

# TOWN OF DARTMOUTH PLANNING BOARD



## MEETING MINUTES

PLANNING BOARD  
MARCH 13, 2023

### Present

Kevin Melo, Chair  
Christopher O'Neil, Vice Chair  
Margaret Sweet, Clerk  
Kevin Estes  
Nicholas Psychopaidas  
Christine O'Grady, AICP – Planning Director

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*As the Town Office Building has limited capacity for public meetings due to the Governor's ban on public gatherings during the COVID-19 emergency, this public meeting will instead be held remotely through the Zoom application with live interaction by the public using the Join Zoom Meeting login information provided on each agenda.*

Chairman Melo opened the Board meeting at 7:00 pm. A roll call was taken.

A motion to recess the Regular Meeting and open the Public Hearing was made by Mr. O'Neil, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

### **Public Hearing**

(1) Special Permit (PSP-23-1) & Amendment to Approved Site Plan (PASP-23-1)  
Joe's Original - 61 State Road (Assessor's Map 169 Lots 245 & 246)

Discussion: Ms. O'Grady stated that a Special Permit was applied for to reduce the number of parking spaces by 50%. However, the plans have changed as a result of meeting with the technical review committee, and now the applicant is requesting a reduction of 2 spaces. The engineer's and architect's plans differ slightly in the number of seats in the restaurant. The handicapped space is being moved with mounted signage on poles as well as painted on the pavement. The number of pick-up spaces is in question. There may be a need to move the dumpsters; however Ms. O'Grady is not in favor of this. The timeframe for receiving of deliveries is in question. The barrier to the entrance into the building may be in question. There will not be a restroom within the designated outdoor area unless the number of restaurant seats change.

Mr. Alan Heureux, PE of Heureux Engineering, Inc. spoke on behalf of the applicant, who was also present. He presented a plan dated February 12, 2023 for a seasonal retractable pergola structure with a utilities plan revised February 21, 2023. They are proposing new landscaping and ten bollards on the westerly side of the structure. There

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were two handicapped spaces in the corner of the parking lot; the plan is to locate all four required spaces in front of the entrance. Based on the 108 total restaurant seats, 12 seats at the bar, and 12 employees, the requirement is for 78 parking spaces. The plan calls for 76 spaces; that is why they are requesting a Special Permit. He showed the architectural elevation drawings. The proposed pergola is elevated from the parking lot. There is a proposed fireplace and seating with a railing. Mr. Heureux stated that they could easily add two spaces at the back of the parking lot with an extended travel isle. However, the applicant requests the plan to be approved without the additional two spaces.

Mr. Eugene Benbenek of 5 Leonard Avenue, an abutter to the property, asked if the six reserved spaces for pickup/takeout are included in the total number of parking spaces. Mr. Heureux stated that there are no designated spaces for pickup. This is not a requirement of the bylaws. If the owner were to designate spaces as such, they would probably be three spaces in the front of the building. Ms. O'Grady recommended that the Board look at signage for pickup areas as this will likely become a precedent.

Mr. Benbenek asked about truck deliveries; the trucks back right up to the building and block parking spaces, so how could those delivery spaces be counted for customers? He stated that deliveries occur all day long. He also asked if the restaurant has had a fireplace in the past. Ms. O'Grady stated that as a response to COVID, the Governor allowed changes in outdoor seating spaces for restaurants. Regulations were put into place for temporary outdoor seating, but now are being revised to be permanent. The fireplace will be reviewed in the Building Permit process by the Building Commissioner and the Fire Department.

Mr. Steven Silverstein of 8 Eagle Drive, the owner, spoke on behalf of the project. He stated that deliveries are supposed to occur before 11:00am, but that does not always happen, as Mr. Benbenek accurately noted. They will not accept deliveries during their peak hours between 11am and 1:30pm, and 4:30pm or later. They have been operating the patio with 60 seats during COVID without parking issues, and are now requesting a reduction to 33 seats. In regard to the pickup spaces and signage, they would like to identify those spots for greater efficiency. They currently use cameras to note when drivers pull into these spaces. They plan to use Car Hop for deliveries. The fireplace has always been part of the plan.

Ms. O'Grady stated that no one made comments on the fireplace during the technical review meeting. She advised Mr. Heureux to note on the plans where the fireplace will be along with the required handicapped parking pole signage. She asked if there will be a season for the outdoor eating area; if they plan a season when it will be closed, it should be noted on the plan. She stated that this is one establishment but it is over two lots with a paper street, which is unusual. The Select Board and Zoning Board originally approved the plan. Mr. Heureux will designate the pickup spaces and has no problem

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with the conditions as stated by Ms. O'Grady. Mr. Silverstein stated that the retractable pergola would be in operation approximately April 15 through October 31<sup>st</sup>. The structure is a lightweight canvas awning style for the roof with plastic glass sides.

Mr. Psychopaidas stated that based on the owner's success and commitment to dining in Dartmouth, he strongly supports the proposal. He cautioned that April 15 to October 31 should be taken without being rigid as the winters are warming here. He believes it is a tremendous enhancement to the restaurant.

Mr. O'Neil asked if the fireplace is for aesthetics and not for cooking. Mr. Heureux responded that it is for aesthetics only. Ms. O'Grady stated that the Safety Officer reviewed the plans but did not give any comments regarding fire lanes or other issues. Mr. O'Neil asked if the door to the patio from the restaurant is new. Mr. Heureux stated that the doorway to the north is new. Mr. Silverstein stated that there is a new direct doorway to the pergola to avoid employee traffic from the kitchen into the main entrance. There is no entrance from the north side on the utility plan; he will correct the utility plan. The plan submitted meets the code. There is handicapped accessibility into the restaurant and then into the pergola, but not directly from the parking lot.

Ms. Sweet asked, why not move the dumpster and not have to apply for a Special Permit? Mr. Heureux stated that it would be an extra expense and being near wetlands, it might require permission of the Conservation Commission. The retention basin functions beautifully and he could easily design two more spaces. But he would have to pave the spaces and they may be in the Buffer Zone. The dumpster protects the wetlands as is, and the restaurant has been operating very well with the number of parking spaces it has. Ms. O'Grady stated that the original agreement with the Town was that nothing could block that potential right-of-way.

A motion to close the Public Hearing was made by Mr. Psychopaidas, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

Motion- A motion to issue a Special Permit for the reduction of two parking spaces according to the plan submitted was made by Mr. Psychopaidas, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

Motion- A motion to approve the amendment to the Site Plan Review as discussed was made by Mr. Psychopaidas, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

(2) Zoning Articles for Spring Town Meeting 2023, Articles A, B, C, & D:

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A motion to open a Public Hearing was made by Ms. Sweet, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

Ms. O'Grady recommended discussing only the first two articles tonight. She will re-advertise a Public Hearing for the remaining two articles. Article 3 has wording that should be reviewed by the Building Commissioner, and Article 4 should have notifications sent to residents in the District. She would prefer to err on the side of caution. There will be four articles for Town Meeting and one appropriations article on the funds from the Gendreau estate which is being written by Ms. O'Grady and the DPW.

#### A. Amendments to Article 1 – Preamble

Ms. O'Grady stated that the proposal is to change the reference from the 2007 Master Plan to the 2023 Master Plan. Ms. Helen Zincavage of SRPEDD will join the meeting later to discuss the Master Plan. Three new value statements were added: Values 11, 12, and 13. These will be listed in the Town Meeting packet and will be posted on the website. Town Counsel has reviewed the wording.

A motion to approve and accept Article 1 was made by Ms. Sweet, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

#### B. Amendments to Article 2 - Explanation and Purpose of Zoning Bylaw

Ms. O'Grady stated that this amendment is for cleaning up the Zoning bylaw. There are no content changes. There are 14 Districts in the Town, but only 11 were listed in the bylaw. The map has also been updated with parcel information, conferring with Tighe & Bond. Some of the notes were slightly modified to make reference to all maps. There are six Overlay Districts which are now covered in the revised maps. The dates will change from 2009 to 2023. Mr. O'Neil stated that he is happy with the revisions.

A motion to approve and accept Article 2 was made by Mr. Psychopaidas, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

A motion to close the Public Hearing was made by Mr. Psychopaidas, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

#### C. Amendments to Article 5 – Definitions and Accessory Uses - Tabled

#### D. Amendments to Article 14 - Neighborhood Business District - Tabled

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### Administrative Items

3) Approval Not Required- 0 Horseneck Road (PANR-23-4) 0 Horseneck Road, Map 23 Lots 48-1 & 48-2

Discussion: Ms. O'Grady stated that this is a reconfiguration of existing lots with no additional lots being created. There is additional information that is not on the plan submitted to the Board; wetlands delineation and upland areas and the title on the plan. Ms. O'Grady does not anticipate any issues but she has not yet received the revisions. There are no frontage issues. She recommended endorsement.

Motion- A motion to endorse the ANR was made by Mr. Estes, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

(4) Amendment to Approved Site Plan- 470 State Road (PASP-23-2) 470 State Road, Map 166 Lot 143-3

Discussion: Ms. O'Grady stated that this filing was withdrawn after the applicant's meeting with the technical review committee.

(5) Open Space & Recreation Plan - Review of Draft Plan for 2023-2030

Ms. O'Grady introduced Ms. Helen Zincavage of SRPEDD, who was present to discuss this plan. The plan was presented to the Select Board at their last meeting.

Ms. Zincavage presented a PowerPoint presentation. The Mass Division of Conservation Services has requirements for this plan. The final draft document is posted on the Town website. Additional ADA information is required which Ms. O'Grady will provide. Ms. Zincavage stated that 420 responses were received on the survey, and three public workshops were held. She listed key recreational activities that Dartmouth residents enjoy. Residents stated that more sporting, hiking, and biking resources should be developed. Water resources should be developed including swimming, a splash pad, fishing and other resources. More work needs to be done with teenagers to provide age-appropriate resources. Some respondents want sidewalks, while others do not.

She stated that 88% of respondents support additional land conservation, protection of wildlife habitat, and protection of drinking water among others. She listed several areas of potential conservation.

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The plan has five broad goals, with objectives, actions, responsibilities, funding sources, and implementation tasks listed. Ms. Zincavage read through the five goals and the objectives associated with each goal.

The Select Board asked for top priorities and activities. SRPEDD presented a 15-Point Prioritized OSRP Action Plan over the next seven years. It provides direction but allows flexibility for change. Ms. Zincavage read through the actions that were elevated to the 15-Point Priorities. This list was added to the Open Space & Recreation Plan document.

The Public Comment period was open through February 15, 2023.

Ms. O'Grady asked about the ADA information in the appendix. She will confer with Ms. Zincavage on this matter.

Mr. Melo asked why this is a 7-year plan, and not a 10-year plan to correspond with the Master Plan. Ms. Zincavage stated that the state used to require a 5-year plan but realized perhaps that this was too burdensome and so moved to a 7-year plan.

Mr. O'Neil asked if the Town has an action item for setting aside a certain percentage of Town tax revenue for preservation other than the funding for CPC. Ms. O'Grady stated that she hasn't seen this, but will ask Mr. MacInnes. Mr. O'Neil stated that it would make sense to have a set-aside fund for preservation so that the Town could make a commitment to it. Ms. Sweet stated that the CPC does grant funds for preservation and sometimes in large amounts. She believes CPC is an autonomous board. Mr. O'Neil is concerned that large tracts of land with open space were passed by because the Town did not have the money to purchase them. Ms. Zincavage stated that there is a recommendation in the Master Plan to recapitalize a farmland preservation fund that was spent out. Ms. O'Grady added that the Town received grant funds for the design of the Community Center. Ms. Zincavage stated that there are different grants that could be applied for to fund land acquisition of sensitive habitats such as marshlands that are shrinking due to climate change. Ms. Sweet stated that all articles have to be approved by Town Meeting. Ms. O'Grady noted that Mr. Estes served with distinction on this committee.

Motion- A motion to authorize Ms. O'Grady to write a letter in support of the Open Space & Recreation Plan as presented was made by Mr. Estes, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

#### (6) Master Plan - Review of Draft 2023 Master Plan

Ms. Zincavage presented a PowerPoint overview of the process. There are several state requirements for the Master Plan. She read through the reasons why the Town

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should have a Master Plan. The major components are information and data and community/stakeholder input. There were five public workshops held. The Community Vision stresses outdoor activities and schools.

Out of a long and complex plan, Ms. Zincavage pulled out some chapters with their distinctive goals and strategies to discuss. She referred to Chapter 4: Land Use, Chapter 5: Housing, Chapter 6: Economic Development, Chapter 7: Natural and Cultural Resources, Chapter 8: Open Space & Recreation, Chapter 9: Services and Facilities, Chapter 10: Circulation & Transportation, and Chapter 11: Climate Change & Resilience.

Ms. Zincavage stated that the Planning Board's first step would be to adopt the plan, and recommend it to the Select Board. After that, it can be submitted to Mass Department of Housing and Community Development (DHCD), and then implemented. She thanked the entire Dartmouth community for all its participation, and in particular to Mr. Bill Chandler who did a thorough review of the document. Mr. Melo thanked Ms. Zincavage for her help and assistance with this process. Ms. Zincavage offered to make this same presentation to the Select Board if the Planning Board so chooses. Ms. O'Grady stated that she is comfortable with presenting it to the Select Board.

Mr. Estes stated that he sent feedback from the Dartmouth Police Chief with recommendations for revisions to the plan. Ms. Zincavage stated that SRPEDD did receive the comments and made revisions in that portion of the plan.

Ms. O'Grady stated that she is comfortable having a vote at tonight's meeting. The Open Space & Recreation Plan complement and will be referenced in the Master Plan, and the date will be changed to 2023. Ms. O'Grady will follow up with Mr. MacInnes.

Motion- A motion to adopt the Master Plan as presented was made by Mr. O'Neil, seconded by Ms. Sweet. A roll call vote was unanimously voted and approved 5-0-0.

(7) Minutes – February 27, 2023

Discussion: None

Motion- A motion to approve the minutes of February 27, 2023 was made by Mr. Estes, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

(8) Correspondence

Legal Notices: City of New Bedford, Town of Freetown, Town of Westport

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Motion- A motion to acknowledge and file correspondence was made by Mr. Psichopaidas, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

#### (9) For Your Information/New Business

Zoning Board Decisions/Legal Ads – Ms. O’Grady stated that the marijuana establishment on Old Fall River Road hearing was continued until April 2023.

Subcommittee Reports – Ms. Sweet stated that she attended a CPC meeting. They will be presenting three or four articles at the Spring Town Meeting including the Mendes-Monteiro House, bicycle path, and Waterways.

Chairperson’s Report – Mr. Melo asked if Mr. O’Neil has opposition in the upcoming election on April 4, 2023. Mr. O’Neil reported no opposition. Mr. Melo stated that there will be a reorganization of the Board after the election. Members should contact him if they wish to take on an officer position or if they have comments and agenda items.

Planner’s Report- Ms. O’Grady stated that she is still waiting from the Governor’s office with word regarding the continuance of remote meetings. She is ready to pivot if necessary. She will keep members informed. She stated that the Mass DOT meeting on corridor improvements to Route 6 from Hathaway Road to Faunce Corner Road has been rescheduled to March 29, 2023 at 6:00pm. Regarding the Windsong property proposal, Ms. O’Grady stated that she, DPW, and Board of Health met with the owner to discuss how to move forward. She has not received an update from Town Counsel. She noted that she and Mr. Ross Cuddy, Assistant Director of Planning, are working well together to take care of office business. Ms. Sweet stated her opinion that Mr. Cuddy is doing a great job. Ms. O’Grady concurred, as did Mr. O’Neil.

(10) Adjourn - Mr. Psichopaidas’ connection was lost; he left the meeting.

Motion- A motion to adjourn the meeting at 9:09m was made by Mr. O’Neil, seconded by Mr. Estes. The roll call vote was unanimously voted and approved 4-0-0.

The next meeting will be held on March 27, 2023.

Approved By Dartmouth Planning Board:

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Date of Approval: March 27, 2023