

East Greenwich Planning Board

Wednesday, May 6, 2020

Virtual – Convened via the ZOOM remote meeting platform

7:00 PM

Present: Nate Ginsburg, Vice Chair; Eric Jautaikis; Ben Lupovitz; Kevin Murphy; Chris Pels

Absent: Jason Gomez

Staff: Lisa Bourbonnais, Town Planner; Aaron Lindo, Planning Technician; Peter Skwirz, Solicitor

### **1. Call to Order**

Mr. Ginsburg called the meeting to order at 7:02

### **2. Roll Call**

### **3. Public Hearings**

**A)** Review of Zoning Ordinance Amendments – for recommendation to the Town Council. Specifically, revisions to Article VI, Off-Street Parking Regulations, of the Zoning Code, being

Section 260-19 of the Town Code. A new sub-section “E” would provide for the temporary suspension of off-street parking requirements for restaurants and retailers in response to temporary emergency declarations and other executive orders issued in connection with the COVID-19 health emergency. Related, amendments to Article XI, Historic Districts, of Chapter 260, Zoning, of the Town Code, are also proposed. Specifically, Section 260-59 would also add a sub-section “E” which would temporarily suspend the requirement that properties in the historic districts secure a Certificate of Appropriateness for certain alterations.

Ms. Bourbonnais presented the draft motion of the proposed zoning ordinance amendments. The amendments are straightforward. The Town is temporarily suspending certain things to accommodate the expansion of business while things are restricted from a capacity perspective, for our retailers and our restaurants. The amendments come at the request of the Town Council and they are expecting to see a recommendation from the Planning Board. The Council is starting advertisements tomorrow for the June 22<sup>nd</sup> Town Council meeting and needs the recommendation in advance.

The zoning piece is very straightforward and is a companion piece for other modifications and revisions for the alcoholic beverage sections of the code to accommodate the temporary outdoor expansions.

The executive order provides for what the ordinance amendments are doing. There were several businesses that applied for temporary outdoor seating permits mostly to their own parking lots.

There have also been a couple of requests to expand into the sidewalk to take up space beyond their own business façade. There have been 10 applications already since the executive order was given. The amendments will formalize and codify what the Town is already doing in practice.

Mr. Ginsburg asked Ms. Bourbonnais to talk about the parking and why suspending offstreet parking requirements makes sense. Ms. Bourbonnais replied that the restaurants that are expanding outdoors typically do not have room except in their parking lots because their sites are mostly paved. Tavern on Main is an example of this. They have expanded into their back parking lot because if they were confined to their small sidewalk area, it would not make sense for the business to reopen. The Council wants to be uniquely well positioned in terms of accommodating business to get restaurants reopened. It is not appropriate everywhere and the applications are being reviewed on a case by case basis. It is the Planning Department in addition to the Fire Marshal, Town Engineer and the Zoning Officer/Building Inspector who are reviewing site plans and seating layouts for life safety issues and to make sure there is still circulation in places where there will continued onsite parking.

Every restaurant has a capacity number and has a number of conditions attached to their approval. The Town is expressly preventing them from doubling their capacity. A restaurant cannot exceed capacity from indoor capacity.

Mr. Ginsburg asked about the certificate of appropriateness and if a business would typically need one with a tent. Ms. Bourbonnais replied that they would not need one for a tent but there are some businesses that were going to make bigger investments to put up actual fencing which is subject to HDC purview. They like to see fences that are in keeping with the historic character of the neighborhood. Fences are temporarily exempt from this. When the crisis is over and businesses want to install something more permanent, they would need to apply to the HDC for a CoA.

Mr. Lupovitz asked for the plan on compliance and enforcement. Ms. Bourbonnais replied that for initial compliance, there were site visits from staff. Staff felt very good for the initial compliance. It is thought that the Town is going to have to revisit the specific sites at times from a life safety perspective as well as on a complain basis as needed. There will be a step up in enforcement throughout the summer. The Town has only one enforcement officer and it will have to be a group effort. It is known that there is already a parking problem. The zoning is an extension of police power and the Town can certainly use police if needed, especially with life safety issues. Mr. Skwirz commented that restaurants do not want to risk losing their license through non-compliance.

Mr. Pels asked what happens when the governor changes the capacity regulations going forward. Ms. Bourbonnais replied that locally, at no point during the crisis are restaurants allowed to exceed capacity that they are permitted for. This could keep the Town very busy from an enforcement perspective. A lot of people have questions about what is happening on the waterfront. Those businesses that are on the waterfront are good to go by right as they are not adding or changing

anything from which they already have permission for. They are not seeking to exceed their total capacity and have not submitted an application.

Mr. Murphy asked Mr. Skwirz if the relatively sparse language in the public notice is an issue. Mr. Skwirz replied that he did not see it as a notice issue. The first part pertains specifically to licensing. The Planning Board is charged with purview over zoning amendments and does not really have purview over licensing. Ms. Bourbonnais added that the zoning code is the only piece that the Planning Board has purview over. The Town Clerk is intending to advertise the full text of the amendment in a legal advertisement.

Regarding the alcoholic beverage section, if a restaurant has a duly-authorized alcohol license now and they are just changing the physical area where service will take place, they will not have to be relicensed by the Town Council for the area expansions. They will give a plan to the Planning Department that shows the expansion area and will be kept on file.

Mr. Ginsburg noted section 15.8 “A license shall not be required in connection with a duly-authorized temporary expansion of a restaurant service area as provided for in Sec. 15-9” sounds too vague.

Mr. Lupovitz asked about liability issues to the Town on a public sidewalk. Mr. Skwirz commented that if someone gets injured on a sidewalk, they can make a claim against the Town. If it is part of the licensing and the restaurant has the liability insurance, it provides the Town a bit more coverage than if there was no liability insurance from another entity. The issue would come down to if the injury was caused by a defect in the sidewalk or if it was caused by the way the licensee operates. That is pre-existing liability and there is always liability of a potential trip and fall scenario. The Town has insurance and there is an extra layer from the restaurant’s liability. There can never be a complete elimination of liability and the restaurant would get the first crack at the liability. Restaurants have an indemnification clause in the application that they must sign.

Mr. Ginsburg had a concern about the parking lot lighting in regards to tripping hazards and ADA accessibility. Ms. Bourbonnais commented that the sites are visited during the day and from an enforcement point they will have to be visited when they are functioning to make sure it is a safe condition.

At the request of Mr. Ginsburg, Ms. Bourbonnais would add a letter to the Town Council highlighting the Planning Board’s discussion of the zoning amendments.

Mr. Lupovitz made a motion for a favorable recommendation of the zoning amendments to the Town Council. Mr. Murphy seconded the motion which was unanimously passed.

**4. Minutes** – The Board is asked to review and approve minutes of the 5/6/20 meeting.

A motion to approve the minutes was made by Mr. Murphy, seconded by Mr. Pels, and unanimously approved.

Ms. Bourbonnais commented that the Board will likely convene for a second meeting in June on the 17<sup>th</sup>.

A motion was made by Mr. Ginsburg to adjourn. Meeting adjourned at 7:41 PM.

Minutes respectfully submitted by Aaron Lindo, Planning Technician.