dugas* recommended ID numbers to go with the paint selection. *Doe* replied that the term 'Lexington' could be used to describe the color palette.

MODS: *Robinson* amended her motion changing 'color Option B' to "color Option B – Lexington"

VOTE: 5 in favor, 0 opposed; the motion carried.

Having no further comments regarding this agenda item, **Dugas** proceeded to address the Findings of Fact.

**Town of Kennebunk
Site Plan Review Board**

FINDINGS OF FACT

1. Project Name: Aroma Joes Restaurant & Drive-Through
2. Date of Action Taken: January 21, 2016
3. Site Location: 76 Portland Rd.
4. Zoning District: Suburban Commercial
5. Lot Size: 28,789 sq. ft.
6. Building Size: 1,070 sq. ft.
7. Assessor's Map: 035 Lot: 019
8. Existing Property Owner: Atlantic Holdings III, LLC
9. Proposed Property Owner: Sarlo Enterprises, LLC
10. Applicant: Sarlo Enterprises, LLC
11. The applicant has shown legal interest in the property by deed, option or purchase and sale agreement, or other device (circle one).
12. The Kennebunk Site Plan Review Board has reviewed the above noted proposal utilizing the set of approval criteria in Article 11, Section 8 of the Kennebunk Zoning Ordinance as summarized below and determined:

Approval Criterion # 1

The plan preserves the natural landscape insofar as practical and adequately uses the natural features of the site and/or new landscaping to define, soften, and screen the impacts of development.

**Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.
None**

Approval Criterion # 2

For a nonresidential project, effective buffers are maintained or created between it and adjoining residential properties and residential zoning districts.

**Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.
None**

Approval Criterion # 3

Filling, excavation and earth moving activity is carried out in a way that keeps erosion and sedimentation to a minimum.

**Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.
None**

Approval Criterion # 4

Adequate provision has been made for surface drainage, so that removal of storm waters will not have an unreasonably adverse effect on neighboring properties, downstream water quality, soil erosion, or the public storm drainage system.

**Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.
None**

Approval Criterion # 5

Adequate provision has been made for water supply and sewage disposal.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.

A temporary waiver is required for the final sewer design sign off.

A motion was made for a temporary waiver of the sewer sign off letter pending final Kennebunk Sewer District approval.

MOVED: *Robinson*

SECONDED: *Dunn*

DISCUSSION: *None*

MODS: *None*

VOTE: **5 in favor, 0 opposed; the motion carried.**

Approval Criterion # 6

The site plan provides for safe access to and egress from public and private streets, with adequate parking and internal circulation.

Dugas asked how the previous failed motion to grant a waiver of the 200 foot distance from the intersection would affect this criterion.

Bernstein suggested that the Board make reference to the traffic consultant's report, and that the vote decisions should have a basis other than staff and the traffic engineer's review.

Kenney asked **Dugas** if a vote should be taken on Approval Criterion # 6 and # 7 since a vote has not been taken on the previous Approval Criteria.

Bernstein suggested that the Board be as specific as they can on this issue if it is not going to pass.

Dugas stated that if the Criterion is deemed not met, then a vote should be taken which should include a basis for the negative vote.

Osterrieder provided the following clarification:

- The decision you make and the detail you provide is subject to appeal;
- Consider each section of the Criteria individually;
- Ultimately, the 200 foot waiver may or may not apply to this standard;
- Documentation provided by Sebago Technics, Maine DOT, and the Town Traffic Engineer all concur that the level of service will not be a safety issue on the street; but it doesn't necessarily mean that a 200 foot separation doesn't have an impact;
- You may be able to reach a conclusion irrelevant to the 200 foot separation;
- If you feel that not abiding by the 200 foot separation presents a problem with the general health, safety, or welfare of the public then it would be important because if you say the criteria is not met, you need to say why; and
- If you say the criterion is not met, you are refuting documented evidence to the contrary put before you; therefore you will have to present a basis for your decision.

A lengthy discussion developed concerning the waiver of Article 11, Section 8(6)(c) regarding driveways being less than 200 feet to intersections. Topics discussed and highlights include the following:

- The dissenting voters should present a reason why the criterion is not met (**Kenney**);
- The Criterion for safe access to and egress from public and private streets, with adequate parking and internal circulation has not been met because the waiver for driveways being less than 200 feet to intersections was not approved (**Robinson**);
- Typical situations concerning the safety of this issue might be (**Osterrieder**):
 - ✓ Historical facts;
 - ✓ Sight lines;
 - ✓ Turning maneuvers being blocked by queued vehicles; and
 - ✓ Parking lines too close.
- The 200 foot separation criterion is worded exactly the same in the Design Standards (Article 10) as it is in the Findings of Fact (Article 11). The Board previously voted and denied the waiver when considering the Design Standards. The same vote should apply to the Findings of

Fact (**Dugas**);

- The Design Standards (Article 10) stipulates a 'Drive-Through facility', the Findings of Fact (Article 11) doesn't specify a Drive-Through use requirement; therefore, a different conclusion could be reached between the two Articles (**Osterrieder**);
- When considering the application, the Board cannot factor in what might happen down the road (**Robinson**);
- The Planning Board set the standards for what they considered safe and they can go beyond the industry standard (**Robinson**);
- All Town standards allow for a waiver to be requested and require that the Board review that waiver request and make a determination regarding its suitability. If the Board denies the request, the basis for denial should be presented for the record (**Bernstein**);
- Facts to support a reason for denial should be provided (**Kenney**);
- The Board needs to make a clear decision because it just granted the same waiver for the project (High School) prior to this one (**Osterrieder**);
- Granting a waiver for the 200 foot separation criterion violates the current published rules that were established by the residential Planning Board (**Parker**);
- Personal experience refutes some of the data showing it to be not accurate (**Robinson**); and
- The reason the waiver for the 200 foot separation criterion was granted for the High School is because "the High School exists, and there is very little that can be done with a project that is already there versus a project that is in development" (**Robinson**).

Knowing that this issue will probably go to appeal, **Kenney** asked the dissenting voters if they still wanted to go forward with their decision, knowing that their basis and lack of facts may not be strong enough to stand up on appeal.

Parker made the following statement: "I'll stand before the appeals Board, if that's where it's going to go, and make my defense".

Robinson replied: "I will as well".

Kenney asked **Dugas** if a final motion was needed.

Dugas responded that a motion was needed on Article #6.

Speaking out of order, Chris **MacClinchy**, Chair, Planning Board, suggested that the Board should separate the two votes. That by not granting a waiver, a hardship is created on the property by not allowing any development.

Austin objected that the **MacClinchy** comments are not proper.

The Board agreed and cautioned **MacClinchy**.

A motion was made to declare Approval Criterion # 6 as having been met.

MOVED: **Kenney**

SECONDED: **Dunn**

DISCUSSION: **None**

MODS: **None**

VOTE: **3 in favor, 2 opposed (Parker, Robinson); the motion failed for not meeting the required 4/5 vote.**

Criterion is: met ____, not met __X__, or not applicable ____ with the following conditions, waivers, and/or comments.

A waiver of Article 11, Section 8(6)(c) regarding driveways being less than 200 feet to intersections failed approval.

Approval Criterion # 7

Vehicular access to the site will be on roads which have adequate capacity to accommodate any additional traffic generated by the development.

A motion was made to declare Approval Criterion # 7 as having been met.

MOVED: Kenney
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 3 in favor, 2 opposed (*Parker, Robinson*); the motion failed for not meeting the required 4/5 vote.

Criterion is: met ____, not met X, or not applicable ____ with the following conditions, waivers, and/or comments.

A waiver of Article 11, Section 8(6)(c) regarding driveways being less than 200 feet to intersections failed approval.

Approval Criterion # 8

The site plan provides for safe pedestrian circulation, both on-site and off-site.

A motion was made to declare Approval Criterion # 8 as having been met with the condition that the applicant will contribute an estimated amount, provided by the Town Engineer, to the sidewalk fund.

MOVED: Kenney
Osterrieder clarified the 'estimated amount' to be, "*on a prorated basis of the portion previously reviewed with the Planning Board during the Costal Woods project.*"
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.

The applicant will contribute an estimated amount, provided by the Town Engineer, to the sidewalk fund.

Approval Criterion # 9

Exterior lighting does not adversely affect neighboring properties or streets.

A motion was made to declare Approval Criterion # 9 as having been met.

MOVED: Kenney
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments.

None

Approval Criterion # 10

Electrical and telephone utility lines and components serving the site will be placed in a manner that is not hazardous or unsightly.

A motion was made to declare Approval Criterion # 10 as having been met.

MOVED: Kenney
SECONDED: Dunn
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Criterion is: met X, not met , or not applicable with the following conditions, waivers, and/or comments.
None

Kenney asked **Dugas** the following two questions:

- 1) Should the Board return to the Approval Criteria that was not given a Board vote; and
- 2) Should a discussion take place regarding the issue of 'accessory use'?

Bernstein clarified that 'use' determination comes under the jurisdiction of the Code Enforcement Officer and not the Site Plan Review Board.

A motion was made to declare Approval Criterion # 1, 2, 3, 4 as having been met.

MOVED: Parker
SECONDED: Kenney
DISCUSSION: None
MODS: None
VOTE: 5 in favor, 0 opposed; the motion carried.

Dugas asked if a final vote should be taken on the findings.

Bernstein replied in the affirmative, adding that the basis of the vote should be clarified and included.

Dugas stated that "In their review, the Board finds that the criteria of Article 11, Section 8 of the Zoning Ordinance have been met."

A motion was made to declare the criteria of Article 11, Section 8 of the Zoning Ordinance as having been met.

MOVED: Dugas
SECONDED: Kenney
DISCUSSION: None
MODS: None
VOTE: 3 in favor, 2 opposed (**Parker, Robinson**); the motion failed.

Kenney suggested forming a sub-committee to evaluate the procedural steps for considering Design Review Criteria and Findings of Fact; subsequently, developing a clearer and more consistent flow.

Dugas remarked that the issue has been discussed at workshops.

Bernstein replied that it is one of the topics where changes are desired; however, any changes will have to go through the Zoning amendment process. She added that the issue can be added to the agenda and that the Town Attorney should review these proceedings.

Robinson noted that there are provisions for waivers and appeals, adding that she expects this decision to be appealed. Personally, she felt good with her vote because it was based on the ordinance and her knowledge that her decision could be appealed and overturned.

Austin asked when the written finding will be prepared.

Bernstein replied that a draft of the findings may be available in a week; however the findings will be part of the minutes which need to be Board reviewed and approved at the next meeting.

Dugas proceeded to the next agenda item.

5. Other Old/New Business

Bernstein informed the Board that there is a re-submittal in the works for the next meeting, but she has yet to receive a package.

6. Adjournment

Dugas asked for a motion to adjourn.

A motion was made to adjourn the meeting at 8:39 p.m.

MOVED: Dunn

SECONDED: Robinson

DISCUSSION: None

VOTE: 5 in favor, 0 opposed; the motion carried.

Date signed:

4 March 2016

Signed by:

Brenda S Robinson
Brenda **Robinson**