

TOWN OF CAPE ELIZABETH, MAINE  
MINUTES OF PLANNING BOARD MEETING

May 21, 2002

7 P.M., TOWN HALL

Present: David Griffin, Chair  
Andrew Charles  
John Ciraldo  
Peter Cotter  
Karen Lowell  
Barbara Schenkel  
David Sherman

Also present was Maureen O'Meara, Town Planner

Chairman David Griffin opened the meeting and asked for action on the minutes of the previous meeting of April 22, 2002. With no amendments requested, Mr. Sherman made a motion to accept the minutes. Motion was seconded by Mr. Ciraldo and was approved 7 in favor and 0 opposed.

Mr. Griffin reviewed correspondence. There was no old business and the Board proceeded to the first item on the agenda.

**Gull Crest Site Plan Bus Parking Amendment** – Request by the Town of Cape Elizabeth for an amendment to the Gull Crest Site Plan to reconfigure the existing paved areas to provide for bus parking, Sec. 19-9-6, Amendments.

The request had previously been before the Board and no presentation was made. Mr. Curled stated that since the request involved an existing paved area and represented no change to the impervious area, he would be in favor of placing the request on the Consent Agenda item. With no further discussion, Mr. Ciraldo made the following motion for the Board to consider:

BE IT ORDERED THAT The Gull Crest Bus Parking Site Plan Amendment be approved as a Consent Agenda item.

Motion was seconded by Mr. Charles and was approved 7 in favor and 0 opposed.

**NEW BUSINESS**

**Dorsey Private Accessway Permit** – Request by John and Sarah Dorsey for a Private Accessway Permit and Resource Protection Permit to create a new lot located at 146 Scott Dyer Rd (U45-8) and build a driveway which will alter RP2 wetlands, Sec. 19-7-9, and Sec. 19-8-3, Application Completeness.

Bob Metcalf, Mitchell & Assoc., stepped forward to represent John and Sarah Dorsey and review the site plan for the project. He described an overlay of the property depicting the current dwelling and driveway and the pockets of wetland existing within the boundaries. He also outlined the lot being proposed to the rear of the parcel and explained the 30' access easement, which would service that lot as well as the existing dwelling. The driveway configuration is impact sensitive to the wetlands at the rear property line, and in compliance with Town required emergency vehicle egress per a letter from Fire Chief McGouldrick.

The Dorseys propose a two-story dwelling of roughly 1800 sq. ft. and a garage to have usable overhead space. Sweet Associates have identified the leach field and test pit areas for the septic system, and delineated the wetlands. Three 12" culverts will be provided to accommodate drainage along the accessway. Issues raised by Steve Harding the Town Engineer with regard to grade and stormwater, are being addressed and information will be presented at the next meeting with the Board. An evergreen buffer will be provided for screening of the adjacent property and the proposed dwelling. Sight distance studies on Scott Dyer Road showed no significant problems.

Several Board members were concerned about the existence of a stormwater runoff plan. The Town Engineer had requested further information with regard to stormwater impact on abutting properties. Mr. Metcalf stated that the project would create minimal change or impact to existing conditions, and the proposed culverts would actually improve drainage.

Mr. Sherman asked Maureen O'Meara whether it was customary that the Board receive an actual stormwater runoff plan for any project or can they accept the information given in the summary cover letter. Ms. O'Meara replied that the Board should be provided with both depending on the complexity of the project and the level of concerns.

Mr. Griffin asked Ms. O'Meara her opinion on a consideration of ruling the application complete given the Town Engineer request for more information on stormwater. Ms. O'Meara replied that the applicants had shown good faith in pursuing all the issues raised by Steve Harding and was certain that they would continue to work with him to provide any necessary submissions.

With no further discussion, Mr. Cotter made a motion for the Board to consider:

**BE IT ORDERED** that, based on the plans and materials submitted, the application of John and Sarah Dorsey for a Private Accessway Permit and a Resource Protection Permit to create a second lot located at 146 Scott Dyer Rd that will include the alteration of 1,868 sq. ft. of RP2 wetland is deemed complete.

Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

Mr. Charles requested that a site walk be scheduled, and Mr. Sherman concurred. Members agreed on a site walk to be scheduled for Wed. evening May 29<sup>th</sup> at 6PM. Mr. Metcalf agreed to stake out the proposed driveway and lots.

Mr. Charles requested a Public Hearing and Mr. Cotter made the following motion for the Board to consider:

**BE IT FURTHER ORDERED** that the above application be tabled to the regular June 18, 2002 meeting of the Planning Board, at which time a public hearing shall be held.

Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

Mr. Griffin introduced the next order of business.

**Scout House Office Building Site Plan** – Request by Everett Johnson for Site Plan Review to convert the vacant building located at 1231 Shore Rd (U22-81/82) to a 1,116 sq. ft. office building and build a 766 sq. ft. addition, Sec. 19-9, Site Plan Completeness.

Jim Fisher of Northeast Civil Solutions, Inc. stepped forward to make the presentation. He began by handing out additional material to the Board members and stated that the information and material was not necessarily new or unaddressed. Mr. Fisher made note that the property under review had been previously presented and approved by the Board in 1999 for a more extensive project. The former application involved plans for a restaurant. Current proposal is for a small office building which Mr. Fisher labeled as a more benign use than what had already been accepted. Referring to the plan, he pointed out the accessway off Shore Road and the existing buildings which are to be renovated. Also outlined was a sidewalk layout and a plan for preserving many of the existing trees on the property, a feature that would have been jeopardized had the restaurant been built instead.

Mr. Fisher solicited a waiver from the Board for a site walk or Public hearing, respective of the fact that the property was familiar to members and that the additional pictures presented would suffice. He also made a plea for Final Approval with Conditions and went on to address written comments from the Town Planner and Town Engineer.

The application is submitted in the name of Everett Johnson when in fact the property is owned by Scout House Properties LLC. Mr. Fisher has corrected the ownership information in his submitted material.

The Town Engineer had requested more information with respect to the transition area between the proposed site and the abutter to the west who is, in fact, the same owner. Mr. Fisher referred to the material he introduced to members at the beginning of the presentation. Although Board members had not had time to review those plans, he hoped to point out the aspects that might satisfy the Town Engineer's concerns and satisfy a conditional approval for the project. He stated that the Steve Harding had seen the plans but not had time to make a formal recommendation to the Board.

A driveway to the office building will run along the boundary between the abutting properties. The drive will be curbed and a common lawn area will connect the properties. The Town Engineer recommended that for safety reasons the drive connect to Shore Road at a 90-degree angle. The drive proposed has an 85-degree angle in order to protect

a large oak tree at that intersection. He did not feel the difference in degree would adversely impact sight distance at that intersection.

With regard to the Town Engineer's comments concerning contours, Mr. Fisher again referred to the new submission showing that all Mr. Hardings considerations had been addressed and the plan reflects the Town Engineer's suggestions for low impact grading and stormwater diversion from the building.

Mr. Fisher then addressed the question of solid waste. Original proposal for the "Scout House" included a Dumpster to accommodate a 40-seat restaurant. The proposed office building would not need solid waste removal of that extent. A cleaning agency which currently handles Mr. Johnson's offices would also service the proposed office building.

Steve Harding had provided a letter as to his suggestions for a landscaping plan which Mr. Fisher had subsequently provided.

The applicant had requested a waiver from a lighting foot-candle radius plan, but instead provided the information on the plan newly presented to the Board. Two building mounted lights and two pole-mounted lights are depicted on the plan showing a 16.2 foot candle radii. Mr. Harding had not reviewed of the photometrics on the plan, but Mr. Fisher was confident that they would prove acceptable. If not, he assured the Board that the plan would be corrected.

Mr. Charles questioned the significance of the 16.2' radius drawn from the mounted lights on the plan. Mr. Fisher explained that that was the distance at which the candlepower of the lights met with the ordinance requirement of 0.5 foot-candles with respect to abutting properties.

A sign location and description was submitted with the new material to the Board. Mr. Fisher recognized that Board members were only presently reviewing submissions which would address the comments of the Town Engineer, but hoped, once again, to be granted final approval on condition that ultimately the sanctions of the Town Engineer would be received.

Information on financial capability had been sent to the Town Manager for review and Mr. Fisher believed that Ms. O'Meara would be receiving a memo from Mr. McGovern for the Board.

Mr. Griffin asked for discussion from the Board with regard to finding the application complete.

Ms. Lowell asked Mr. Fisher whether the maximum 2% grade requirement for handicapped parking had been addressed per the Town Engineer's comments. Mr. Fisher replied that the grade had been corrected and was consistent with that requirement.

Mr. Charles reviewed with Mr. Fisher the sequence of documentation with regard to the application submissions. He was concerned that the Town Engineer had not had time to review and comment on the material that the Board had received from Mr. Fisher at the

beginning of his presentation. Mr. Fisher replied that Steve Harding had reviewed the submissions but had not yet made comment. He noted that when the “Scout House” project was before the Board, Mr. Harding was then the Town Engineer and from that end there were few substantial changes. Mr. Fisher had requested that Mr. Harding quickly review the latest submissions and point out anything which he felt differed significantly from the original project. His response and the concerns initially sent to the Town Planner were what comprised the plan packet presented to the Board that evening. Two recommendations were not represented on the plans. One being the 90-degree driveway angle which was not at issue when the original project was approved in 1999; and the other being the transition landscaping between the abutting properties. Both properties now have the same owner.

Mr. Charles was concerned that the time frame of submissions did not allow sufficient time for the Board to receive a final plan which also would have been reviewed by the Town Engineer and Town Staff and offer their comments. Mr. Fisher replied that Town staff usually defers on technical issues to the town Engineer. Mr. Harding’s last recommendations concerned the angle of the driveway and the review of the photometrics. Having addressed those considerations, Mr. Fisher felt the Board could grant approval on condition that the plans ultimately satisfy the Town Engineer.

Mr. Sherman stated that he had no problem with a granting of completeness, but was not comfortable granting final approval based on conditions.

Mr. Griffin felt at issue was a situation in which the Board had to make a decision in the absence of input from other Town Staff and a final assessment from the Town Engineer.

Mr. Charles questioned Mr. Fisher with regard to the hardship of delaying approval until the Board is comfortable with a decision. He responded that time is a hardship in that a contractor is ready to begin the project. The offices in Mr. Johnson’s property are under contract with another company for lease and his business would need to move to the proposed office site. He appealed to the Board that given the minimal additions and changes from the original proposal and the fact that most of the plan had formerly been approved, that final approval be deemed. He stated that with regard to satisfying conditions put forth by the Town engineer, Steve Harding’s response to the plans was that “We’re golden”.

Mrs. Schenkel asked Town Planner Maureen O’Meara whether any precedent had been set for granting an approval based on conditions. Ms. O’Meara responded by outlining the timeframe involved in the application process and citing the problems involved in not completing a full review of any project submissions by Town Staff. Once approval is granted by the Board, other Town Staff will not be able to elicit changes they feel necessary unless conditions are very specific with no room for interpretation.

Mr. Sherman and Mr. Charles concurred that without due process they felt uncomfortable granting final approval. Although they were willing to make a ruling on completeness, they recommended that final approval of the application be tabled until the next meeting.

Everett Johnson asked to address the board. He was distressed with the length of process involved in reviewing his property, citing delays as expensive and time consuming. He noted that the parcel had gone before the Board three times with the current proposal representing the least complicated use. Time was crucial with respect to scheduling contractors and negotiating with potential tenants. Another month constituted economic loss and jeopardized completion of the project.

Mr. Ciraldo responded that acting on the “normal schedule” was not an effort to delay any project, but stated that when material is presented at the meeting that Town Staff had not reviewed, the Board had a responsibility to proceed in due process. Materials needed to be reviewed by the Town Staff and the Town Engineer so that the Board could make a responsible decision based on all their considerations.

Mr. Johnson stated that he was ready to go with the project two months ago but was put off by the Board; first because of a project on Mitchell Road and then because of a request for a traffic study. He insisted that his site planner had been in constant contact with the Town Planner and all elements of the application had been complete and “ready to go”. He blamed delays on the Town process.

Mrs. Johnson addressed the Board. She noted that the Johnsons owned several properties in the Town Center and had always done an exceptional job with those projects to the extent of winning awards. She and her husband had always worked with the Town to deliver the type of presentation they required and she was anxious to proceed with their new project.

Mr. Griffin questioned Ms. O’Meara on whether the delays had been incurred through Town channels. She had no recollection of any project over the years ever being bumped from an agenda. Applications are always scheduled for the next available agenda. With regard to the request for a traffic study, Ms. O’Meara denied that the Town had made that request since they considered the study performed for the restaurant proposal adequate. She recalled a specific conversation with traffic consultant William Bray to that extent. Mrs. Schenkel remembered that the Board did not request a traffic study when discussion ensued at the Planning Workshop.

Mr. Charles made comment to the Johnsons that the Board recognized their frustration but reiterated that each project had to be reviewed of its own merit. He made assurance that no intentional delay was applied to their project, only that the Board had a responsibility to proceed with due process.

Mr. Johnson questioned the Board again as to why his application was bumped from the March agenda because of a Mitchell Road Project, and why he was told that an updated traffic study was required causing him additional costs and another excessive time delay. For those reasons, he felt intimidated by the Board.

Jim Fisher stated that at the March workshop he spoke with a Town official and was told personally that because of a very detailed project being reviewed by the Board, there was no likelihood that the Johnson’s project would make that agenda. Because of that “informal comment”, the application was not submitted for the March meeting. With

regard to the traffic study, Mr. Fisher said that a waiver had been requested at the Workshop and that he had worked with Maureen toward that end. Later, dealing with William Bray to update that study, further information needed to be procured and that resulted in more time. He agreed that the Board did not dictate the delay for the traffic study.

Mr. Fisher once again pressed the Board for a conditional final approval, citing that there have been precedents for such approvals. He felt that in good faith any subsequent concerns pending other Town Staff review would be addressed and implemented after approval. With those conditions in place, and with few alterations or changes from the originally accepted proposal, the project could forego another thirty-day cycle of review.

Mr. Cotter suggested that the Board make an effort to accommodate the application for the Johnsons by taking a 15-minute recess and reviewing the new submissions. Perhaps by drafting some concrete conditions, a motion for final approval could be satisfied. Discussion ensued with regard to what precedent existed of a conditional approval. The opinion was that any prior example was very clear in its interpretation.

Mr. Griffin asked Ms. O'Meara whether or not the Board was within jurisdiction to call a recess. She stated that the procedure was acceptable if it involved the drafting of the conditions, but if there was discussion involved with regard to approval, members must go public. Board members agreed to Mr. Cotter's suggestion and Mr. Griffin ordered a fifteen-minute recess.

Mr. Griffin reopened the meeting and asked for a motion on completeness. Mr. Ciraldo made the following motion for the Board to consider:

**BE IT ORDERED** that, based on the plans and materials submitted, the application of Everett Johnson for Site Plan Review to convert/reconstruct an existing building located at 1231 Shore Rd to a 2,372 sq. ft. office building be deemed complete.

Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

Before proceeding with a motion for approval, Mr. Cotter addressed the members of the Board. He hoped that no member would feel uncomfortable with his attempt to compromise and would ultimately vote their conscience.

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

**BE IT FURTHER ORDERED** that the above application be approved subject to the following conditions:

1. The applicant submit for review an enlarged set of plans scaled 1"/10' for review by Town staff. That these plans be a copy of the plans submitted to the Planning Board on April 23<sup>rd</sup>, 2002.
2. That the plans be revised to address the concerns of the Town Engineer's letter dated May 17<sup>th</sup>, 2002.

3. That an esplanade of 5' between the sidewalk and the street, Shore Road, consistent with the Town Center zone plans, be completed and be made part of that set plan.
4. That no building permit shall be issued nor any alterations on the site, whatsoever, until the plans be revised to reflect the above conditions.

Mr. Griffin asked for a second on the motion, which was given by Mr. Schenkel.

Mr. Ciraldo questioned a determination of the approval of the Town Engineer. Mr. Cotter felt that it would be presented in a letter to the Planner and other Town Staff. Mr. Sherman also questioned a determination of meeting Town Center standards sited in item #5. Mr. Cotter felt that a determination would be made by the Planner and Town Staff. Mr. Sherman was concerned that the Board would be yielding their authority to Town entities that they relied upon but who should not be put in a position of granting plan approval.

Mr. Fisher had issue with the condition of the sidewalk, stating that the requirement would make it necessary to remove mature oak trees. Mr. Cotter, borrowing from a similar situation, made the suggestion that the design bend the sidewalk around the tree. Mr. Griffin stated that the reasoning for the configuration of the esplanade was safety for pedestrians, and also conformity within the Town Center. Mr. Fisher complied with those arguments.

Ms. Lowell asked for clarification regarding the Town Engineer's concerns with the ninety-degree angle for the driveway intersection. Ms. O'Meara explained that the ninety-degree standard is a goal that Towns try to attain. Traffic studies have proven fewer accidents occur with those standards. Mr. Ciraldo felt that the Board could make a judgement on the acceptance of the 85-degree angle proposed on the plan. Ms. Lowell was hesitant to interpret why Steve Harding initially raised an issue with the driveway angle.

Mr. Fisher was asked to review the configuration of the driveway and the reasons why it could not meet the ninety-degree standard preferred by the Town engineer. He stated that the plan was a compromise to satisfy two Town ordinances; one pertaining to driveway distance from abutting property line, and one pertaining to angle of intersection. The existing drive which is shared by the two properties currently owned by the Johnsons, has been in use for some time. The plan allows for some transitional area between the driveway and the abutting properties should ownership change at some point. Although the driveway has a slight radius toward the back, at the point of intersection the angle is very close to the ninety degree standard. A large tree at the end of the drive is also a reason for the offset to that standard.

Mr. Cotter asked that the following revisions be added to the list of conditions:

That condition #2 be amended to include a phrase at the very end that "the Town Engineer inform the Board in writing that this condition has been met".

That condition #3 be amended to include a phrase at the very end stating "with consideration to the preservation of mature trees".



Mr. Charles gave merit to Mr. Cotter's attempt to attain project approval and was distressed that the Johnsons felt the Town had subjected them to unwarranted delays. He was not of the opinion that these delays were the Town's responsibility. Given the lack of procedural process which would allow input from all Town staff, he could not make a determination of final approval for the Johnson's proposal. Ms. Lowell also was uncomfortable making any judgement without a full understanding of the concerns raised by the town engineer.

Mr. Ciraldo felt that the conditions could qualify for an approval along with their subsequent letters of acceptance. He was troubled by the inference that the Board was responsible for the time delays incurred by the applicant when in review it did not prove to be so.

Mr. Griffin also voiced concern over the fact that the Board was being sited as the reason for delays with the Johnsons project. He stated that he was very uncomfortable moving forward on the project without the input of the Town staff.

With no further discussion, Mr. Griffin asked for a vote on the motion. Motion did not carry with 3 in favor and 4 opposed.

Mr. Sherman made a motion for the board to consider:

BE IT FURTHER ORDERED that the above application be tabled to the regular June 18, 2002 meeting of the Planning Board, at which time a public hearing shall be scheduled.

Motion was seconded by Mr. Cotter. Motion carried 7 in favor and 0 opposed.

Mr. Griffin introduced the final item on the agenda.

**Highlands Trail Extension Resource Protection Permit** – Request by the Town of Cape Elizabeth Conservation Commission for a Resource Protection Permit to install boardwalks in RP1 and RP2 wetlands located at the end of the Highlands trail to a woods pond and to Two Lights Rd (U56-15, U37-4-1, U39-4-2, U39-45-1, U39-3), Sec. 19-8-3, Completeness and Public Hearing.

Mike Duddy began the presentation by orienting the Board with the trails involved on the application. The request is permit to extend the Greenbelt Trail system in the Highland and Two Lights area. The Highland Trail has a dead end. An extension is proposed to link up the Highland Trail with Two Lights Road where hikers can then continue on to Broad Cove or Jordan Farm Road. A two-phase plan is intended. Phase One would construct a trail southward along Town-owned property to connect with an easement being negotiated with the Pillsburys and then continue on to Two Lights Road. Phase Two would construct a trail along a Town-owned easement on the Cianchette Family property. That trail would be located at the southern end of the Cianchette property and wind around the small man-made pond. It would connect with a Town-owned easement which also continues on to Two Lights road. A unique feature in the Cianchette easement is that it is time limited. The 5-year window available to construct the trail will lapse in two years.

Mr. Duddy explained that the Two Phase plan was the culmination of a long process working with the Town. A workshop and Public Hearing have been completed with both the Conservation Committee and the Town Council.

RP1 and RP2 wetlands are present in both trail areas. Two types of boardwalks are proposed with trail improvements. Extensive signage is proposed to encourage hikers to utilize the trails subject to Phase One. Consideration is being paid to property owners along the Phase Two trails with regard to privacy.

Four waivers are requested with regard to submitting additional information on soils, topography, vegetation, and stormwater. The reason being that the project will not impact any conditions relative to those issues.

Mr. Sherman supported the applicant's request for waivers.

Mr. Ciraldo made a motion for the Board to consider:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth Conservation Commission to extend the Highlands Trail through RP1 and RP2 wetlands to Two Lights Rd and an existing woods pond be deemed complete.

Mr. Sherman seconded the motion. Motion carried 7 in favor and 0 opposed.

Mr. Griffin opened the meeting to a Public Hearing. With no one coming forward, the Public Hearing was closed.

Mrs. Schenkel requested that in light of a letter received from property owners the Perhams, signage be evident at the juncture of their property and the trails for better delineation of the Greenbelt system. Mr. Duddy agreed.

Mr. Griffin was troubled that no signs were to be placed at the easement running along the Mullens and the Hollidges property. Mr. Duddy explained that there was no plan to clear along the Town-owned easements along those properties, due to privacy concerns raised by the Mullens. Mr. Griffin wanted "for the record" to state that he would like to see signs marking that easement. Also of concern to him, was a swale along the pond trail that needed a structure for transversing and Mr. Duddy was in agreement. Mr. Griffin made the statement that signage in that easement would actually benefit property owners by better delineating the trail and prevent hikers from inadvertently exit the area by crossing private land.

Mr. Griifin made comment to the Board that in proceeding with this application, the Town would be saving engineering fees and other costs.

Mrs. Schenkel made the following findings of fact:

## Findings of Fact

1. The Town of Cape Elizabeth Conservation Commission is requesting a Resource Protection Permit to extend the Highlands Trail through RP1 and RP2 wetlands to Two Lights Rd and an existing woods trail, which requires review under Sec. 19-8-3, Resource Protection Permit.
2. The placement of signage along the trail will minimize wetland impacts and incursions by trail users onto private property.
3. The application substantially complies with Sec. 19-8-3, Resource Protection Permit Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth Conservation Commission to extend the Highlands Trail through RP1 and RP2 wetlands to Two Lights Rd and an existing woods pond be approved, subject to the following condition:

1. That signage in accordance with the Greenbelt Signage policy be placed along the trail and clearly mark the new entrance on Two Lights Rd, and clearly mark the Perham property with Limit of Town Property Greenbelt Signs.

Motion was seconded by Mr. Cotter and was approved 7 in favor and 0 opposed.

With no further business, Mr. Griffin asked for a motion for adjournment. Mr. Charles made a motion which was seconded by Mr. Cotter. Motion was approved 7 in favor and 0 opposed.

Meeting adjourned at 9:40PM.

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary

