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CAMDEN PLANNING BOARD
MINUTES OF MEETING
May 15, 2014

PRESENT: Chair Lowrie Sargent; Members Richard Bernhard, Jan MacKinnon and John Scholz; and CEO Steve Wilson

ABSENT: Member Richard Householder

The meeting of the Planning Board convened at 5:00 pm.

1. Public Input on Non-agenda Items:

Mr. Scholz: At the previous meeting a summary overview of a zoning amendment under consideration by Mr. Scholz had been mistakenly circulated in his absence without his knowledge. The submission, given to the CEO and intended only for his review, is in the very beginning stages of discussion and was not meant for distribution. It was not Mr. Scholz's intention to submit anything to the Board until they had completed their deliberation on the Bifulco proposal, and he wanted to make it clear to those attending for the purpose of discussing the amendment being heard this evening that his proposal was in no way connected to the proposal before the Board. Kristi Bifulco's proposal stands alone and it will be considered on its own merits.

2. MINUTES:

April 17, 2014: The Minutes had been reviewed at the May 1 meeting and the Recording Secretary had been asked to make some revisions. The revised draft was reviewed and approved.

MOTION by Mr. Scholz seconded by Mr. Bernhard that the Minutes of the April 17, 2014, as amended and revised, be approved.

VOTE: 3-0-1 with Ms. MacKinnon abstaining due to her absence

3. PROPOSED ORDINANCE AMENDMENT: Public Hearing

The Chair read the procedure for Public Hearings and asked Ms. Bifulco to explain her proposal to add a Special Exception to the Ordinance.

Ms. Bifulco read the proposed language which included one minor change made since the last meeting:

Article VI Section 2(2) (c) add the following language", except an Inn abutting High St and within 500' of a zone where restaurants are an allowed use may be granted a Special Exception to be allowed to serve meals to *their* overnight guests only, subject to meeting the standards of a Low Impact Use as determined by the Zoning Board of Appeals."

To explain the history of the evolution of her proposal and their arguments for economic benefit without impact to the neighborhood, Ms. Bifulco prepared a Power Point presentation. That presentation is part of the live streaming video of the meeting and can be viewed at:

http://www.townhallstreams.com/locations/camden-me/events/18337/camden_town_hall

1 Ms. Bifulco noted that their property has been in commercial use since the early 1900's.
2 Since taking ownership of the business they have followed the guidance "grow slowly and
3 maintain character" – this change accomplishes that. They would like to expand their income
4 base and are proposing what they believe is a modest change to this area of High Street that is
5 adjacent to the Downtown Business district. The three affected inns have a total of 18 rooms so
6 the highest number of diners they could serve in an evening would be 36. None of them would
7 require new parking; all of them have space off Route One to take deliveries; and the fact that the
8 diners will be sleeping on the premises guarantees that there will not be noise resulting from the
9 activity because it would negatively impact the inn's guests. In addition, there would be less
10 traffic and less noise because guests would not be coming and going from dinner elsewhere.

11
12 The Chair noted that the Board received three letters and two emails speaking to the
13 proposal:

- 14 ➤ Michael Salmon, Hartstone Inn, dated May 12, 2014
- 15 ➤ Claudio Latanza, Maine Stay Inn dated May 14, 2014
- 16 ➤ Jim and Cyndi Ostrowski, Blackberry Inn and Elms B&B; Terry and Annette Hazzard,
17 Blue Harbor House; and Norman and Linda Henthorn, Captain Swift Inn – letter dated
18 May 15, 2014
- 19 ➤ An email from Dennis McGuirk – unsigned and undated received May 15, 2014
- 20 ➤ An email from Russ Miller (Whitehall Inn)

21
22 *First Public Comment Period*

23
24 Ann Sziklas: 28 High Street: She wanted to read the letter from Russ Miller into the record, but
25 the Chair reiterated the Board's policy that redundant testimony is to be discouraged. The
26 members of the Board have already seen Mr. Miller's testimony and anyone who wants to read
27 the letter can get a copy from the Codes Office.

28
29 Leonard Lookner: 58 Melvin Heights Road: He asks the Board to consider the fact that no one
30 from the public has come forward to speak in favor of the proposal. The letters the Board has
31 received are all in opposition; people have come out several times to make their feelings known
32 – it shows they care about the issue. He asks the Board to take these concerns into consideration.

33
34 Neale Sweet: 39 High Street: He complimented Ms. Bifulco on her good presentation of the
35 issues, but he has lingering concerns regarding 1) Whether or not this is Spot Zoning – the
36 proposal has a very narrow focus. Whether or not it is legal is another question, but relying on
37 Spot Zoning as policy comes with many implications; 2) The proposal does not meet the intent
38 of the Zoning Ordinance. It is clear that the intent was that to restrict commercial activities in
39 this District and to that end no commercial expansion of these businesses was to be permitted.
40 This minor change will set a precedent for other incremental changes – don't start that ball
41 rolling.

42
43 Mr. Scholz responded to the charges that this change creates the potential for requests for
44 further changes by saying that *if* this request is approved it does not mean other requests will
45 receive automatic approval.

46
47 Joanne Ball: A Little Dream B&B, High Street: Although Ms. Bifulco's presentation was
48 compelling she wants the Board to ask if the change is necessary, and she reminded them that

1 no-one else supports that argument. Ms. Ball spoke at length of her experience in obtaining
2 powerful protections for High Street during the work to rebuild that stretch of federal highway a
3 few years ago. Those protections were put in place after a group of neighbors worked to show
4 the historic significance of the residential neighborhood and to obtain National Historic Register
5 status. Changes like the one proposed can undermine those protections. The DOT watches the
6 efforts to protect the character of this part of Camden, and the protections may be seen as
7 unnecessary if commercial activity continues to move up the street.

8
9 Russ McKenna: 15 High Street: He disagrees that the precedent that will be set by approving
10 this change is not important to the future, especially if the Ordinance language that limits
11 expansion can be ignored.

12
13 Betsy Perry: 39 High Street: She expressed concerns about the impact to neighbors if
14 commercial kitchens are added to these inns - the smells and noise coming from exhaust fans and
15 the additional traffic from deliveries are examples. The residential neighborhoods are important
16 to the economic vitality of the Town.

17
18 Cindi Ostrowski: Blackberry Inn: They are very involved in tourism in Maine and know how
19 businesses offering lodging, retail and meals are doing in this area – only 50% of these
20 businesses have rebounded to pre-2008 levels. They are tenuous businesses with a symbiotic
21 relationship. She knows that several restaurant owners in Town are worried about the impact of
22 this proposed change on their business. She also noted that many inn owners who do serve
23 meals bought properties in the business district – knowing what the zoning rules were - just so
24 they could serve meals as part of their offering; the Ordinance is very clear on where this is
25 permitted. She understands the need to maintain historic properties - many of the houses in her
26 district are as old as, or older than, those on High Street. But the zoning controls on growth and
27 change help protect their investments in a commercial business in the Town. This proposal
28 could start to tip the balance that exists – and that works – and has the risk of making a mockery
29 of the High Street Historic District.

30
31 Ken Kohl: 49 Mountain Street: He asked if one of the criteria in deciding a Special Exception
32 was to prove an economic hardship. He does not believe that one exists regarding income at the
33 Windward House, and he does not believe that a decision should be made on this proposal based
34 on this factor. The change will be positive for the Applicants but negative for everyone else – it
35 is not worth the cost of increasing business to one B&B by creating an uneven playing field with
36 the inns that are allowed to serve dinner now. The Board should ask if the change is necessary,
37 is it reasonable, and is it consistent with the Comprehensive Plan.

38
39 Deb Dodge: 27 High Street: The fact that the current proposal now includes added protections
40 for nearby residents does not outweigh the negative impacts on the remainder of the hospitality
41 industry.

42
43 She also asked the Board to reconsider not allowing letters to be read out loud. The
44 meetings are live streamed, but viewers don't have the benefit of reading a copy of the testimony
45 that was offered that those attending the meetings do. It is only fair to have them in the record if
46 there is to be a complete record of the proceedings.

47
48 No one else came forward and the first Public Comment period was closed.

Questions from the Board

1
2
3 Mr. Sargent: Mr. Sargent asked Mr. Wilson to address the questions raised regarding whether or
4 not this proposal constituted spot zoning. Mr. Wilson replied that the practice of creating a new
5 zone to allow special provisions for a specific property is more accurately defined as Contract
6 Zoning. Spot Zoning, which is not illegal, would cover the instance when changes are made
7 within an existing zone that applies to a specific property – or as charged here to a limited
8 number of properties. He believes this proposal is allowed due to the fact that Camden has
9 already defined Special Exceptions that includes a provision for a transitional zone where
10 specific uses can be permitted as Low Impact Uses under very limited circumstances. The
11 Ordinance already contains provisions for allowing this to happen when it is with 500' of a zone
12 where the specific use is already allowed. The stringency of the review combined with the
13 ability of the ZBA to set very site specific conditions is considered to offer sufficient protections
14 to permit the concept to allow a use not otherwise allowed to be legal.
15

16 The CEO clarified that Special Exceptions run with the property and would continue if
17 any of the three inns changed hands. However, the business would have to be run exactly as it
18 was approved for a Low Impact Use – with all conditions applied and no expansions of the use
19 would be permitted. If the Inn stopped serving dinners for a period of time the Special Exception
20 continues and the practice can be resumed at any time.
21

22 Mr. Scholz: He discussed the different definitions and standards that the State Health
23 Department uses compared to those in Camden's Ordinance as they apply to restaurants and food
24 service. Mr. Wilson explained that the local Ordinance prevails when it comes to Zoning
25 decisions regarding use – the State prevails when it comes to the licensing of establishments to
26 conduct that use. The Town can say yes to the serving of dinners, but the State can say no, if the
27 property doesn't meet their standards. When the property does meet those standards dinner can
28 be served. Or vice versa – just because a property meets State standards for a full restaurant that
29 *could* serve the general public it doesn't mean the Town has to permit the use.
30

31 Mr. Bernhard: In the big picture this would not create a great impact in the use of the property.
32 But, it is also important that High Street is architecturally significant and is a dramatic entrance
33 into Camden that serves the purpose of transitioning from residential to commercial. He
34 wonders if this proposal wouldn't set a precedent that would endanger that character.
35

36 Ms. MacKinnon: She addressed Mr. Lookner's comments that members of the Board were
37 callous because they didn't consider the residential nature of the area. She noted that it had been
38 the Board's practice for many years to send all requests forward that had any merit. They turn
39 no one away and work with them, affording them all due process, to make changes to wording
40 and to the proposal itself. It doesn't mean they support the proposal or will automatically vote to
41 send it forward. Mr. Lookner apologized for his choice of words.
42

43 Mr. Bernhard asked what the process was for receiving and hearing zoning amendments.
44 If the item comes to the Board as a non-agenda item the public does not have the benefit of any
45 notice. Mr. Sargent replied that there is not a set procedure for hearing these requests and he
46 believes it is something the Board needs to develop. He did explain the notification process that
47 goes along with Public Hearings, but wants to discuss the matter further sometime in the future.
48

1 Mr. Sargent: He supports the concept of a 500' arc to create a transitional zone, but it doesn't
2 seem fair to him that other inns and B&Bs on High Street - which are also commercial
3 establishment that have been in business a long time. These businesses will not qualify to make
4 the change. However, the stringency of Low Impact Use criteria addresses his concerns about
5 creating a "slippery slope with an approval of this request. The Board is not supposed to make a
6 decision based on public sentiment – that happens more at the Select Board level. It does
7 concern him that the B&B Association, and no other B&B's including the Hawthorn Inn and
8 Abigail's, the two other B&Bs that would benefit from this change, have come forward in
9 support.

10
11 Mr. Scholz: The Ordinance language specifically says that inns cannot become more non-
12 conforming with regard to use – this still causes him problems if this expands the use. Mr.
13 Wilson replied that it is not the use that is non-conforming – inns are an allowed use within this
14 district. In addition, non-conforming uses are now allowed to expand minimally. He referred
15 members to the definition of Lodging and Inns and explained that the definition will not have to
16 be changed. The ability to serve dinner will be granted by the Special Exception Low Impact
17 Use which will override the definition. Mr. Wilson agrees with Mr. Scholz that the Ordinance is
18 confusing to interpret – the definitions don't collate, there are definitions missing. Mr. Wilson
19 spent time speaking with the Town Attorneys regarding the Ordinance language and is confident
20 that he now understands how the different sections work together.

21
22 *Second Public Comment Period*
23

24 Leonard Lookner: He agrees that the ordinance remains confusing in spite of attempts to clarify.
25 He disagrees that inns are a conforming use: When the Ordinance was written the controls on
26 B&Bs were established by limiting them to their current size based on the existing situation in
27 Camden to ten rooms or less. They were all re-classified as non-conforming inns if they were on
28 less than 2 acres, and a new limit was placed on any expansion of the use so the Town could
29 actually limit the number of rooms allowed. The basic tenant of the Special Exception provision
30 is that a use is found to be no more non-conforming. What this proposal does is to allow a non-
31 conforming inn to become more non-conforming.

32
33 Mr. Wilson added that after consulting with the Town Attorney he has a better
34 understanding of the case law that supports his understanding of when a situation is non-
35 conforming. There is case law in Maine finding that when a use is allowed in the District but the
36 grandfathered situation does not meet the lot size requirement established by the Ordinance, the
37 lot can be classified as non-conforming, but the use cannot. Serving dinner to guests can be
38 allowed by Special Exception because that is an allowed use in the abutting district.

39
40 Mr. Scholz believes that the fact that the State Health Department says that serving
41 dinner will require a change in licensing to a higher level of food service is an argument that this
42 is adding a new use and that is not allowed by the definition. Mr. Wilson believes that it is not a
43 new use, but it is a change in the way the inn does business that will come with different
44 licensing criteria.

45
46 Deb Dodge: Ms. Dodge added some history of the evolution of minimum lot size for inns: In
47 2004 the Maine Stay Inn filed a lawsuit against the Town because they had been denied an
48 expansion because they were, by definition, on a non-conforming lot. The ZBA upheld the

1 decision. The inn owner argued the lot size was grandfathered so they were not non-conforming.
2 The Court said the definition applied. Camden amended the Ordinance with the intent of saying
3 that inns on non-conforming lots cannot add rooms *or services* – that both the inn and the lot are
4 non-conforming unless that inn is on two acres or more.

5
6 Mr. Wilson explained that the Ordinance classifies inns as a non-conforming structure not a non-
7 conforming use. In addition, other expansions are allowed on these lots that are conforming –
8 like an increase in residential uses. He also added that the addition of a Special Exception
9 provision permitting this use makes that use available because it is an exception to the rule and
10 overrides what would otherwise apply. Mr. Scholz still finds that the Ordinance definition
11 language and other language limiting expansion all translates to not allowing expansion of the
12 use, and that Mr. Wilson is simply interpreting that language in another way.

13
14 Dennis McGuirk: He believes that the discussion regarding the fact that this is a non-conforming
15 use on a non-conforming lot because it is an inn on less than two acres is very relevant.

16
17 Joanne Ball: Ms. Ball read from the Ordinance at Article XV Amendment and Other Interpretive
18 Provisions: Section 1. Interpretation: “Interpretation of what may not be clear in this Ordinance
19 shall be according to the *intent of the Ordinance* and the comprehensive plan.” and from
20 Section 2. Conflict with Other Ordinances: “Whenever the provisions of this Ordinance conflict
21 with or are inconsistent with...or wherever the regulations of one part of this Ordinance
22 conflict with another part of this Ordinance, *the stricter shall apply...*” (emphasis is hers).
23 She asked the Board to adhere to the spirit of the Ordinance and look to the intent not to allow
24 any expansion.”

25
26 Ken Kohl: He believes that District boundaries were drawn purposefully and that uses allowed
27 were considered carefully as were placing limits on expansion of those businesses that already
28 existed within the District. None of this matters if the boundaries are not made to apply. Mr.
29 Wilson replied that the 500' area is meant to span zones – it only applies to the Village and
30 Village Extension Districts where they abut business districts and only to uses allowed within
31 those districts.

32
33 Cindi Ostrowski: Don't open the door to the additional uses the precedent of allowing the 500'
34 area to apply would bring.

35 Neal Sweet: He finds the arguments regarding setting precedent weak, but the issue of whether
36 this is a conforming use versus a non-conforming use is not clear. When that lack of clarity is
37 the case the Board must return to the overarching concept of the Ordinance which is clear, and
38 not allow the expansion of commercial uses in residential districts.

39
40 *Proponent's Closing Argument*

41
42 Ms. Bifulco believes this will be a good use to the property, and asked the Board to note
43 that there were no abutters here to oppose her request. This is because she talked with them and
44 took their concerns into consideration when she wrote this version of the amendment. She has
45 also spoken to the other two innkeepers who would be impacted – one didn't want to get
46 involved again after the last experience.

1 The market value of High Street properties is going down – in some cases by hundreds of
2 thousands of dollars. The Town needs to give the owners of the expensive old buildings
3 incentive to grow their businesses so they can keep the properties maintained and beautiful.
4

5 She doesn't understand the opposition put forward by the other inns because they already
6 have the ability to expand to address any competition they may face. She didn't expect support
7 but she doesn't think they need to fear the competition.
8

9 *Board Deliberation*

10
11 Ms. MacKinnon: She believes that this particular area at the bottom of High Street is different
12 from the rest of the street, but she understands the concern of the residents as well. The Board
13 has recently sent all requests from other businesses for zoning changes forward to the Select
14 Board and she feels they should do the same in this instance.
15

16 Mr. Scholz: He feels strongly that work needs to be done to define the process for reviewing
17 Ordinance amendments. In this case there are enough "ifs" that concern him that if the
18 amendment were to be approved there are a number of things that could happen – he is not clear
19 how the change would play out. He wants the Board instead of reacting to requests, to do
20 planning and to look at the whole Town to see what is needed and what is appropriate to change.
21

22 Mr. Bernhard: He has mixed feelings about the impact of this change – it probably would be
23 minor. He has tried to listen to the arguments on both side and not be swayed by the emotional
24 comments. But there are many people who have come to speak who don't support the proposal –
25 they are the constituency of the Board and that is important to note. Would the change add to the
26 intensity of the use – it would. Would the historic aspect of the area be eroded -- probably not?
27 He is swayed instead by the importance of the historic nature and appearance of High Street as
28 the northern gateway to Camden. From a planning perspective is it the right change to make to a
29 residential neighborhood? He has to rely on the Ordinance for guidance and use the most
30 restrictive interpretation – he cannot support this request.
31

32 Mr. Sargent: The 500' rule is bizarre but it is the rule. He asks what the impact would be if this
33 were to happen and doesn't think anyone would even notice the change because of the Low
34 Impact Use criteria. The Ordinance imposes very tight rules on inns in this district that other
35 inns in Town don't have to follow and he wonders if those rules are lessened if there will be any
36 impact on the charm and appeal of High Street – he does not believe there would. In fact, if the
37 change is successful it may mean that the owners can bring in more money to pay for the upkeep.
38 Would the change benefit the neighborhood or be a detriment? If this kind of change did not
39 have to go before the ZBA for review he could not support it, but the ZBA can add whatever
40 restrictions they feel are necessary -- the hearing is a public process where people can attend to
41 express concerns.
42

43 Mr. Scholz wonders if the ZBA will be in a tough spot making these decisions because
44 they are going to have to look long and hard and the same ambiguities that the Planning Board
45 has discussed. He could support sending this forward to let the ZBA do the job, but he feels the
46 Planning Board should do their job and look harder at better defining non-conforming uses.
47

1 Mr. Sargent agrees that the Planning Board has work it must do, but he believes that
2 Kristi Bifulco deserves an answer to her request after all this time. Mr. Scholz hopes she
3 understands that if the Board decides not to send this on it will not be personal to the Windward
4 House, but will be because of the lack of clarity in the Ordinance.

5
6 Ms. MacKinnon believes this is a nominal request with nominal impact. She puts aside
7 concerns about the impact on local restaurants – there are many reasons they go out of business
8 and this would not be the sole factor in causing that to happen. She does have concerns but she
9 still can support the proposal going forward.

10
11 **MOTION by Ms. MacKinnon seconded by Mr. Bernhard** that this proposal be passed
12 forward to the Select Board for their consideration with the recommendation that it is placed on
13 the next Town ballot.

14 **VOTE: 2-2-0 with Mr. Bernhard and Mr. Scholz voting No**

15
16 Because the vote was tied the Motion failed and the proposal will go no further.

17
18 **4. DISCUSSION:**

19
20 1. There were no Minor Field Adjustments

21
22 June 5: Camden Snow Bowl Lighting Plan will be delayed

23 The lighting plan has changed to accommodate a new kind of lighting – different from
24 the LED proposal because a test of the LED lamp initially selected showed the system
25 would be far too intrusive on surrounding property owners. The new lamps -- which
26 offer better lighting for night skiing with less impact to the night sky -- were chosen after
27 discussions with ski area managers and neighbors from other parts of the country where
28 they are have been used for several seasons.

29
30 2. Pending Applications:

31 Cartwright, Frazer and Gerard: Mixed Commercial/Residential Development BR
32 They are still developing plans and have hired a forester to develop a plan for cutting for
33 development in the Shoreland Zone – this is not considered site work

34
35 Spear Subdivision: Rockport must conduct a Pre-application Meeting because this is a
36 Major Subdivision undergoing full review; they will notify Camden if they are going to
37 hold another Site Walk. Then the joint meeting will be held on the Application. Rockport
38 wants to hold the meeting in Rockport because they have a better location for both
39 Boards to meet – they will hold the meeting on Camden’s schedule. After the Public
40 Hearing and Evidence presentation the Boards can sign the Agreement to Waive Joint
41 Review. Any further evidence received will have to be shared jointly.

42
43 3. Other:

- 44 ➤ CEDAC: They want to make residential use available on upper floors at the Tannery
45 site. The Board may be able to modify the Open Space Zoning proposal to
46 accommodate that request. Evidently Northeast Ambulance is looking for a site in
47 Town to house their ambulances and this may work for them. They will talk about the
48 Open Space Zoning proposal and Floor Area Ratio (FAR) -- a planning concept that

1 allows the creative use of land by permitting buildings to go up instead of out with a
2 smaller footprint and more resulting useable lot area. In the case of the Tannery site it
3 would mean that the setback from the river wouldn't impact a developer's potential to
4 better use the site. It can also address issues like dealing with the slope of the land and
5 required setbacks from the road like those found at the Southern Gateway property.
6

7 CEDAC meets next on May 19 but Mr. Sargent does not know if this issue will be on
8 the agenda – Planning Board members might want to attend if it is.
9

10 ➤ Mr. Bernhard noted that the Camden Film Festival is looking for additional venues
11 and wondered if that would be something the Planning Board could help with.
12

13 ➤ The agenda for the Comp Plan Meeting on May 22 was reviewed.
14

15 There being no further business before the Board they adjourned at 8:30pm
16
17

18 Respectfully Submitted,
19

20 Jeanne Hollingsworth, Recording Secretary