

Melissa Tryon

From: Ethan Croce
Sent: Thursday, March 05, 2015 2:19 PM
To: Melissa Tryon
Cc: Nathan Poore; Amanda Stearns; Lisa Sangillo
Subject: MRA Public hearing - March 3, 2015 Planning Board meeting - Amendments to Tidewater Master Plan and Tidewater Village Design Guidelines - Parcel TV-4

At its March 3, 2015 meeting, the Planning Board, acting as the Town's designated Municipal Reviewing Authority, held a public hearing on various proposed amendments to the Tidewater Master Plan and the Tidewater Village Design Guidelines relative to parcel TV-4.

Summary of public comment received:

Bob Isler, Farmgate Road resident and board member of Tidewater Homeowners Association (HOA), said that TV-4 is a gateway/transitional lot that should be limited to office use due to its small size and that office use has more limited traffic/noise impacts and more limited hours of operation. He said that the developer has underestimated seating capacity at the proposed restaurant. He stated that a poll conducted by the HOA indicated that the Tidewater homeowners are generally not supportive of the restaurant proposal. There is no objection to having the Rivalries restaurant located on other lots in Tidewater Village, but the TV-4 parcel is too small to accommodate that intensity of use.

Tom Emery, of Foreside Architects, is speaking on behalf of the HOA. They believe that the Council is ignoring the land use issues with this proposed project and hopes the Board will issue a recommendation to deny the proposed amendments. Parcels TV-1 and TV-4 were planned for office use only due to their small size and their lack of ability to accommodate off-street parking for more intensive uses. He believes that the architecture of the proposed building does not conform to the scale and massing required by the Tidewater Design Guidelines. Mr. Emery said that the developer hasn't provided information relative to the lot coverage and green space requirements. With the proposal to re-orient the building toward Hat Trick Drive the HOA is concerned that the building will be "turning its back" on the Tidewater residential development. The HOA believes that TV-4 is too small for the proposed intensity of use. If a three-story building were being proposed, as was originally permitted for this lot, the building footprint could be smaller and more parking could be accommodated on-site. The HOA is concerned about parking on Farmgate Road as the road, in its existing condition, is narrow especially with the amount of snow this winter. The HOA believes this is a great project and a great applicant, but that the use but should be located on the adjacent parcels.

Diane Morabito, traffic engineer from Maine Traffic Resources, is speaking on behalf of the HOA. She stated that the originally permitted office building for this site at 8,000 square feet would have generated much less vehicular traffic than the proposed restaurant use on both weekdays and weekends. Compared to the office use, she projects there will be a 14 fold increase in traffic on weekdays, with 75 times the traffic on Saturdays and 150 times the traffic on Sundays. The restaurant proposal would have negative off-site traffic impacts as the restaurant use requires seven times the amount of parking as the office use.

Mark Burnes, of Foreside Architects, is speaking on behalf of the HOA. They believe that the building is too large for the site, that there will be insufficient parking, and that the developer's proposed occupant load is too small. He distributed a handout titled "Practical comparison of proposed design to the Foreside Tavern". He summarized his comparison analysis. He stated that the proposed restaurant is a larger sized restaurant on a much smaller lot and with much less on-site parking being provided. The HOA would like the zoning amendment denied, however, if the amendment passes the HOA would like to see a restriction on the size of the restaurant imposed. Something in the range of 4,000 square feet, instead of 9,416 square feet, might be acceptable. This could be done by having a one-story building with no basement. This is a great project on the wrong site.

David Costello, resident at 1 Marigold Lane, said his residence is the closest residence to the site. He was asked by the HOA to speak. He would like the building footprint size clarified since there is conflicting information as to whether it is 4,500 square feet or 4,000 square feet. The building was originally oriented to be closer to the residences which provided a natural buffer between the residential area and Walmart. Now, the residents will be looking at the back of the building. There appears to be limited buffering along Farmgate Road, and the HOA would like buffering for the loading areas, mechanicals, and dumpster. The walk in cooler is unsightly and the HOA would like for the cooler to be included within the building footprint inside. Regarding noise impacts, he would like emptying of the dumpster to be limited to the hours between 7 am and 7 pm. He is requesting that only residential parking be allowed on Farmgate Road, which is narrow especially with the snow. He requested that the outdoor seating and the music outdoors not be allowed.

Jim Katsiaticas, attorney with Perkins Thompson, is speaking on behalf of the HOA. He said that the Council approved restaurants for parcels TV-2 and TV-3 because those parcels have sufficient land area and are located on Clearwater Drive. An office use is appropriate for TV-4 since it involves less traffic and requires less parking. The HOA believes the restaurant could be sited on adjacent lots. The HOA supports development in accordance with the adopted Master Plan. An office use would likely operate between 8:00 am and 5:00 pm., but a restaurant will be open seven days a week with a 13 fold increase in traffic. TV-4 cannot support the intensity of use being proposed with this restaurant. The formerly-approved office building for the site had a size and scale and parking arrangement that was acceptable. The proposed building is larger than the Foreside Tavern with less on-site parking. The HOA is requesting that the Planning Board recommend denial of the amendments. If, however, the Board recommends approval, the HOA recommends that the Council attach conditions to limit the size of the restaurant to 4,000 square feet; prevent parking in front of the Tidewater houses; and provide suitable screening and buffering. The HOA wants to see development occur in the manner they bought into.

Tim Longstaff, Falmouth resident, is the GM of National Distributors and believes that the Rivalries owners, the Meaders, are one of the better customers he has ever dealt with. He believes that Rivalries is a successful business and is a higher scale sports themed restaurant suitable for families and is a good fit for this location. He believes that Rivalries would draw customers from other towns and keep some people in Falmouth instead of them having to drive to Portland to dine out.

Tommy Johnson, Falmouth resident, said that the Tidewater Master Plan was a 10 year plan with a discrete expiration date of 10 years. The Tidewater plan was only a 10 year vision that people bought into, not a forever vision, and that people should expect that some changes will occur over time. He said Falmouth has invested \$12 million into the Route One corridor to attract businesses and he thinks a denial of these amendments would send the wrong message to the business community. He said that the Tidewater residents wanted Farmgate Road to become a public street and that they should then expect it to be used for public purposes such as on-street parking, which he thinks should be accommodated fine on the road. He believes that the building's appearance is attractive and matches the character of the Tidewater community. He believes that the Town will start seeing more bikers and pedestrians due to the Town's vision for Route One, which should lead to fewer off-street parking needs and that people will walk to the restaurant from the adjacent ice arenas. He is confident that the buffering issues can be addressed during site plan review and believes that the Meaders will put in a well run business that fits into the neighborhood.

Mark Eule, resident of Tidewater Farm, is opposed to the project. He said there are no restaurants with bars in town that are located within 500 feet of any home, and that this restaurant would be located within 200 feet of a residential area. He thinks that most people would have an objection to having a bar located within 200 feet of their home. He is also concerned about the prospect of outdoor music and drinking and inadequate parking.

Lance Meader, owner of Rivalries and a Falmouth resident, said that all of the property surrounding the TV-4 parcel is zoned to allow restaurant and retail uses and that the residents bought into that vision. He said that the Tidewater marketing materials he has reviewed reference the benefit of being able to walk to your favorite restaurant. He pointed out that a restaurant could be located as close as 50 feet away from TV-4 on the adjacent TV-3 parcel and, for that matter, anywhere on the opposite side of Clearwater Drive which is in the VC1 District. A restaurant on either of those sites would generate the same concerns with traffic, parking, and hours of operation so he is unclear as to why the TV-4 parcel is being singled out. He mentioned that Nathan Bateman made a request earlier in the evening to reduce the amount of retail required on parcel TV-3 due to wanting an office use on that site. One could argue that TV-4 is simply absorbing some of the retail/restaurant use that was always contemplated to occur on TV-3. Mr. Meader said that most of the pull-in, on-street Clearwater Drive parking is never used currently, and that there is a large parking lot on TV-3, across the street from TV-4 that essentially amounts to on-site parking due to its proximity to TV-4 and due to the fact that those spaces are dedicated to TV-4. He does not think that the Town wants to create more empty parking lots but, rather, more businesses with shared parking in accordance with the recently enacted VC1 vision. He thinks the Town's goal is to make the Route One area more walkable with fewer parking lots. He said that screening and buffering details will be provided with Planning Board site plan review. With respect to noise concerns, they have had an outdoor patio for 13 years with no complaints in Portland and that the music is simply low-level background music which you cannot hear unless you are on the patio. The patio will also be screened. He said that the two story building concept was recommended by town staff to better fit in with the Tidewater architectural theme and the Town's planning vision and that he believes having the second floor works well for functions.

Susan Nielsen, resident of Farmgate Road, said she has to walk in the street in winter because the sidewalks aren't plowed and that the restaurant use will generate more vehicular traffic which there is not enough room for on Farmgate Road now that large Town plows are plowing the street. She said that noise travels easily in the neighborhood and that she can hear people talking at both Walmart and Family Ice when she is out walking at night. She is concerned about noise impacts.

Summary of Planning Board deliberations:

Jay Chace pointed out that many of the site's design elements, such as screening, buffering, etc. are elements that the Planning Board will look at during site plan review and that the Board will not get into that level of detail at tonight's hearing, which is limited to looking at the zoning amendments more narrowly. He recognizes that some of the impacts of a restaurant use are germane to the zoning discussion.

Tom McKeon said he is reviewing whether or not the proposed use represents a material change in the nature of the overall development and is assuming that this project will come to the Board for site plan review, unlike the ice arena. Mr. McKeon asked Ms. Morabito whether she did a traffic analysis that isolated traffic impacts to Farmgate Road. Ms. Morabito said she did not. Mr. McKeon asked Ms. Morabito to verify, then, that her analysis with respect to traffic impacts to Farmgate Road is anecdotal. Ms. Morabito said it was. Mr. McKeon asked if Ms. Morabito analyzed the difference in traffic impacts that might exist if the restaurant were located on TV-3 instead of TV-4. Ms. Morabito said she did not.

Rudy Israel said, in light of the objections from the public, his preference is to not issue a recommendation but to request that the Council consider the comments made by the public. He thinks the HOA's comparison of impacts between the Foreside Tavern and this use are significant.

Bill Benzing said he would like to see businesses come into this area and he likes the other Rivalries location in Portland. He shares the concerns of the residents, but thinks to some extent that these abutter impact issues are issues that inherently arise with mixed use developments. He said that as times change, uses may sometimes change as well. He thinks that with the allowance for restaurants and retail uses on the adjacent properties that the neighbors would still be having the same general concerns and discussions regarding parking and traffic. He is hopeful that the Town's efforts to encourage pedestrian traffic will help alleviate the traffic/parking issues somewhat and thinks that there is a need to move away from the traditional suburban parking mindset and accept shared parking arrangements. He thinks that the parking issues will need to be addressed at site plan review. He would hope that the Council will look closely at the public comments made. He also hopes that the Council does not exempt this project from site plan review so that the public and the Board will have a forum to address these issues and concerns with transparency.

Tom McKeon said he struggled with this matter but is leaning toward voting against the proposed amendments. He believes that when master plans are involved it is a different situation than when you are dealing strictly with regular zoning issues in that the master plan is part of a package marketed to the residents of an area. He believes that the Town should be open minded to changes to a master plan if the intended economic uses don't work out, but he thinks that it is too early to be making a change of this nature for this property. TV-4 is a small lot, much different from TV-3, and the parking comparison raised by the abutters is compelling as parking at Foreside Tavern is often hard to find. He believes this use will have a significant impact on the neighborhood. Mr. McKeon also said the fact that restaurant use is allowed on all adjacent properties is also a compelling argument in support of the project. He is concerned that, as the amendment is currently written, the Board will have little leeway during site plan review to modify project components such as the size of the building. He said that if the amendment were re-written to lessen the intensity of the project then he may be able to reconsider his recommendation.

Jay Chace said he also struggled with this amendment. He clarified that the Planning Board, through the site plan review process, would absolutely have the authority to either deny or modify the intensity and size of the project even if the amendment passes as drafted. He said that just because an ordinance allows a particular sized use, such as an 8,000 square foot restaurant, that does not mean that that sized use can meet all of the town's various regulatory thresholds under site plan review. Mr. Chace said the Planning Board has the authority to deny or suggest ways to amend any given development proposal during site plan review if the project cannot meet all of the town's regulatory standards. If this zoning amendment passes, there are no assurances that the project as designed can meet all of the Town's site plan review standards at the scale and intensity the restaurant is being proposed. He believes that the developer will have an uphill battle in meeting all of the Town's development regulations, but that is a discussion for another day. He said it is compelling that restaurant uses are currently allowed on every adjacent parcel, so he thinks that TV-4 is generally a compatible location for a restaurant.

Chris Hickey thinks that the Board should identify any particular issues that could hamstring the proposal under site plan review.

Jay Chace said that the Board is being asked for an opinion on three discrete items related to use, building orientation, and building square footage. He suggested that maybe the basement area should be limited to non-public use to avoid issues around expanded use in that part of the building in the future. With respect to building orientation, he believes that pulling the building to the street, adjacent to Clearwater Drive, is what the town's land use vision for this area calls for.

Tom McKeon said, of the three amendments for which the developer is seeking, he is most concerned with the use issue and would not recommend approval for the addition of the restaurant use. He sees no compelling reason to allow that use there.

Jay Chace said he did not drill down into the details of the HOA parking study. He is concerned about how parking will be accommodated but he is setting the details of that issue aside with the belief that the site plan review process is the appropriate venue for having that discussion. He believes that there are opportunities for a restaurant use to work at this site given the context of uses allowed on surrounding parcels, but he acknowledges that it may be difficult for the restaurant to get permitted at the scale proposed.

Tom McKeon thinks that a restaurant use is qualitatively different than an office use.

Bill Benzing agreed with Mr. Chace that the Planning Board has the authority through site plan review to make a determination that the scale of the project is too big, and does not think the Board should be delving that deep into site plan review details at this point in time.

Rudy Israel said he cannot recommend the restaurant use given the parking required and the potential impact to the quality of life in the residential area.

Chris Hickey read the Tidewater District mission statement/purpose and thinks that, given that restaurant uses are allowed by right on all of the adjacent parcels, that a restaurant on TV-4 does not seem inconsistent with the spirit of what was trying to be accomplished with the District. The applicant is clearly aware of the parking deficiencies, and he thinks that the Board can and will address parking details during site plan review. He wonders if site plan amendments would be required for other parcels where shared parking is being proposed off-site. He said he is generally in favor of the proposal.

The Planning Board voted 3-2 (McKeon, Israel) to recommend that the Council approve the proposed amendments.