



Minutes
June 25, 2019

TOWN CLERK
TOWN OF SANDWICH

AUG 14 2019

I H Y I M P M
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6 p.m.
Upper Meeting Room
270 Quaker Meetinghouse Road

Present: Christopher Neeven, Chair; James Killion, Vice-Chair; Robert Jensen; Erik Van Buskirk; Timothy O'Neill; and Gerald Nye

Absent: Chase Terrio

Also Present: Brendan Brides, Building Commissioner; Ralph Vitacco, Director of Planning & Economic Development; Leanne Drake, Assistant Town Planner; Katherine Laughman, Town Counsel; and Sam Jensen, Assistant Town Engineer

Mr. Neeven opens the meeting with the Pledge of Allegiance and the reading of the Opening Statement.

Approval of Minutes

Mr. Killion motions to accept the minutes of the meeting held May 28, 2019, and June 11, 2019 as edited. Mr. Jensen seconds. The vote is unanimous.

Old Business

- 0 Pocasset Road and 0 Shawme Road, Map 37 Parcels 1&2 – The Adventure Park at Heritage Museums and Gardens, LLC – Special Permit – Continued

Mr. Neeven explains that the Board is entering into initial deliberations. The Board has heard and received documentation from many people on both sides. Tonight we will be asking direct questions to Town staff as well as the applicant and to anyone else we have a question for. The Public Hearing will be closed in order for the Board to vote on the Special Permit. Mr. Neeven asks Attorney Cox if she has any information to add. Attorney Cox tells Mr. Neeven she is comfortable with the Board's approach and her whole team is present to answer questions.

Mr. Neeven asks Board members if they believe the applicant has satisfied that they are not an amusement park. Board members agree that they have. Mr. Vitacco asks the Board to provide elaboration on this point. Mr. Neeven responds by saying they will provide elaboration in the Decision. There is no further discussion as it relates to this matter.

Mr. Neeven asks Board members if they believe the applicant has satisfied that they have meet the criteria for an outdoor recreation facility. Mr. Killion states there are no issues with the requirements of Section 4151. Mr. Bob Jensen says the question is whether it is it a small scale community recreation facility. "Small scale" is not elaborated in the Town's Zoning By-Law. Mr. Bob Jensen says this is the only question he has out of 4150 and subsequent 4151. Mr. Killion asks Mr. Sam Jensen if he has any comments regarding Section 1342. Mr. Sam Jensen says the Engineering Department has reviewed the site plan and comments are summarized in their comment memo. The assumptions made in the Traffic Analysis show there is no significant impact. More detail could be provided on capacity analysis and curb distribution in terms of the distribution on the local road network and traffic associated with it. The report was brief; more detail could be provided if the Board found it was necessary. Mr. Killion says he has reviewed attendance numbers for 2017 and 2018. He estimates that approximately, on average, 126 people per day visited in 2018 and 166 people per day visited in 2017 with 50-60 additional vehicle trips per day to the Adventure Park, as the report listed 2.5 people per car. This equates to 5 to 6 more vehicles trips per hour. Mr. Killion asks Mr. Sam Jensen if this is the number of vehicles he expects to see based on the attendance numbers provided. They discuss peak trip hours with both roadways in use. Mr. Killion points out that the applicant stated the Adventure Park doesn't have peak hours. Mr. Sam Jensen agrees it is a reasonable assumption that the additional vehicles trips are spread out over a period of time. Mr. Sam Jensen says it seems 5 to 6 extra trips per hour is something the roadway network could accommodate. There could be additional delays at intersections; it is unlikely to be a significant impact. No measurable impact may be shown. Mr. Sam Jensen goes on to say that these roads are residential in character; they are relatively low-volume streets. Mr. Sam Jensen explains what the Engineering Department looks for in the design of a road. Attorney Mello interjects. Mr. Neeven asks Board members if anyone asked Attorney Mello to speak. Attorney Mello says he would like to make a point of clarification. He asks the Board to compare the data submitted by the applicant and the data shown in the trial exhibits; there are discrepancies. There is no further discussion as it relates to this matter.

Mr. Neeven addresses "small scale" and says there is no definition provided. He says if small scale community recreation facilities and sports fields are considered small scale he would be considering this small scale. Mr. Killion agrees. Mr. Bob Jensen states that the average per hour in 2015 was 49; 46 in 2016 and 2017 and agrees this is small scale. There is no further discussion as it relates to this matter.

Mr. Neeven asks if it meets the criteria of community. Mr. Bob Jensen says "community" is not defined. He goes on to say that the Adventure Park offers discounts for local schools, and ticket stubs can be used at local restaurants for discounts; therefore, he believes it ties into community very well. Mr. Neeven acknowledges there was testimony from the other side on this point but he agrees it is good for the Town of Sandwich and the community. There is no further discussion as it relates to this matter.

Mr. Neeven asks if the applicant has satisfied the criteria that no building or other structure related to outdoor recreation facility shall be constructed or placed on a lot with an area less than 80,000 square feet. Board members discuss the two yurts and the deck. There is no further discussion as it relates to this matter.

Mr. Neeven states there will be no concession stands. There is no further discussion as it relates to this matter.

Mr. Neeven states there will be no lighting. Mr. Bob Jensen points out that the lighting was only used for overflow parking in the winter for Lights Aglow. There is no further discussion as it relates to this matter.

Mr. Neeven asks Board members if the applicant has satisfied to them that they meet the criteria that lot coverage by building, structures, paving or other impervious structures or additions to any building, structure, paving or other impervious surfaces does not exceed 20%. The answer is 1%. There is no further discussion as it relates to this matter.

Mr. Neeven asks if the elements of the ropes course does or does not meet the definition of structure as presented in the Sandwich Protective Zoning By-Law. There is a protracted discussion on this point. Mr. Bob Jensen states that the wedges are bolted to the 4x4's and the platform sits on the trees by compression in his mind. Mr. Neeven says he has spoken with Mr. Brides several times. Based on his load factors Mr. Brides considers it a structure. Mr. Neeven says that he is a lay person and doesn't do this for a living. He is leaning toward calling it a structure. Mr. Killion believes the argument can competently be argued both ways. This definition can be extended to a clothesline; however, he doesn't believe the definition was ever intended for this purpose. Mr. Killion goes on to say that the definition needs work but either argument can fit into it. Mr. Neeven asks Mr. Brides to speak to this point. Mr. Brides says there was discussion about a clothesline as well as a cable connecting one tree to another. A piece of plywood might not be considered a structure but when these elements all come together they form a structure. In Mr. Brides' opinion the whole course is a structure. Live loads and dead loads aren't calculated for a clothesline because people won't be hanging from them. In this instance, there are bridges and elements that are 25 to 30 feet in the air, designed and certified by an engineer carrying dead loads of the equivalent of about ten pounds per square foot. They're required to carry live loads of people at about 50 pounds per square foot. Mr. Brides believes these types of things qualify the entire structure to be a structure whereas a clothesline is not really serving the same purpose. We are dealing with zoning which can be ambiguous but there is a definition of "structures" in the Zoning By-Law unlike "community" or "small scale." Mr. Brides believes the "structure" definition is pretty clear. Mr. Killion states that he doesn't disagree with this regarding load calculation but the definition does not mention loads. There is level of ambiguity. Mr. Bob Jensen says that he continues to struggle with this. Mr. Bob Jensen asks Mr. Brides if there is a difference in his mind between a compression fit and a bolted fit to the tree. Mr. Brides replies that he considers it attached; you don't have to bolt something to attach it. Mr. Neeven acknowledges Attorney Cox who says she has seen the photographs that were submitted. The photographs are of the starting platform which the applicant has always acknowledged is a structure. It is located more than 100 feet from the property line. This is irrelevant to the question on whether the elements in the trees are structures. Mr. Neeven thanks Attorney Cox. There is no further discussion as it relates to this matter.

Mr. Neeven asks if the applicant has satisfied to the Board that they meet the criteria that off-street shall be provided within 100 feet of any property boundary line and shall

be screened from any public way or driveway. Board members unanimously say “yes.” There is no further discussion on this matter.

Mr. Neeven asks if the applicant has satisfied to the Board that they meet the criteria that spectator seats shall not exceed 100. Mr. Neeven says “yes.”

Mr. Neeven asks if the applicant has satisfied to the Board that they meet the criteria that nuisance, hazard or congestion will not be created as a result of this Special Permit. Board members unanimously agree that the applicant has.

Mr. Neeven asks if the applicant has satisfied to the Board that they meet the criteria that there will be no substantial harm to the neighborhood as a result of this Special Permit. Board members unanimously agree that they don't feel there will be substantial harm.

Mr. Neeven asks if the applicant has satisfied to the Board that there is no derogation from the intent of the By-Law, such as the district's objectives will not be satisfied as a result of this special permit. Board members unanimously agree that this has been demonstrated.

Mr. Neeven asks Board members if they have questions for anyone. There are none. Mr. Neeven asks Attorney Cox if the applicant has any final comment or question. Attorney Cox states she understands the Board will get back to whether or not the platforms are structures. Mr. Neeven explains that this will be done during deliberations once the Public Hearing is closed; if there is anything else to add now is the time. Attorney Cox replies by saying the applicant prefers that, if possible, the Board deliberate on that question while the Public Hearing is still open. In the event that the Board finds that these are structures we do have a plan that we would like to submit that moves everything outside of the 100 foot setback. Mr. Neeven states he feels the course is a structure. Mr. Killion agrees and states that he believes the applicant has the ability to work around this requirement. Mr. Bob Jensen reiterates that he was on the fence as to whether it is a structure or not. He visited the site today and determined it was not a structure but based upon Mr. Brides' opinion and those who are in the business he can agree that it is a structure. Attorney Cox tells Mr. Neeven that she would like Mr. Azarm to respond. Mr. Azarm tells the Board he appreciates the Building Commissioner's interpretation and understands why he would like to consider that a structure. Mr. Azarm tells the Board he has an engineering background and the Commissioner's interpretation would also include a rock as a structure on the property or even a tree stump. The platforms don't actually have to be there in order for the course to operate. They are there as a place for people to rest as they are going from one element to the next. People are always tethered to something else which Mr. Azarm considers their lifeline and what the courses are designed on. The platforms have no load requirements per se whereas a building would or something that holds people for safety. Mr. Bob Jensen asks Mr. Azarm how the lifelines work. Mr. Azarm explains that around every tree there is a lifeline. When coming from one element you clip onto the lifeline around the tree. It has nothing to do with the platform. The platform enables you to rest your feet. Mr. Bob Jensen asks if when he is unclipped if his weight is on the platform. Mr. Azarm states that you are never unclipped with both clips; you are always clipped on because you cannot physically unclip both. He states that if a person is standing on a platform and for some reason the platform wedges come out and the platform goes down, a person

remains safely tethered to the lifeline. Mr. Killion asks Mr. Brides if he feels the cables themselves are structures. Mr. Brides responds by saying he believes the whole course is a structure. He says that speaking with someone who is involved in public safety he is taken aback with the idea that it is really okay for the platform to fall because a person is hanging on a line. He believes we need to do better than that.

Mr. DiPersio asks if the public will be allowed to ask questions. Mr. Neeven answers by saying if a question is directly asked yes otherwise no. He says this was explained at the start of this meeting because there have already been two lengthy meetings. Mr. DiPersio says that the spikes, the ones he took pictures of, are going right into the wedge, therefore, the wedge has no function. Mr. Neeven says the Board isn't talking about the spikes at this point; what is being discussed is whether or not the course is a structure. Mr. DiPersio interjects to tell the Board he was, for years, a licensed construction supervisor. He is also a graduate engineer. He tells the Board if spikes are put through and they pick up the wedges then the wedges don't work. Mr. Neeven thanks Mr. DiPersio and explains that is not the issue the Board is discussing now.

Attorney Cox addresses Mr. Neeven to say that she is going to submit a revised plan. She says she has reviewed this plan with the Building Commissioner, the Town Planner and the Assistant Town Planner. It pulls all of the course elements outside of the 100 foot setback. Town staff date stamp the revised plan. Dick Harries asks Mr. Neeven whether or not we will have a chance to review it. Mr. Neeven states there is a copy of the plan available for review right now. Mr. Neeven asks Attorney Cox to provide the Board with a brief summary of the revised plan. She explains that the mountain trail course and the waterfall course were realigned on the plan. Both courses are fully outside of the 100 foot setback. In addition, the plan notes there is an existing briefing area where orientation is provided to climbers. This is also proposed to be moved outside of the 100 foot setback. Mr. Bob Jensen asks if the revised plan keeps the original five courses. Attorney Cox responds in the affirmative. Mr. Neeven asks about hours of operation. Attorney Cox states that she has given thought to potential conditions. They propose that the Adventure Park should be open to climbers no earlier than 8 a.m. All climbers should be out of the Adventure Park by 9:30 p.m. There is no lighting proposed. Attorney Cox confirms to Mr. Neeven that the reservation system will be maintained. In addition, she confirms that the maximum number of climbers at one time will be 120. Mr. Azarm tells Mr. Killion that the last reservation of the day will be a maximum of two hours prior to the closing time which will be adjusted according to the season. Mr. Killion asks what happens if someone doesn't complete a course before it gets dark. Mr. Azarm says there are ways of making sure someone gets down off a course before it gets dark. Mr. Neeven asks the applicant how they would define the "season." Mr. Azarm responds by saying this is a little difficult to say because they generally like to open for school vacation in March which fluctuates from year to year. If we need to have a starting date it is probably to say March 1. Mr. Neeven asks if it is fair to say March 1 to November 1 or November 30. Mr. Azarm says November 30 would be ideal. Mr. Neeven states he would rather it be broad enough than limited. Mr. Jensen confirms the dates of the season and the hours of operation.

Mr. Neeven asks Board members if, after review of the plan, they have any questions for Town staff, the applicant or anyone else in the room that have provided submissions or spoken previously. Mr. Van Buskirk mentions the data discrepancies from the trial exhibits and what was submitted by the applicant. The attendance counts are not the

same. The board discusses this and concludes that both sets of data portray the same findings; that the Museum had far more visitors than the Adventure Park.

Mr. Carl Johansen spoke from the audience and identified himself as the one who submitted the pictures showing the bolts. Mr. Neeven explains that at this point the bolts have nothing to do with the decision. Mr. Johansen questions why this wouldn't be considered as it helps find that this is a structure. Mr. Bob Jensen tells Mr. Johansen that the Board has already determined that it is a structure and everything will have to be moved out of the 100 foot setback. Mr. Neeven asks if anyone has any concerns or questions before the Public Hearing is closed; is there anything further the Board needs to discuss. Attorney Mello interjects and states that the Board missed an important requirement regarding screening. The park has to be screened from the public way. Attorney Mello states that the revised plan would need to go before Historic and be thoroughly vetted. He states that this application has been very transparent from the beginning, with all information submitted posted to the Town's website. It is a total surprise to see that there was offline communications between the applicant and staff regarding a new plan. Attorney Mello requests that the Board continue the Public Hearing. Mr. Neeven asks Board members if they have any more questions. The Board reviews and discusses which jurisdictional departments provided comments and which did not.

Mr. Bob Jensen motions to close the Public Hearing for #19-04 Heritage Plantation in Sandwich and take it under advisement. Mr. Killion seconds. The vote is unanimous.

Deliberations

- #19-04: 0 Pocasset Road and 0 Shawme Road, Map 37 Parcels 1&2 – The Adventure Park at Heritage Museums and Gardens, LLC – Special Permit

The Board reviews and discusses Special Permit #19-04. The Board votes to approve the Special Permit with conditions. The Decision, findings and conditions are on file in the Planning & Development office.

Mr. Neeven announces that the Special Permit has been approved. The public is welcome to stay for the remainder of the meeting.

New Business

There is no new business to discuss.

Board Discussion

There are no items to discuss.

Other Matters Not Reasonably Anticipated

There are no matters to discuss.

Adjournment

Mr. Jensen motions to adjourn. Mr. O'Neill seconds. The vote is unanimous. The meeting adjourns at 7:24 p.m.

Respectfully Submitted,



Maureen McCabe

Supporting Documents:

1. Memo to Christopher Neeven, Chair from Sam Jensen, Assistant Town Engineer re: Petition 19-04, Application for a Special Permit, 0 Pocasset Road & 0 Shawme Road, Parcels 1 & 2 on Assessors Map 37, dated May 13, 2019 (1 page)
2. Undated and unaddressed document from Eric Small, received June 25, 2019 (2 pages)
3. 3-ring bound document submitted by Carlo DiPersio, title page "MANY SPIKES IN TREES" received June 25, 2019 (15 pages)
4. Details Regarding Platforms, received June 25, 2019 (6 pages)
5. Drawing C-1 entitled Ropes Course Redesign, prepared by Horsley Witten Group, Inc., dated June 2019, stamped on June 19, 2019 by Richard A. Claytor, P.E. (1 drawing)
6. VHB Traffic Evaluation dated April 23, 2019 (217 pages)