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**CAMDEN PLANNING BOARD
MINUTES OF MEETING
September 4, 2014**

10 **PRESENT:** Chair Lowrie Sargent; Members Richard Bernhard, Richard Householder, Jan
11 MacKinnon and John Scholz; Select Board Liaison Don White; and CEO Steve Wilson

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

13 **1. Public Input on Non-agenda Items:** No one came forward to speak.

14 **2. MINUTES:**

15 Review of the Minutes of August 21, 2014, was deferred to the next meeting. The Chair had
16 reviewed the minutes and was satisfied with the accuracy of the representation of the two
17 Applications that will be reviewed this evening; he believes the Board can rely on the
18 information in the Minutes during those reviews.

19 Mr. Scholz was absent for the last meeting, but he has watched the video of the meeting
20 and read the Minutes and is able to participate as a voting member for both reviews.

21
22 **3. SITE PLAN REVIEW: ENLARGE an EXISTING COMMERCIAL WHARF**
23 **Appleton Family, LLC: Map 119 Lot 9: Transitional Harbor Business District (BTH):**
24 **Inner Harbor: 44 Bayview Street**

25
26 *Public Hearing*

27
28 The Chair read the procedure for Public Hearings. He then noted for the record that the
29 Harbor Committee Chair, Gene McKeever, had provided information on the Committee's
30 discussion regarding the Appleton wharf application via email dated September 2. The
31 Committee's discussion on this matter had not been included in the official minutes because they
32 had not completed a formal review and had not provided the Board with the written
33 recommendation the Ordinance requires for this type of review. The Board agreed that the email
34 from Mr. McKeever filled this requirement. Although the Harbor Committee did not produce a
35 written set of findings, the CEO, who attends Harbor Committee meetings, noted that the
36 Committee had carefully gone through the criteria before making their decision to unanimously
37 support the proposal because the expansion will not extend beyond the Wharf Line. Steve Gold,
38 member of the Harbor Committee, was present and confirmed the CEO's observations.

39
40 Sam Appleton, owner of the Waterfront Restaurant was present for the review of his
41 request to expand the deck of the Waterfront Restaurant. At the initial review, Mr. Appleton was
42 asked to provide the Board with information about the lighting proposed for this expansion – he
43 submitted two pictures for this purpose. He was also asked to provide an updated Site Plan
44 signed and sealed by the engineer who had prepared the original plan seven years ago. He

45 reported that this particular engineer had left the company he was with when the Plan was
46 prepared. He has been located and is preparing the revised Plan requested by the Board. It was
47 not ready for this evening's meeting, and the Board agreed they could move forward making any
48 approval conditioned upon receipt of the revised Plan.

49
50 *1st Round Public Comments:*

51 There were none

52
53 *Questions from the Board:*

54 There were none

55
56 *2nd Round Public Comments:*

57 There were none and the Public Hearing was closed.

58
59 The Board reviewed the Approval Criteria of Article XII (see Attachment A) and made
60 the following Motion:

61
62 **MOTION by Ms. MacKinnon seconded by Mr. Householder** that the Application for the
63 Appleton Family Pier is approved contingent upon receipt of a revised Plan that has been stamped
64 and sealed by an engineer and contains a signature block.

65 **VOTE: 5-0-0**

66
67 **4. SITE PLAN REVIEW: Residential Pier**

68 **Robert and Karen Brace: Map 124 Lot 88: Coastal Residential District (CR): Outer**
69 **Harbor: 25 Harbor Road**

70
71 The Chair noted that on August 27 all five members of the Board met on the site with
72 Will Gartley, project engineer, to discuss the project. Mr. Gartley submitted the lighting cut
73 sheets – the only outstanding submission.

74
75 *Public Hearing*

76
77 The Applicants were represented by their agent Will Gartley of Gartley and Dorsky
78 Engineering and Surveying. Mr. Gartley summarized the proposal:

- 79
- 80 • A new pier in the Outer Harbor that will measure 100' from Mean High Water (MHW) to
Mean Low Water (MLW)
 - 81 • A 44' aluminum ramp leads to 16' wide float – both are seasonal
 - 82 • The nearest pier is 657' away (Armstrong property)
 - 83 • The pier is subject to Army Corps and DEP approval – neither permit has been received
84 but Mr. Gartley has heard from both agencies that they have no concerns that need to be
85 addressed – the permits are expected to arrive shortly
- 86
87
88

89 *1st Round Public Comments:*

90

91 The Chair entered an email from abutter Diane Miller into the record. The Millers ask
92 that the Brace's locate their pier so they – the Miller's – are not precluded from installing a pier
93 on their property sometime in the future. (See Attachment B)

94

95 Steven Gold: Representing the Harbor Committee:

96

97 Mr. Gold took the Board section-by-section through the pertinent sections of the Harbor
98 Ordinance to explain both the Committee's jurisdiction and their reasoning in reaching the
99 decision *not* to recommend approval of the Brace pier. Mr. Gould read the Purpose of the
100 Ordinance and the Committee's charge regarding the Outer Harbor. Further, the Ordinance at
101 Article IV Section 7F2, directs the Select Board to determine that the proposed project will not:

102 (Parts A and B were not addressed)

103 C. Reduce or interfere with existing shell fishing and clamming areas, and access
104 thereto.

105 D. Interfere with public vessel launching and pier facilities.

106 E. Block or interfere with public rights of passage and uses of the shores and flats.

107 F. Adversely affect small recreational boating activities.

108

109 The Harbor Committee believes there will be some changes resulting from a pier; what is
110 impossible to assess is exactly what that impact would be. They believe: 1) There *will* be
111 interference with small boaters paddling along the shallows – and with those who walk the flats
112 - because their passage will be blocked by the pier; 2) The mere presence of a pier in this
113 location could depreciate the value of abutting property; 3) That the pier will depreciate the value
114 of the Miller property because they will never be able to build a pier based on the location of the
115 Brace pier¹; and 4) That the Comprehensive Plan supports the Harbor Committee's position that
116 there should be *no* piers at all in the Outer Harbor – that it should remain in a natural state.

117

118 They have been trying to clean up the Ordinance and change it to extend the ban on piers
119 the entire length of Sherman's Cove – they have had no luck getting the Selectmen to bring the
120 question to the public.

121

122 *Questions from the Board:*

123 Mr. Scholz asked Mr. Gartley about the depth of water at the end of the float at high and
124 low tides; the answer was 14' and 4' respectively. Neither Mr. Scholz nor Mr. Sargent believes
125 the pier will interfere with small boaters because the area between the shore and the end of the
126 pier is out of water at low tide and boaters cannot use the area as it is now. They will only have
127 to travel out and around the float to continue down the shore in that one area.

¹ At their September 18, 2014, meeting the Planning Board noted the following about Item 3): The Millers actually have a 50'+ strip of property within which a pier could be legally located; they do not agree that the Miller property will be depreciated.

128 Mr. Gold also contends that because the pier will sit on granite cribbing, the larger
129 footprint increases the detrimental effect to the sea bottom. Mr. Sargent noted that the area is
130 very rocky and wondered how much impact a pier would have covering a rocky bottom.
131

132 Mr. Scholz countered the Committee's concern that approving a pier would have a
133 detrimental effect on property values in the area and said that not approving the pier might have
134 that effect as well since property owners purchased their property with the understanding they
135 would be able to build – this might make their property worth less on the market.
136

137 Mr. Bernhard raised the issue of the Millers property perhaps being devalued since they
138 would no longer be able to build a pier because they would not be able to meet the required 300'
139 setback from the Brace's pier. He believes that this issue should be part of the initial review of a
140 project; Mr. Sargent noted that the Board has to act on the Ordinance as written and that permits
141 the Braces to locate their pier on their property wherever they want as long as it passes review.
142

143 Mr. Bernhard also believes that the Planning Board should listen to the Harbor
144 Committee says, but Mr. Sargent noted that the Planning Board acts on different criteria than the
145 Harbor Committee, which is purely advisory in nature.
146 He also informed the Board that part of Sherman's Cove is protected as Shore Bird Habitat and
147 piers are not allowed there – that may have been the reason that the prohibition was written to
148 apply to only a portion of the Cove.
149

150 Mr. Wilson noted that the 300' setback provision is unique to Camden's Ordinance – it is
151 not required by State Law. Regarding a possible proliferation of piers once one is approved, he
152 stated that much of the shoreline of Sherman's Cove is protected as Shore Bird Habitat and it
153 appears that there may be only four properties in total where piers could be constructed in the
154 Outer Harbor as the Ordinance is written now.
155

156 (The entire discussion can be viewed at: <http://www.townhallstreams.com/locations/camden->
157 [me](http://www.townhallstreams.com/locations/camden-))
158

159 The Board reviewed the Approval Criteria of Article XII (see Attachment C) and made
160 the following Motion:
161

162 **MOTION by Mr. Scholz seconded by Ms. MacKinnon** that the pier application for Robert
163 and Karen Brace presented by Gartley and Dorsky be approved because all the Approval Criteria
164 have been met or found to be not applicable.

165 **VOTE: 5-0-0**
166

167 **5. WIRELESS TELECOMMUNICATIONS FACILITY: Discussion with building owner**

168 Northeast Wireless Networks: 36 Washington Street Smokestack
169

170 Matt Orne will not be available for the Public Hearing on this Application scheduled for
171 September 18 and he is before the Board this evening to answer any questions the Board might

172 have with regard to this Application. The following facts were provided pertinent to the
173 Application: (The entire discussion can be viewed at the link above)

- 174 • A metal cap, recommended by the engineers to protect the interior of the smokestack,
175 will be installed and serve as the “roof” necessary to qualify the structure as a building
- 176 • The contract with the contractors outlines the work to be done (a copy will be provided
177 for the record) – it does not include painting the stack. Instead they are looking at
178 breathable coverings that will allow the concrete structure to breathe
- 179 • The overall appearance will be a more uniform light color from top to bottom
- 180 • They hope to eventually have three “tenants” on the stack – Red Zone Wireless and
181 Sprint have both expressed interest in locating antennae on the smokestack. It is
182 anticipated that the first installation will be the highest up with Red Zone probably
183 located much lower than either

184

185 **6. ZONING AMENDMENT: Business Opportunity Zone (BOZ)**

186

187 The Board discussed the Draft of the new district which had been reviewed for
188 “unintended consequences” by the two architects on the Board; the recommendations for
189 changes to the language they offered were accepted. After discussing the limited sites where the
190 BOZ might apply in the BTH, the Board removed that district from the list where the overlay
191 could be applied.

192

193 The revised draft will be discussed at the Comprehensive Plan Committee meeting on
194 September 11 and sent to Public Hearing on October 2.

195

196 **4. DISCUSSION:**

197

198 1. There were no Minor Field Adjustments;

199

200 2. Future Agenda Items:

201 Camden Snow Bowl Lighting Plan: The Lighting Plan is complete and will be heard at the
202 September 18 meeting.

203 Maine Farmland Trust subdivision: The MFT is waiting for word from Rockport whether
204 or not the changes made to lot lines on the Plan are “substantive changes” that will require
205 another joint hearing of the Camden and Rockport Planning Board.

206

207 3. Other:

208

209 Mr. Householder asked that the Board’s list of priorities be brought back for continuing
210 discussion.

211

212 There being no further business before the Board they adjourned at 7:45pm

213

214 Respectfully Submitted,

215

216

217 Jeanne Hollingsworth, Recording Secretary

ATTACHMENT A: Article XII: Section 6: Site Plan Approval Criteria: Appleton Family Pier

(1) *Preserve and Enhance the Landscape*

MOTION by Ms. MacKinnon seconded by Mr. Householder that Item #1, Preserve and Enhance the Landscape is not applicable because there is no landscaping involved.

VOTE: 5-0-0

(2) *Erosion Control*

MOTION by Ms. MacKinnon seconded by Mr. Householder that Item #2, Erosion Control, is not applicable because there is no filling, excavation or earth removal associated with this project.

VOTE: 5-0-0

(3) *Relationship of the Proposed Building to Environment and Neighboring Buildings*

MOTION by Mr. Householder seconded by Ms. MacKinnon that the proposed structure, in relationship to the neighboring buildings, will have no impact since it is an extension of a pier.

VOTE: 5-0-0

(4) *Vehicular Access, Parking, and Circulation*

MOTION by Ms. MacKinnon seconded by Mr. Scholz that Vehicular Access, Parking and Circulation is not applicable because the project will not be adjacent to vehicular access, circulation or parking.

VOTE: 5-0-0

(5) *Surface Water Drainage*

MOTION by Mr. Scholz seconded by Ms. MacKinnon that Surface Water Drainage is not applicable because the proposed structure is not imposing any changes to surface water drainage on the site.

VOTE: 5-0-0

(6) *Public Utilities*

The development shall not impose an unreasonable burden on sewers and storm drains, water lines or other public utilities. New utilities shall be sized and existing utilities upgraded to adequately handle the demands of the development.

MOTION by Mr. Householder seconded by Ms. MacKinnon that Public Utilities is not applicable.

VOTE: 5-0-0

(7) *Special Features of Development*

Exposed storage areas, exposed machinery installation, service areas, truck loading areas... structures shall have setbacks and screening to provide a buffer to sight and sound sufficient to minimize their adverse impact on other land uses within the development area and on surrounding properties.

MOTION by Mr. Scholz seconded by Ms. MacKinnon that Special Features of Development is not applicable because there are no exposed storage areas, machinery installations, service areas, truck loading areas, etc, being added as a result of the expansion of this existing deck.

VOTE: 5-0-0

(8) *Exterior Lighting*

MOTION by Mr. Householder seconded by Ms. MacKinnon to approve this Item because the lighting is an extension of the existing lighting that has already been approved and because it does not create any visual glare.

VOTE: 5-0-0

(9) *Emergency Vehicle Access*

MOTION by Ms. MacKinnon seconded by Mr. Householder that Emergency Vehicle Access is not applicable because it is not changing from the original emergency vehicle access.

VOTE: 5-0-0

(10) Special criteria for Piers, Wharves, Breakwaters, Municipal Boat Tamps, Municipal Piers, Consolidated Piers and other mariner related uses requiring site plan approval under the terms of the Ordinance. In addition to the above approval criteria, the site must be demonstrated to be suitable for the proposed use according to the following specials criteria.

(a) The project must not cause undue erosion on or near the site.

(b) The proposed use must not cause degradation of marine life in or near the area. The Board may ask for an examination and statement by a qualified marine biologist regarding the impact of the project, and that statement shall show no significant adverse impact on marine life.

Discussion: Mr. Scholz asked the Applicant to verify that the method of constructing this pier will not cause any disruption to the marine environment. Mr. Appleton replied the only disruption will be the driving of piles. The CEO noted that they have a DEP NRPA Permit is in hand which addresses this issue, as well as an Army Corps permit and a DOC Submerged Land Lease which also looks at environmental impact.

MOTION by Mr. Scholz seconded by Ms. MacKinnon that the Special Criteria for Piers, Wharves, Breakwaters, etc., has been met and can be approved.

VOTE: 5-0-0

ATTACHMENT B: Miller Email

Stephen Wilson

From: Diane Miller [dgmiller@me.com]
Sent: Thursday, September 04, 2014 4:21 PM
To: Stephen Wilson
Subject: Re: Planning Board Meeting Notification

Hello Stephen,

We have no objection to the Brace's building a pier in general. However, it is important to us that we retain the ability to add one at our adjacent property at some point in the future. Given the 300 foot distance requirement between piers, we simply request that the Brace Pier be placed on their property such that we would be able to build a pier in compliance with the 300 foot distance requirement after taking into consideration the proposed Brace pier (and the existing one on the Armstrong property on our other side). So, long as we retain the possibility of building a pier on our property in the future without running afoul of the existing 300 foot distance from pier to pier regulation (as we understand it), then we have no objection to the Brace request.

Diane Miller
305-321-2628 cellphone

> On Aug 27, 2014, at 9:50 AM, Stephen Wilson <swilson@camdenmaine.gov> wrote:

>

> The Public Hearing for that project is scheduled for the planning board meeting of Sept 4 2012 at 5:00 PM in the Washington St conference Room.

>

> Please feel free to contact me if you require any additional information

>

> Steve Wilson

> Code Enforcement Officer /Plumbing Inspector/ Planner Town Of Camden

> P.O. Box 1207

> 29 Elm St.

> Camden, ME 04843

> (207) 236 - 3353 x 114

>

> Sign up for the Camden newsletter

> MUBEC Information: <http://www.maine.gov/dps/bbcs/> Free Viewing of the

> I Codes: <http://publicecodes.cyberregs.com/icod/>

> Maine has adopted the 2009 editions with amendments

> -----Original Message-----

> From: Diane Miller [mailto:jdgmiller@me.com]

> Sent: Tuesday, August 26, 2014 12:03 PM

> To: Stephen Wilson

> Subject: Planning Board Meeting Notification

>

> Hello! We just received via certified mail our notice regarding the August 21, 2014 Planning Board meeting.

(5) *Preserve and Enhance the Landscape*

MOTION by Mr. Scholz seconded by Ms. MacKinnon that Item #1, Preserve and Enhance the Landscape, is met by the Applicant's presentation because it does not change the existing landscape insofar as tree removal, disturbance of soil, and retaining vegetation

Discussion:

Mr. Householder asked about bringing the electrical lines down to the pier. Mr. Gartley replied that a shallow trench would be opened with a trench digger and the line would be buried just below the surface. Mr. Wilson agreed that would not be considered soil disturbance.

Mr. Bernhard is of the opinion that the project, while preserving the landscape, will not enhance it.

VOTE: 5-0-0

(6) *Erosion Control*

MOTION by Ms. MacKinnon seconded by Mr. Scholz that Item #2, Erosion Control, has been satisfied by the Applicant because there is no earth moving activity that would cause sedimentation or erosion into the harbor.

VOTE: 5-0-0

(7) *Relationship of the Proposed Building to Environment and Neighboring Buildings*

MOTION by Ms. MacKinnon seconded by Mr. Householder that the proposed structure, in relationship to the neighboring buildings, has been satisfied because the angle of the stairs will mimic the slope as much as possible, the pier is designed to be as low as possible over the water to reduce the visual impact, and the pier is over 300' from the nearest pier.

VOTE: 5-0-0

(8) *Vehicular Access, Parking, and Circulation*

MOTION by Mr. Householder seconded by Mr. Scholz that Vehicular Access, Parking and Circulation is not applicable because there is no parking involved.

VOTE: 5-0-0

(11) *Surface Water Drainage*

MOTION by Ms. MacKinnon seconded by Mr. Householder that Surface Water Drainage is not applicable because there will be no drainage involved with this structure.

VOTE: 5-0-0

(12) *Public Utilities*

The development shall not impose an unreasonable burden on sewers and storm drains, water lines or other public utilities. New utilities shall be sized and existing utilities upgraded to adequately handle the demands of the development.

MOTION by Ms. MacKinnon seconded by Mr. Householder that Public Utilities is not applicable.

VOTE: 5-0-0

(13) *Special Features of Development*

Exposed storage areas, exposed machinery installation, service areas, truck loading areas... structures shall have setbacks and screening to provide a buffer to sight and sound sufficient to minimize their adverse impact on other land uses within the development area and on surrounding properties.

MOTION by Ms. MacKinnon seconded by Mr. Householder that Special Features of Development is not applicable because there are none.

VOTE: 5-0-0

(14) *Exterior Lighting*

MOTION by Mr. Householder seconded by Ms. MacKinnon that the exterior lighting proposed, which consists of ten down-facing 3-watt LED sconces, four on the steps and six on the pier, is approved.

Discussion: Mr. Scholz asked if the intention of the property owner to only have the lights on is in writing. The Chair noted that this statement was part of the record. When asked how this would be enforced, the CEO replied enforcement in cases like this is initiated with a complaint – there is no practical way to monitor these issues otherwise.

VOTE: 5-0-0

(15) *Emergency Vehicle Access*

MOTION by Mr. Householder seconded by Mr. Scholz that the criteria for Emergency Vehicle Access, is not applicable.

VOTE: 5-0-0

(16) Special criteria for Piers, Wharves, Breakwaters, Municipal Boat Tamps, Municipal Piers, Consolidated Piers and other mariner related uses requiring site plan approval under the terms of the Ordinance. In addition to the above approval criteria, the site must be demonstrated to be suitable for the proposed use according to the following specials criteria.

(c) The project must not cause undue erosion on or near the site.

(d) The proposed use must not cause degradation of marine life in or near the area. The Board may ask for an examination and statement by a qualified marine biologist regarding the impact of the project, and that statement shall show no significant adverse impact on marine life.

MOTION by Mr. Householder seconded by Ms. MacKinnon that the Application meets the Special Criteria for Piers.

Discussion: Mr. Scholz asked if the Board should waive their right to ask for a statement by a qualified marine biologist that there would be no impact on marine life. Mr. Sargent said that this was an option, not a requirement, and that the Board had all this information in submissions provided by the Applicant from the DEP.

VOTE: 5-0-0