

**TOWN OF NEWBURY
SELECT BOARD**

MINUTES

DATE: April 20, 2021

PRESENT: Select Board: Chairman J.R. Colby; Vice Chair Alicia Greco; Clerk Geof Walker;
Mike Doyle; Gerry Heavey

Staff:

Tracy Blais, Town Administrator
Julie O'Brien, Executive Administrator
Martha Taylor, Planning Director

Speakers:

Matt Porter, Attorney
Josh Childs, The Sunset Club
Vincent Godin,

Salute to the Flag

Motion: A. Greco moved to open the public hearing, seconded M. Doyle and voted unanimously

At 7:00 p.m. Chairman J.R. Colby called the meeting to order and confirmed member access by roll call that all members and persons anticipated on the agenda were present and could hear him. He requested as he called the names, to respond in the affirmative as follows:

Select Board:

Alicia Greco – Yes
Michael Doyle - Yes
Gerry Heavey - Yes
Geof Walker – Yes

Staff:

Tracy Blais, Town Administrator – No reply
Julie O'Brien, Executive Administrator - Yes
Martha Taylor, Planning Director – Yes

Speakers:

Matthew Porter, Vieira D'Gianfilippo Attorneys at Law
Josh Childs, Sunset Club
Vincent Godin, The Sunset Club

Chairman Colby read the Introduction to the Remote Meeting

Oral Communications From Citizens

None

Board and Committee Reports

Report of Chairman Colby:

Signed PR21-21 J O'Brien

Grants, Gifts & Donations

(Chapter 44: Section 53A Grants and gifts; acceptance and expenditure)

- Grant, Metropolitan Area Planning Council, \$14,705.88

Motion: G. Walker moved to accept the Grant seconded, A. Greco and voted unanimously

Discussion: None

Public Hearings:

- Continuation of The Sunset Club, Application for New Liquor License

Discussion: Board attended a site walk today and Chairman Colby polled board for any questions for the applicant

G Heavey spoke regarding hours of serving alcohol as compared to other restaurants in the area. Inquired of the applicant what hours he would like to serve alcohol

Josh Childs 11:00 a.m. to 11:00 p.m., last call at 10:30 p.m., 7 days a week

G. Walker last call would be at 10:30 p.m. is that correct?

J. Childs yes to the best of my knowledge in relation to Massachusetts laws and my experience

G. Walker asked the question, if liquor license is 11:00 to 11:00, does that mean glasses are in or is that last call?

M. Taylor responded Mr. Childs stated last call would be 10:30 p.m. and off site at 11:00 p.m.

M. Porter, 11:00 p.m. would be the end of consumption at that point no more service or consumption. The state allows facility to be open 11:00 a.m. to 11:00 p.m. It is then the Boards purview to extent those hours. In this case we are just looking for what is prescribed by the Statute not looking for extended hours

M. Doyle 62 parking spaces allotted is that correct? And how many people can be seated with those 62 parking spaces?

Vincent Godin 54 parking spaces, we are allowed to have three seats per parking space. That is per code in Newbury

M. Doyle asked regarding traffic studies done for this corner?

Vincent Godin did do traffic study using existing traffic counts and utilizing standard traffic analysis. Martha has a report

Martha, MVPC did review the traffic. One change made to entry and exit. Site plan public hearing continued to 4.21.21

A.Greco walked perimeter concerns regarding keeping alcohol on premise. Would a fence be required to be in place? Could set a condition of the license that there be a fence put in place

G. Heavey understood there would be a 5 foot on top of the 2 foot berm. Asked to confirm

Vincent on side facing parking lot there will be a 6 foot fence, once on Old Point Road and wrapping around to Plum Island Blvd, there will be two foot berm with snow fencing around 3 feet. A wood slate snow fence.

A.Greco commented wants to be sure it is clear where the alcohol should be

G. Walker what is the back fence that borders the parking lot made of?

V. Godin which is a wood fence, shadow box, to allow sand to pass through but not people.

A.Greco perhaps have signage stating no liquor beyond this point

G. Walker asked Martha if site plan review has discussed lighting and noise

M. Taylor is a concern and some discussion. Lighting will be dark sky compliant. Some discussion regarding directional speakers, nothing final as of yet

JR Colby would be more comfortable hearing the hours that State requires 11:00 to 11:00 from our counsel and also would like to see how the Planning Board meeting goes tomorrow night and if the shifts or shapes things

M. Doyle concerned regarding parking. Concerned about traffic and neighborhood noise at night particularly during the week

G. Walker, his concern is regarding the hours and the noise. Discussion ensued regarding the outdoor seating and noise

A.Greco asked the applicant will there be outside music

J. Godin was our intention. Discussed Jeff and Vince own the surrounding property, there concern first and for most is for the community and environment there. We would like some component of outdoor sound but low level intention to keep to an absolute minimum.

G. Walker commented the site walk was helpful and during which he observed likely not getting much noise from North as blocked by houses. The westerly winds would cause noise to travel down the main street or over towards the Beachcomer. I would go easily towards 11:00 o'clock if I thought and I do not have a ruling from Town Counsel, does the liquor license have us including trying to control the noise? If our approving the liquor license does not also mean we are also controlling noise, then we would go along with what everyone else has. Is that within the scope of our purview when granting the liquor license?

M. Porter not certain necessarily feels it falls under the purview to enforce at this point however; I do think the Board has the ability to enforce down the line. We certainly do not anticipate this but if there are ever any issues with noise levels or persons leaving the lot with alcohol, it is within the Board's purview to discipline if licensee is not behaving in an appropriate manner. Reiterated, the owners have decades of experience with no violations. Certainly a responsible group, but if behave otherwise the Board has the right to try to enforce that.

G. Heavey commented the liquor license is renewable every year therefore if we heard there was a problem we could take action at that time for the next year. Where they do have a good reputation and are a new business I would like to try to assist them. Let's give them a year's grace and if we hear there is a problem we can certainly correct it.

JR Colby commented feels like we are putting the cart before the horse until we know what the Planning Board is doing with the project. Also, would like to hear from Town Counsel regarding the hours.

A.Greco commented if you look at the Plum Island Grille, they sell liquor Monday through Saturday's 11:00 to 11:00, Sunday's 10:00 to 11:00. I do not want to confound with other areas want to keep with the Plum Island area. The Beachcoma, is 11:30 to 11:30 and Bob Lobster is 10:00 to 9:00 and the only serve beer and wine. As I recall the reason that we did that was due to the outside seating. Does anyone recall why we did that?

M. Doyle everything has changed since COVID

A.Greco yes but COVID will go away. Why did we initially, why are they not open until 11:00?

G. Heavey may because they are surrounded by neighbors who did not support the hours

A.Greco that is what I was thinking

G. Walker tonight there is no one here and this is a public hearing

A.Greco I agree and I feel we should be consistent with surrounding areas. If it does not work out we can modify next year. There are a couple of things such as the outdoor seating which is a concern and I feel there needs to be a fence. Should be signs stating no liquor beyond this point so that persons clearly understand where they can and cannot drink. Liquor should be locked up in the building and all serving should be done from inside no service bar outside. As far as serving from 11:00 to 11:00, the "bar clock" is usually 15 to 20 minutes later to serve last call fifteen minutes prior to closing time. What last call means is no alcohol on the table, 11:00 done.

G. Walker inquired of applicants; did you also have a thought in your mind to have people come up to the bar to buy drinks and then go outside? Alicia had mentioned alcohol only being served by a waiter, is that what you envision too?

J. Childs yes that is our anticipation. If a guest walked up to the bar to get a drink under our supervision and walked outside that could happen but our intention is to have the servers come from inside the building.

A.Greco clarified she is fine with someone going up to the bar to get a drink. She was referring to having a bar outside, not in favor of that.

G. Walker if we want to condition we could run by Town Counsel

A.Greco agrees having the final site plan review adds value

JR Colby I do not want to get in a situation where there may be a couple changes by planning and wish we had known that prior to making a decision

G. Walker inquired if want to take a straw vote?

JR Colby what would the straw vote entail?

G. Walker when do we meet again?

A.Greco we can have a fast meeting next Tuesday before Town Meeting

G. Walker we can get there a half an hour early. We just need every question answered so we can take a vote

A.Greco I am comfortable with 11:00 to 11:00

G. Heavey I am fine with hours also as they are in line with their neighbor the Plum Island Grille

JR Colby I am a little concerned with the outdoor nature of it. Commented he can hear noise from his home from Newburyport Breweries. I can hear songs on the radio so I do have concerns night after night, for persons who potentially have to get up in the morning. I know there are other businesses but this is a unique venue and I would like to hear a couple things from Counsel.

A.Greco mentioned she would like to know if there is a noise ordinance

JR Colby does not believe there is a noise ordinance in the Town

G. Heavey inquired regarding the noise, what is the effect of the proximity of the ocean? Where you are there are just open fields

JR Colby responded there is an Industrial Park in-between where I am

G. Heavey I am thinking the surf may mask any sounds

JR Colby I am closer to Route 95 than the breweries and I can still hear. Again, if they are entitled to 11:00 to 11:00, there is not much we can do. If we do have the authority to change the hours that might be something I am interested in. I think this is a good project and will be successful. Just need to be careful with no noise ordinance in the Town. If the Board was comfortable making a straw vote tonight, that is fine.

A.Greco what are your questions to ask Town Counsel?

JR Colby the 11:00 to 11:00, I want to hear from our Town Counsel

G. Walker as you feel might be more appropriate to close a little earlier

JR Colby correct. I am not looking to cut the hours in half but week nights closing at 10:00 might be reasonable if we have the authority to do that. Weekends are weekends but weeknights are different particularly if persons get up early in the morning. It is a neat venue and I think people will enjoy themselves and I know Jeff lives nearby and he will be respectful. We all know people who have a couple drinks and get loud. We are adding a lot to that little corner. Something absolutely needs to go there, it will clean the area up, it is an interesting and attractive to the town. I do not want to come across I am against, I am not at all, I just try to put myself in the position of the neighbors. I take great care in making this decision and want to be certain all my questions are answered.

G. Walker that location is relatively buffered; marsh on one side, the other side is the Plum Island Grille, westerly winds mostly in the summer, a lot of noise in that area anyway. For us it is the first full hours, with sky instead of a roof.

JR Colby I did go, before the site walk, to some of the neighbors on Old Point and had a chat. Then went to Olga Way, when you go to Olga Way and look left, it's not too far away, a lot has happened to that neighborhood. Again not against the project just need a few questions answered by Counsel.

A.Greco can we also ask John Lucey if there have been any noise complaints regarding the other restaurants in that area

JR Colby feels moot point as there is no noise ordinance

M. Doyle Beachcoma had to my knowledge, some issues which they handled with extra insulation and adjusting music hours. It has been addressed

G. Walker Gerry made a good point; we can change next year if it does not work. But we do not even know if site plan review is making an eight foot fence a requirement, we do not know.

JR Colby obviously they do not want much of a fence on the sunset side. Inquired if the applicants had anything to add.

M. Porter I would say that we would prefer you take a vote tonight and put in some conditions

JR Colby that would contradict what you said that you have a right to stay open until 11:00. On the one hand you are stating we can condition but on the other there is a right to stay open until 11:00

M. Porter you had stated you would like to confirm with Town Counsel, I am not trying to contradict myself. What we prefer is if we can take a vote subject to conditions from the Board, it allows us to at least to try to move this on a lateral path as we still have a State license to apply for which can take up to a month for approval that would be our request to have some form of a vote rather than pushing out another week. That would be the preference at on our end.

A.Greco as we cannot close the public hearing. I am not certain we can meet prior to Town Meeting

JR Colby it can be televised. If that is what we end up doing tonight we need to let the sound people know

A.Greco there is also Zoom unless people physically come to the meeting. You have to continue the public hearing to a date and time certain. My concern is if we continue the public hearing to night of Town Meeting and technologically cannot meet like we are doing now, then what do we do?

G. Walker my concern is we do not know what the Planning Board asked for. We do not know if they asked for a 6 foot fence or an 8 foot fence which for me would mean a lot to me if I thought about what the noise would be. Martha can you give us any hints? Did the Board talk about conditioning anything?

M. Taylor there was not much discussion regarding conditions for approval and there was no discussion about doing anything different with fencing then what has been proposed by the applicant

G. Walker what you have at site plan review is the 6 foot fence around the parking lot

M. Taylor and the snow fence on top of the berm

A.Greco stated if we are going to continue the public hearing we should have another meeting, not do on the 27th. If something happens that we cannot hook up to Zoom, etc. we are better off coming here on the 28th. I do not want to set us up for a failure

M. Doyle stated the 28th works for him

A.Greco inquired of the Town Administrator is it possible to hold this type of meeting forum at Triton?

G. Walker suggested making it Wednesday

JR Colby that is going to be challenging for our tech people

A.Greco agreed. Can everyone make the 28th?

G. Heavey suggested asking the Tech person as he is currently at the meeting

G. Heavey confirmed she is available on Wednesday

G. Walker asked Matt Cooper if he is available on Wednesday

M. Cooper replied sure

G. Heavey retracted her statement that she is available the 28th

G. Walker when can you meet Gerry

G. Heavey any other time but that

T. Blais commented there was a raised hand, Vincent Godin

V. Godin provided more history. The project started couple of years ago and along the way we have held a town meeting over at PITA Hall and told them our plans. Well over 200 signatures in support of the restaurant project. Gone through zoning board twice now with a lot of support. One key point was that it was determined not to be detrimental to the neighborhood. This something that has gone through a number of meetings and allowed opportunities for people to voice their concerns. Has not been met with resistance. Regarding your concern with the noise, my investment with the place on the corner pales in comparison with the twelve houses. I'd be shooting myself in the foot to diminish the value of those twelve homes with any noise issues from that restaurant as that would cost me way more than I could ever make from the restaurant. I am not only incentivized due to family living there but also incentivized financially to make it as family friendly and community friendly as possible

JR Colby I appreciate that but the amount of money invested does not affect my decision

V. Godin I do not disagree just wanted to voice that

G. Walker you also went to the Zoning Board correct

V. Godin twice. Approved about a year and a half ago then went in with modified plan with more outdoor space and that was approved January

A.Greco so when do we want to meet? How about Thursday the 29th

G. Heavey yes that is fine

M. Doyle confirmed yes to 29th

G. Walker confirmed yes to 29th

JR Colby do we want to start a half an hour earlier and start at 6:30?

Motion: A.Greco moved that the public hearing be continued to April 29, 2021 at 6:30 p.m. seconded, M. Doyle and voted unanimously

New Business:

None

Motion:

Discussion:

Emergency Management Director

None

Discussion:

Town Administrators Report

None

Old Business

None

Correspondence

- Letter from Boys & Girls Club regarding virtual auction

Meeting Updates

None

Review of Meeting Minutes

None

Motion:

Discussion: None

Warrants

None

Executive Session:

None

Adjourn

Motion: At 7:55 p.m. M. Doyle moved to adjourn, seconded A. Greco and voted unanimously

Discussion: None

Respectfully submitted,
Julie O'Brien
Executive Administrator