

15 June 2005

PHIPPSBURG PLANNING BOARD

EXPANSION OF BUSINESS HEARING

PLANNING BOARD MEMBERS present: Marie Varian, Chairman; Marion Hebert; Clifford (Tip) Newell; Bob Smith; Alternate Elect Mark Hawkes

SELECTMEN present: Mike Rice, Chairman; Alan Douglas; Everett Perkins

CODES ENFORCEMENT OFFICER (CEO): Lee Rainey

APPLICANT: Kai Jacob and Susy Verrier, DBA North Creek Farm, 24 Sebasco Road, Tax Map 29, Lot 7

REQUEST: Expand current operation to include consumption of food on premises.

NOTE: The business is currently permitted for sales of plants, clothing, books, soaps, etc. and beer, wine, and prepared food. Consumption of food, beer and wine is not allowed on the premises. However, the proprietors/applicants had begun serving food and allowing it to be consumed on premises. CEO Rainey issued a cease and desist order on May 27, 2005. The applicants acknowledged receipt of the document via US mail on May 28, 2005 but continued to operate in violation of the Ordinance stated.

Selectman Rice called the hearing to order at 6:34 PM.

Planning Board member Varian explained her association with Waters Edge Resturant and offered to recuse. Selectman Douglas explained his association with Sue's Hot Dog Stand and also offered to recuse. No objections were raised in either case and both Varian and Douglas continued to participate in the hearing.

Verrier explained that North Creek Farm (NCF) had recieved a Maine State License for "take-out" food and thought she was in compliance with the Town and could allow the food to be consumed on site. She continued that the food business followed on the heels of the flower business and since the food was sold as a "bag lunch" in disposable containers with disposable utensils without a waiter or waitress, consumption on the premises could be allowed.

Selectman Rice explained the difference between the first permit application by NCF and the current activity. Verrier commented that she and Jacob felt that today's operation was in compliance with the Town Ordinance.

Board Member Smith brought to the attention of the participants that contrary to Verrier's comments and presentation of the typical bag containers and utensils, that he in fact was served a cup of tea in a ceramic (not disposable) cup on June 13.

Chairman Rice explained Phippsburg Land Use Ordinance, Section 4.10 Enforcement and outlined the consequence of ignoring the CEO order.

Selectman Douglas suggested that the discussion shift from what NCF thought was permitted or allowed and concentrate on the issue at hand. Douglas stated that NCF is in violation, must stop consumption of food on premises, and act on a new permit.

Verrier stated that in her first meeting with CEO Rainey she was not told to stop serving, to which Selectman Rice responded that the Board of Selectmen had ordered CEO Rainey to issue the stop order. Varian explained that the Planning Board does not have enforcement authority nor does the Board of Selectmen have authority to grant a variance. Varian continued that following issue of the stop order NCF had not made any effort to comply, NCF was informed of the Ordinance requirements but NCF chose to ignore the issue.

Selectman Douglas reiterated the seriousness of the NCF non-compliance with the Ordinance. Newell noted the NCF history of filing for permits after the fact and apparent disregard of the regulations that others chose to comply with.

Verrier continued to state that NCF wanted to serve pre-pac meals in disposable containers, to be consumed on the premises, either outside in the gardens or inside sitting down. Selectman Douglas recommended that NCF start over by submitting an application for the activity she desires. Selectman Rice added that NCF must realize what they are permitted for relative to what they wish to be allowed to do.

Selectman Douglas explained that NCF has the right to appeal if they feel their current food service activity is within the scope of the Ordinance requirements and the permits issued to date. Planning Board Member Hawkes replied that NCF is "beating a dead horse", he quoted the requirements of Section 2.3, New Business Permit and added advice on how to speed-up the process.

A member of the audience asked what the problem was/is with the NCF current food service activity. Selectman Rice again explained that the permit NCF currently has in-hand is for take-out food only. The permit issued, as requested by NCF, does not permit food to be consumed on the premises.

Planning Board Chairman Varian stated that she had been misquoted in writing, the Planning Board does not enforce the Ordinances; enforcement is the responsibility of the CEO and the Board of Selectmen. Any penalty for a violation is determined by the Board of Selectmen. Following a complaint, activity at NCF was investigated by CEO Rainey (early May). CEO informed NCF of the violation, advised them to obtain a permit. CEO gave the NCF owners a Planning Board Application, a list of abutters, and information regarding the procedures to follow for compliance. Following the CEO notification NCF continued to operate in violation.

On May 25th NCF applied to the Board of Selectmen for a "Catastrophic Hardship Exemption, the request was denied as the Selectmen do not have authority to grant such an exemption. Varian continued by stating the Ordinances and how Sections 2.3, 2.4, and 2.5 apply to the issue.

Varian stated that the State License NCF has in-hand is for a Vegetable Stand, issued by the ME Dept. of Agriculture, Food and Rural Resources, she noted that license requirements for a restaurant are much more involved and a license for a restaurant is issued by the ME Dept. of Health and Human Services. Questions were raised about sanitary facilities for customers and staff, water availability and water quality reports from the State. Also, how many seats are planned for patrons consuming food as waste water disposal is calculated by the number of seats available. It was pointed out that all are health and safety issues that are pertinent to obtaining a State license. Verrier stated that she did not know how many patrons were served each day. Varian answered by stating that the issue was being "skirted" and the possibility of the State requiring records of the number of patrons served.

Douglas again noted the issues at hand, i.e. toilets, and trash; Varian pointed out that Section 2.4,e&f relate to water sanitary facilities. Following discussion about the adequacy of a composting toilet to be utilized by customers, it was suggested that handi-wipes be provided. The State issue of water volume vs numbers vs the composting toilet was discussed but no conclusion could be made, CEO Rainey will investigate.

Section 2.4 b,e&f were discussed as follows, b.) safe access to and egress from roads is adequate, e.) sufficient water etc. to be determined, f.) sufficient sanitary facilities etc. to be determined. Also required is confirmation of adequate waste water disposal capability.

Motion made by Newell to deny the application until pertinent information was provided. There was no second.

Motion by Smith was seconded and approved by unanimous vote; "To approve the application with restrictions: 1. waterless handwash station to be installed at compost toilet for use of patrons and employees; 2. confirmation / verification from certified site evaluator that current waste water disposal system is adequate for proposed twelve seat business application, to be received by the Town of Phippsburg within twenty one (21) days of this hearing (amended from 30 days); 3. bottled water vs well water to be used for serving patrons.

Notes: Discussion included Phippsburg Land Use Ordinance, Section 2.4 b.e.&f, Section 2.3, and Section 5.2 Definitions, item c New Business.

This is an after the fact permit (fee double), amount collected \$145.00 includes \$45.00 for advertising.

Abutors were notified and verification of same received.

Notification of hearing was published in the Times Record newspaper and posted in Town.

Hearing adjourned at 8:35 PM

Tip Newell
Secretary, Pro-tem