

**TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING**

NOVEMBER 20, 2001

7 P.M., TOWN HALL

Present: David Griffin, Chair
Andrew Charles
Peter Cotter
David Sherman
Mark Wilcox

Absent: John Ciraldo
Karen Lowell

Also present was Maureen O'Meara, Town Planner

Chairman David Griffin opened the meeting and called for a short delay in order for Board members to catch up on some additional correspondence. He then asked for action on the minutes from the previous meeting of October 16, 2001. Mr. Sherman cited two revisions which needed to be made. Mr. Cotter made the motion to accept the minutes. Motion was seconded and carried 5 in favor and 0 opposed.

Mr. Griffin next reviewed correspondence.

OLD BUSINESS

Inn by the Sea Site Plan Amendment – Request by HMH Ltd, Inc. for an amendment to the previously approved Inn by the Sea Site Plan, located at 40 Bowery Beach Road (U17-40) to allow outdoor gatherings of up to 176 people, Sec. 19-9, Site Plan Public Hearing.

Mr. Wilcox recused himself from participating.

Stephen Mohr from Mohr and Seredin Landscape Architects gave a brief history of the facts regarding the Inn's operations and events leading to their request for a site plan amendment. He presented a revised site plan for the Inn illustrating a proposed overflow parking area and barrier plantings. He also updated the Board on actions which the Inn had implemented with respect to the issues raised at the June Planning Board workshop concerning traffic impacts, noise, stormwater, and lighting. A traffic impact assessment from Bill Bray had been provided at the September Planning Board Meeting, as well as initial sound level studies taken by Acoustic Treatments. Additional sound level readings undertaken by the Inn had shown decibel levels exceeding ordinance standards, therefore, acoustic blankets have been ordered to act as noise baffles on the function tents. Music levels were determined as the primary source of excessive readings. Noise level specifications were noted on the plan. The side yard location will allow only non-amplified music in order to maintain a 60DB noise level, and the Inn has revised their client contracts to reflect that change. The front yard location will maintain an 80DB

standard 30' in front of the music and baffle blankets will be mandatory on two sidewalls of the tents. Acoustic blankets will be in place by the first May 2002 event and the Inn will have available monitoring equipment and make efforts to co-ordinate with any findings made by Acoustic Treatments in order to attain levels required.

The Inn submitted a schedule of booked events for the upcoming year and cited that on three occasions the guest numbers exceed a gathering count of 176. These bookings occurred before the July 2001 letter citing the ordinance issues between the Inn and the Town. Mr. Mohr ascertained that the parking standards would be met.

With respect to stormwater management, Mr. Mohr maintained that there would be no impact. He also stated that septic capacity is capable of handling a 176-guest count and referred to a letter from Code Enforcement Officer, Bruce Smith, supporting that statement.

Function hours were established as 11:00AM to 8:00PM. and a limit of 60 days per year will be available for outdoor functions – only 30 of which will be on weekends.

Mr. Mohr noted that all provisions required by the Board for the amendment approval were listed on the revised site plan so that each standard would be readily available with regard to enforcement or review by future Boards. He also confirmed that bandmembers booked for events would be included in the 176 head count.

Mr. Griffin opened the Public Hearing.

Ed Robidoux, a Cape Elizabeth resident from Hobstone, stated that his family had booked a wedding at the Inn for May 2002 and posed questions to the Board regarding the time frames which constituted when the ordinance standards would be in play. Ms. O'Meara clarified that ordinance regulations are instated 24 hours a day. Mr. Robidoux then asked the Board to consider the noise level of 55 decibels. He felt that from the Inn's perspective, the noise restrictions in the ordinance were a disadvantage.

Alan Shock, 60 Richmond Terrace, spoke out against the Inn because of noise levels associated with outdoor functions. He also cited the Inn's lack of consideration and cooperation with regard to complaints, and felt that acoustic blankets would be ineffective against the noise levels. He stated that the function tents obscured the views from his property and made comment on the number of party goers who would be driving Rt 77 following attendance at the Inn.

Tracy Carson, a disc jockey working some events booked at the Inn, spoke in support of the Inn with regard to the responsibility demonstrated with respect to noise level monitoring.

Catharine Crockett, a photographer who has worked with the Inn, praised the Inn for their attention to detail and their ability to fulfill their promises. She felt that the Inn would abide by the standards declared in the ordinances.

Bob Beal, 43 Stonegate Road, Cape Elizabeth, whose daughter is planning a wedding at the Inn next summer, applauded the quality of service provided by the Inn and considered the Town fortunate to have their business. He also found in his dealings with the Inn that they were very careful to maintain a good and responsible reputation with the community.

Sergei Novikos, representing the entertainment industry connected with Inn by the Sea, spoke in support of the Inn and noted that the Inn had always been very responsible with regard to monitoring noise levels at their outdoor functions.

Frank Graziano, 29 Pilot Point Road, has dealt with Inn By the Sea for years as a beverage distributor for Anheuser Busch. He considered the Inn a quality business and urged the Town to grant approval to their request so that they could continue to serve the greater community.

Elliot Cherry, a musician with the Maine Cello Duo, had performed at events at Inn by the Sea. He noted an occasion when he was told to move his vehicle in order to meet parking regulations. He was impressed with the effort to meet those requirements.

Raymond Neveu, 32 Bowery Beach Road and adjacent to the Inn, praised the Inn as very good neighbors. He addressed the noise issue as not a problem and felt that the Inn managed the parking very well.

Virgil Hancock, 32 Ridge Road, supported the Inn as an important institution within the community and hopes that the Town will allow them to continue as a successful business and important contributor to the tax base.

Joe Ohannes, 2 Rosewood Drive, stated that he has been a frequent guest at the Inn by the Sea and has never found the noise levels or the parking to be an issue.

Glenn Prentice, 18 Ocean Ave., asked the Board what the noise level measurements had been for the previous readings. Mr. Mohr answered that of the 98-99 readings taken, approximately 11-12 exceeded the standards in place at this time. Mr. Prentice felt that the levels were too loud and stated that the noise generated by the outdoor functions did impact his neighborhood.

Tim Thompson, 6 Pine Ridge Road, lauded Maureen McQuade as a responsible person who paid attention to detail and worked towards positive outcomes. He praised her as a considerate employer with a quality business, and felt the Town fortunate to have both within the community.

With no other presenters, Mr. Griffin closed the public hearing and opened discussion to the Planning Board.

Mr. Sherman requested the hours of operation be noted on the site plan and Mr. Mohr concurred.

Mr. Charles raised the question of hardship for the Inn with regard to the curtailed operating hours. Mr. Mohr thought the concessions arrived at were best left to rest. Mr. Charles also wanted confirmation on the time frame for the non-conforming events listed on the submitted schedule for 2002, as well as, a clarification on the number of operating functions within the Inn with regard to parking. Mr. Mohr maintained that the non-conforming bookings were taken prior to July and would be addressed and that the staff at the Inn was well informed of the need to comply with the parking standards set forth in the ordinance.

Mr. Charles proposed a motion:

Findings of Fact

1. The Inn by the Sea, located at 40 Bowery Beach Rd, is requesting an amendment to the previously approved Site Plan to allow outdoor functions with up to 176 guests to be held at the Inn which requires review under Sec. 19-9, Site Plan Regulations.
2. The Inn has experienced a shortage of parking spaces during outdoor functions.
3. The Inn by the Sea substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts submitted, the application of the Inn by the Sea, located at 40 Bowery Beach Rd, for an amendment to the previously approved Site Plan to allow outdoor functions with up to 176 people be approved with the following conditions:

1. That band members associated with outdoor events be counted toward the total number of outdoor function guests; and
2. That a note be added to the plan that indicates the hours of operation for outdoor functions shall be limited to 11:00 a.m. to 8:00 p.m.

Mr. Cotter seconded the motion. Motion carried 4 in favor 0 opposed.

Haskell Private Accessway Permit/Resource Protection Permit – Greg and Shanon Haskell are requesting a Private Accessway Permit and a Resource Protection Permit for their lot located on Pleasant Ave. (U27-22) to construct a driveway and sewer line connection for a single family home, Sec. 16-2-5, Amendment to a previously approved Subdivision.

Jim Fisher of Northeast Civil Solutions and representing the Haskells, briefly recapped his previous presentation to the Board and referred to a revised site plan reflecting the additional elements required by the Town Engineer. The revisions included a more

extensive grading plan to reflect the total area of construction. The name Abby Lane depicting the driveway was added to the plan. Also submitted was a letter from the Town Engineer citing the adequacy of the two twenty-four inch driveway culverts to convey run-off.

Mr. Griffin opened the Public Hearing. With no persons coming forward, Mr. Griffin closed the public portion and opened discussion to the Board members.

Mr. Sherman asked whether the Haskells had considered granting the Town an easement so that the proposed Greenbelt might have access to the small pond inclusive of their wetlands. Mr. Fisher confirmed that there was a willingness to address the Greenbelt consideration, but the Haskells first needed to pursue some questions with the Town and the Conservation Commission.

Mr. Charles requested Mr. Fisher's response to a letter from the Conservation Commission with regard to the disturbance of the RP2 wetlands. Mr. Fisher stated that the site plan complied with their concerns by clearly marking the construction area impacted and implementing silt fencing. He stated that it was the Haskells' intention to maintain the integrity of the existing site.

Mr. Sherman made the following motion:

Findings of Fact

1. Greg and Shannon Haskell are requesting a Private Accessway Permit and Resource Protection Permit to build a home and driveway on a 4+ acre lot located off Pleasant Ave which requires review under Sec. 19-7-9, Private Accessway Permit, and Sec. 19-8-3, Resource Protection Permit.
2. The Town Engineer has recommended clarifications to the plans.
3. The building envelope should reflect the total area of construction and include all necessary grading.
4. The drainage easement should be enlarged so that it extends beyond the area altered by the new driveway.
5. The Police Chief has requested that the driveway be named to comply with the Town E911 requirements.
6. The application substantially complies with Sec. 19-7-9, Private Accessway Permit, and Sec. 19-8-3, Resource Protection Permit.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Greg and Shannon Haskell for a Private Accessway

Permit and Resource Protection Permit to build a home and driveway on a 4+ acre lot located off Pleasant Ave be approved, subject to the following conditions:

1. That the plans be revised per the comments of the Town Engineer in his letter dated 11/11/01 and 11/14/01;
2. That the building envelope be revised to provide a minimum 10' wide buffer from the RP2 wetland;
3. That a drainage easement approved by the Town Attorney be signed by the applicants and submitted to the Town; and
4. That the plans be revised to show the name of the driveway;

Mr. Charles seconded the motion. Motion carried 5 in favor and 0 opposed.

NEW BUSINESS

Lots 57/56 Cross Hill Subdivision Amendment – Request by Tom and Eva Reck and Cheryl and Robert Petras to amend the previously approved Cross Hill Subdivision to adjust the common lot 57/56 lot line and adjust the building envelope of the lots located at 5 and 3 Hawthorn Rd., Sec. 16-2-5, Amendment to a previously approved Subdivision.

Robert Libby from BH2M Engineers in Gorham, ME, explained that the common lot line would be changed ever so slightly, swapping square footages, to accommodate the side setbacks for a wrap around porch.

Board members concurred that the application was very uncomplicated and straightforward, and did not require a public hearing or site walk.

Mr. Wilcox made the following motion:

Findings of Fact

1. Tom and Eva Reck and Cheryl and Robert Petras are requesting an amendment to the previously approved Cross Hill Subdivision to change the common lot line between lots 56 and 57 which requires review under Sec. 16-2-5, Amendment to a previously approved Subdivision.
2. The recording plat should include information that will allow easy identification of where these lots are located in the subdivision.
3. The application substantially complies with Sec. 16-2-5, Amendment to a previously approved Subdivision.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tom and Eva Reck and Cheryl and Robert Petras for an amendment to the previously approved Cross Hill Subdivision to change the common lot line between lots 56 and 57, located on Hawthorne Rd, be approved, subject to the following condition:

1. That the name Hawthorne Road, north arrow and phase of the subdivision be added to the recording plat.

Mr. Cotter seconded the motion. Motion carried 5 in favor and 0 opposed.

Good Table Site Plan – Request by Anthony and Lisa Kostopoulos for site plan review of the new Good Table Restaurant located at 527 Ocean House Road, Sec. 19-9, Site Plan Completeness.

Jim Fisher, of Northeast Civil Solutions and representing Lisa and Tony Kostopoulos, presented the proposed site plan for the Good Table Restaurant, which was destroyed by fire. The plan designated the existing parking area, as well as proposed extended parking spaces to accommodate a 75-seat capacity, and spaces designated to address handicap parking. A turnaround was also indicated to accommodate traffic flow. The building footprint is the same except for a slight section in the front. Landscaping has been augmented slightly with additional perennial beds and buffer plantings along the road. Cut sheets were provided to depict lighting diagrams. Signage will be original to the business. A connection has been made into the Town sewer line. Mr. Fisher made note that the revised plan showed a stockade type fence to hide the dumpster and explained that the planting between the road and parking lot would provide a screen at a height to conceal the cars and not the restaurant.

Mr. Cotter made a motion for the Board to consider.

A. Motion for Completeness

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Lisa Kostopoulos for Site Plan Review to build a 75 seat restaurant located at 527 Ocean House Rd be deemed complete.

Mr. Sherman seconded the motion; however, Mr. Charles voiced his concerns with regard to the plantings on the site plan which were clearly on the road ROW and not the property of the Good Table. Ms. O'Meara advised that a motion of completeness could be granted regardless of the issue of the site plantings, which could still be addressed before granting approval of the application. Motion ensued and was carried 5 in favor and 0 opposed.

Mr. Griffin asked for any discussion with regard to a Public Hearing or site walk. Board members deemed a site walk unnecessary and addressed Ms. O'Meara concerning any

correspondence received pertaining to the application. She stated that all correspondence had been favorable.

Mr. Charles suggested that before approval a stipulation be added with regard to gaining permission from the proper entity for the extended plantings proposed beyond the Good Table property line and into the road ROW. Mr. Fisher had no argument with that decision, except for the fact that it would add a burden of delay to the project. A decision was made to amend Motion #3 to allow the Board to move forward on the application and still address the plantings issues on the site plan.

Mr. Sherman made the following motion:

Findings of Fact

1. Lisa Kostopoulos is requesting Site Plan Approval to rebuild a 75-seat Good Table restaurant (with second floor storage) located at 527 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer has suggested revisions to the plans that will clarify how the development will be constructed.
3. Buffering of site elements such as a dumpster and parking lots will enhance the appearance of the site from the public road.
4. The plan, as amended and as presented at tonight's hearing, shows landscape buffering outside of the applicant's property.
5. The plan substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Lisa Kostopoulos for Site Plan Review to build a 75 seat restaurant located at 527 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised to address the comments in the Town Engineer's letter dated 11/13/01;
2. That the dumpster be screened with a stockade fence;
3. That the landscaping plan be revised to depict type and quantities of perennials and that a landscape buffer be planted between the parking lot and Ocean House Rd to screen the parking lot and, to the extent the landscape buffer exceeds the applicant's property line, that such landscape buffer be subject to the approval of the appropriate town, state or other governmental agency or official; notwithstanding anything set forth in condition 5, approval by the governmental agency shall not delay the issuance of a building permit.

4. That the location, size and materials of signage be added to the plans; and
5. That there be no issuance of a building permit nor alteration of the site until the above conditions have been met.

Mr. Charles seconded the motion. Motion passed 5 in favor and 0 opposed.

Blueberry Ridge Subdivision – Request by Joseph Frustaci for Major Subdivision Review and a Resource Protection Permit for the 19-lot Blueberry Ridge Subdivision located off Mitchell Road, Sec. 16-2-4, Major Subdivision Completeness, Sec. 19-8-3, Resource Protection Permit Completeness.

Mr. Joe Frustaci, owner of the subdivision property off Mitchell Road, submitted a site plan review under the Open Space Zoning Provision. The plan dedicates approximately 62% of the parcel as open space, and the remainder will be developed into 19 house lots which will comply with the requirements of the Open Space Zoning. The Cape Elizabeth Zoning Board granted a variance request on side setbacks for consideration with regard to building envelopes. The subdivision will be served by public water and public sewer and serviced by three roads. There will be a request for a waiver on the requirement for a double sidewalk. Mr. Frustaci is working with the Fire Dept. to establish a location for a fire hydrant. He also noted the traffic study enclosed in his application packet and asked for a waiver with regard to easements associated with the subdivision until he can better define what the Town is requiring. He stated his intent to work closely with the Town Planner and Town Engineers to make proper revisions to the plan.

Mr. Griffin requested discussion regarding completeness.

Mr. Charles wanted clarification with regard to the pavement definition of Red Oak Drive and asked how that was specified on the plan. Mr. Frustaci explained that the plan was still evolving pending consideration of costs involved in running water and sewer lines and other infrastructure to outlying lots. There were also considerations involving road maintenance and accessibility by emergency and Town vehicles.

Mr. Sherman made the following motion for the Board to consider:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joe Frustaci for Major Subdivision Review and a Resource Protection Permit for Blueberry Ridge, a 19-lot subdivision located off Mitchell Rd, be deemed complete.

BE IT FURTHER ORDERED that the above application be tabled to the regular December 18, 2001 meeting of the Planning Board, at which time a public hearing shall be held.

Mr. Cotter seconded the motion. Motion carried 5 in favor and 0 opposed.

The Board scheduled a site walk for Sat. morning Dec.1st at 8:00AM and agreed to meet at 138 Mitchell Road.

Mr. Griffin asked that a motion be made for adjournment. Mr. Charles made the motion, which Mr. Sherman seconded. Motion carried 5 in favor and 0 opposed.

Meeting was adjourned at 9:25PM.

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary