

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

September 21, 2004

7:00 pm Town Hall

Present: John Ciraldo, Chair
David Griffin
Barbara Schenkel
Peter Cotter
Peter Hatem
David Sherman
Jack Kennealy

Also present was Maureen O' Meara, Town Planner.

Mr. Ciraldo called the meeting to order. The first order of business was approval of the August minutes. With corrections submitted, Mr. Ciraldo asked for a motion.

Mr. Griffin made a motion for approval of the minutes as revised. Mr. Sherman seconded the motion. **7 in favor, 0 opposed.**

CONSENT AGENDA

Leighton Farms Subdivision Amendment - Wyley Enterprises is requesting an amendment to the previously approved Leighton Farms Subdivision to revise the building envelope for lot 2 located at 2 Leighton Farm Rd (R5-32-2), Sec. 16-2-5, Subdivision Amendments.

Mr. Ciraldo reminded the Board that if there were to be substantive discussion it would have to be placed on the regular agenda.

Mrs. Schenkel made the following motion:

Motion for the Board to Consider

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Wyley Enterprises, LLC to amend the subdivision approval for the Leighton Farms Subdivision to expand the building envelope for Lot 2 be approved.

Mr. Kennealy seconded the motion. **7 in favor, 0 opposed.**

OLD BUSINESS

Murray Private Road Review - Stephen Murray is requesting review of a Private road under the Subdivision Ordinance and a Resource Protection Permit to create frontage for 2 lots located off Fowler Rd (U20-11-1/6), Sec. 16-3-2,

Subdivision Road Design and Construction Standards Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Mr. Griffin recused himself from this application.

John Mitchell, Mitchell & Associates, described the size and location of the two parcels. The proposal consists of developing a private 18 ft wide paved road for 160 ft and transitioning to a 14ft wide gravel road to end with a hammerhead turnaround. The private road acts as road frontage for the two parcels and is 660 ft in total length. Public Works is recommending two catch basins, the applicant is showing one, as there is a large oak tree, which would be effected and the drainage should be sufficient. Mr. Murray has discussed buffering with neighbors and existing lilacs will be transferred with additional lilacs to be planted.

Mr. Ciraldo opened the Public Hearing. With no one coming forth, he closed the Hearing.

Mr. Mitchell addressed the waivers that the applicant was requesting, which include the road width, the radii where the private drive intersects Fowler Rd, the 2 ft wide grass shoulder width, and the centerline radius of 40 ft, which has been reviewed and approved by Fire Chief. They are also asking for a waiver for the 8” wide water main.

Mr. Kennealy asked if the Fire Chief had verified that the water line could satisfy any fire needs.

Mr. Mitchell stated that if there were a fire, water would come off the hydrant on Fowler Road. The water line is for the household use only.

Mrs. Schenkel asked if they had applied to the DEP for a permit.

Mr. Mitchell stated yes, and a copy of the application has been submitted to the Town.

Mr. Sherman asked if there was any information to support the one catch basin vs. two.

Mr. Mitchell said that he disagreed with the catch basins and doesn't believe there is a need for them. They are proposing one catch basin on the easterly side of the entrance, opposite the 46” oak tree, and then pitch the width toward the catch basin to catch drainage.

Mr. Sherman stated he was inclined to approve with one catch basin with the condition the plans be revised to reflect comments from the Town Engineer.

Mrs. Schenkel made the following motion:

Findings of Fact

1. Stephen Murray is proposing to construct a private road, which will also require a Resource Protection Permit, in order to create road frontage for two lots located off Fowler Rd (U20-11-1/6) and which needs review under Sec. 16-3-2, Road Design and Construction Standards, and Sec. 19-8-3, Resource Protection Permit.
2. The proposed private road will require several waivers from the local road standards, which are detailed in the application and shown on the plans. The Planning Board finds that the requested waivers will not create a more hazardous traffic condition, will provide more imaginative design, will secure substantially the same standards of road design and will not have the effect of nullifying the objectives of this ordinance and the Comprehensive Plan.
3. The Town Engineer and Public Works Director are recommending the installation of catch basins to avoid a potentially hazardous ponding situation on Fowler Rd.
4. The private road will extend between 2 existing homes that will benefit from buffering.
5. The application substantially complies with Sec. 16-3-2, Road Design and Construction Standards, 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 Stephen Murray to construct a private road, which will also require a Resource Protection Permit, in order to create frontage for 2 lots located off Fowler Rd, be approved subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated 9/14/04, with the exception that 1 catch basin be installed on the easterly side of the intersection of Fowler Road and Brothers Way;
2. That the plans be revised to show the existing lilac bushes located south of the roadway will be relocated and that an additional 5 lilac bushes will be planted to create a buffer between the road and the Campbell/Mullen lot.
3. That there be no issuance of a building permit, nor alteration of the site until the above conditions have been met.

Mr. Sherman seconded the motion. **7 in favor, 0 opposed.**

Cape Elizabeth Family Medicine Addition - Dr. Craig Johnson would like to request Site Plan Review of a 1,400 sq. ft. addition to the existing medical building located at 1226 Shore Rd (U11-14), Sec. 19-9, Site Plan Public Hearing. Mark Wilcox, representing Dr. Johnson, updated the Board on the progress of the application. The intention of the applicant to begin landscaping has been held up by the Code Enforcement Officer because it would be a further violation of Site Plan Approval. His intention now is to do an addition to the main building in the fall and construct the garage and storage building in the spring.

Mr. Ciraldo opened the Public Hearing.

Alice Rand, 1222 Shore Road, has been an abutter for 42 years. The Rands had been pleased when the property had been sold to a physician. They were displeased to find one day that the buffer had been removed between the properties. They would like to see a performance guarantee before construction starts to protect their privacy and to minimize noise.

Mr. Ciraldo closed the Public Hearing and asked for questions from the Board.

Mr. Sherman is very concerned about the issues from the abutter. He is inclined to add a condition to any building prior to completion or rectification of a buffer.

Mr. Wilcox stated the applicant has made arrangements with ArborCare to proceed with the plantings and landscaping. ArborCare has given Dr. Johnson a one-year warrantee that all plantings will survive or be replaced.

Mrs. Schenkel asked for description of landscaping so the Board would know what kind of buffering would be provided.

Mr. Wilcox stated that a 2 – 2.5ft berm will be constructed, planted with evergreen trees. There will be 8 Canadian Hemlock, 1 Austrian Pine, 3 Colorado Spruce, and 5 Viburnums.

Mrs. Schenkel asked about the availability of the Canadian Hemlock and the potential issues with them concerning infestation.

Mr. Wilcox stated that they are aware of the susceptibility of the trees but there should not be any issues as long as the specimen are certified to be healthy.

Mr. Kennealy asked if the plan had been reviewed by the Rands. He suggested the Planning Board recess the meeting for a few minutes to give the Rands time to review the buffering plan.

Mr. Wilcox stated no, they had received copies of the plans and would view the plans as a working document and could adapt them.

Mr. Sherman stated that he believed the concern of the Rands is the timing of the plantings and that a performance guarantee would insure that if the plantings were not to survive, adequate funds would be available to replace any plantings.

Mr. Ciraldo asked about the phasing of the plantings.

Mr. Wilcox stated that ArborCare has offered a warrantee to stand behind materials and would replace any plantings through next fall. Dr. Johnson does not want to have a performance guarantee with the Town as he is purchasing one through the landscaping company.

Mr. Sherman is in favor of a performance guarantee because if the landscaping company were to become defunct, it would address any issues.

Ms. O'Meara stated in her memo that the performance guarantee would cover all the landscaping. She stated what normally happens is a list of unit cost and quantity is provided by the applicant. The list then is sent to the Town Engineer who will review and revise as appropriate.

Mr. Sherman stated he would want to revise the approval to state the performance guarantee must cover the landscaping.

Mr. Ciraldo asked that, if the approval states that building couldn't commence until landscaping is finished, how that would affect the applicant?

Mr. Wilcox said the applicant could lose the window of opportunity with the landscaping company. The landscaping company would not warrantee work started a month from now.

Mr. Ciraldo asked if the landscaping could commence before the performance guarantee is in place.

Ms. O'Meara stated that an applicant should not start the project until all the conditions from the Planning Board have been met. She stated there could be a condition that the Performance Guarantee had to be provided prior to issuance of a building permit.

Mrs. Schenkel that the Board should be reasonable with the applicant and not have the Performance Guarantee cover all plantings. She asked the Planner about a letter of credit that could cover this issue.

Ms. O'Meara stated that the applicant can choose a letter of credit or an escrow account.

Mr. Ciraldo stated he is inclined to go with a percentage with the understanding that if all the plantings died, the applicant is still required to replace every one of plantings that die. He suggested that a condition be placed to allow work to begin but the building permit not to be issued until the Performance Guarantee is in place.

Mr. Griffin asked if the client would be satisfied with this arrangement.

Mr. Wilcox stated no, that he is already getting a warranty from ArborCare.

Mr. Ciraldo asked about an erosion control plan.

Mr. Wilcox stated one wasn't asked for so there isn't one yet. A plan can be provided. He stated that there was a silt fencing and erosion control measure on plan that was submitted.

Ms. O'Meara stated that would meet the condition.

Mr. Kennealy wanted to go back to his concern with the Rands and if they feel this buffering would be adequate.

Mr. Ciraldo stated there had already been a Public Hearing and plans have been available to view.

Ms. O'Meara stated the Rands did meet with her.

Mr. Sherman made the following motion:

Motion for the Board to Consider

Findings of Fact

1. Dr. Craig Johnson is proposing to construct a 1,543 sq. ft. addition to the existing medical office building and a new two-car garage located at 1226 Shore Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. Vegetation has been removed from a 50' wide buffer area that should be replanted prior to construction on the site.
3. A performance guarantee should be posted by the applicant, to provide for replacement plantings in the event that landscaping dies.
4. The Town Engineer has recommended additional information that should be added to the plans to ensure that the project is constructed in accordance with the Planning Board approval.
5. The construction will require the disturbance of soil and vegetation that could result in erosion.
6. The application 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 Dr. Craig Johnson for Site Plan Review of a 1,543 sq. ft. addition to the existing medical office building and a new two-car garage located at 1226 Shore Rd be approved, subject to the following conditions:

1. That all the plantings located in the 50' wide side setback be installed prior to the issuance of a building permit or any alteration of the site in preparation for the construction of the addition or the garage. If the plantings are not installed by December 15th, planting shall occur no sooner than after the winter frost leaves

the ground and construction of the addition and/or garage shall be delayed until the plantings are in place;

2. That the applicant shall post a performance guarantee for the landscaping for a minimum duration of one year in an amount adequate to cover at least 30% of the 1st phase of the landscaping buffer in a form acceptable to the Town Attorney, an amount acceptable to the Town Engineer and all approved by the Town Manager;
3. That the plans be revised to reflect the comments of the Town Engineer's letter dated 8/9/04 with the exception of paragraph 3; and
5. That there be no issuance of a building permit or alteration of the site until the above conditions have been satisfied.

Mrs. Schenkel seconded the motion.

Ms. O'Meara stated the applicant had asked to phase the project. She asked the applicant if the phasing line reflected the limit of clearing.

Mr. Wilcox stated the cleared area extended 10 ft beyond the phase line. There would be 3 new Spruce planted in that 10 ft area.

Ms. O' Meara suggested the phasing line correspond with the limit of clearing, so that no additional clearing would be needed to install the landscaping until the garage is built.

Ms. O'Meara stated the Board might want to a make a motion that recognizes phasing of the project where all of the landscaping shown on the plan is within the previously disturbed area, and is part of the approval.

Mr. Sherman asked if on the plans they could delineate phase of landscaping buffer and then amend paragraph one of conditions to read that all plantings located in the 50ft wide setback delineated in phase one be installed prior to issuance of a building permit or any alteration.

Mr. Wilcox stated that would be acceptable.

Mr. Ciraldo asked for an amendment to the motion.

Mr. Sherman stated the amendment to condition 1 would read as follows:

That all the plantings within the 50ft wide setback delineated as Phase One be installed prior to the issuance of a building permit or any alteration.

Mr. Griffin seconded the motion as amended. **7 in favor, 0 opposed.**

NEW BUSINESS

Inn by the Sea Site Plan - HMH Ltd Partnership is requesting Site Plan Review to construct an addition and add guest rooms to the Inn by the Sea located at 40 Bowery Beach Rd, Sec. 19-5-5, Conditional Use Review and Sec. 19-9, Site Plan Completeness.

Mr. Ciraldo reminded the Board that they were looking at completeness only and then determine site walk and/or Public Hearing.

Scott Teas, principle of TFH Architects, described the application, which includes the addition of 6 new rooms, the extension of the lobby by 300 sq ft, change existing meeting rooms to guest rooms, expansion of the parking lot by removing the tennis court, upgrade of the solid waste building, changing the vehicular entrance with cobblestones to slow traffic, and addressing the trees and landscaping seen from Bowery Beach Rd. The application is put together as a checklist to make reviewing easier. He knows there are issues that have surfaced since submitting the application and they have addressed the items or are working on them.

Mr. Ciraldo wanted to address the items that were incomplete which were mentioned from the Town Engineer. These include overflow parking spaces, request for stormwater waiver, and table of landscaping plan.

Ms. O'Meara stated that there was a table, but it did not include the numbers of plantings.

Mr. Teas said that he had an adjusted planting schedule with him. He also brought a drawing of the interface of the lighting fixtures and that the parking spaces that were eliminated can be re-added to the plan.

Steve Bradstreet, Aquarion Engineering Services, addressed the storm water waiver request. They have submitted a proposal of 352 sq. ft of additional impervious area and, based on that small increase, it would not be a measurable increase of stormwater drainage and the Town Engineer had agreed.

Mr. Ciraldo stated that he thought a Public Hearing should be scheduled and a site walk if the Board thought it was warranted.

Mrs. Schenkel and Mr. Kennealy thought there should be a site walk.

Mr. Griffin made the following motion.

Motion for the Board to Consider

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of HMH Limited Partnership for an expansion of the Inn by the Sea located at 40 Bowery Beach Rd be deemed complete.

Mr. Sherman seconded the motion **7 in favor, 0 opposed.**

A sitewalk is scheduled for 6:30 at 10/5/2004.

Mr. Cotter made the following motion.

BE IT FURTHER ORDERED that the above project be tabled to the regular October 19, 2004 meeting of the Planning Board, at which time a public hearing shall be held.

Mrs. Schenkel seconded the motion. **7 in favor, 0 opposed.**

OTHER BUSINESS

BB District Zoning Amendment - The Murray Family is requesting amendments to Zoning Ordinance Sec. 19-6-6, BB District, and a Zoning Map amendment to permit moving the contracting office located on Shore Rd to the Murray Pit located at 31 Fowler Rd, Sec. 19-10-3, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara summarized the request of the Murray Family. The activities that are at the gravel pit need to be added to the text of the Ordinance to be considered permitted uses. The one correction in the text made at the September Planning Board was changing 15 acres to 20 acres minimum lot size. They also added Earthwork Contractor and Earthwork Contractors Yard.

Mr. Hatem wanted the text to be consistent and changed the term to Earthwork Contractors Yard.

Mr. Ciraldo opened the Public Hearing. With no one coming forth he closed the Public Hearing.

Mr. Ciraldo stated the applicant has been very helpful, cooperative with abutters, and he would feel confident recommending it to the Board.

Mr. Griffin made the following motion.

Motion for the Board to Consider

BE IT ORDERED that, based on the information submitted and the facts presented, the Planning Board recommends the BB District Zoning ordinance and Zoning Map Amendment to the Town Council for adoption.

Mrs. Schenkel seconded the motion. **7 in favor, 0 opposed.**

BA District Zoning Amendment - FitzPatrick Associates is requesting an amendment to Zoning Ordinance Sec. 19-6-5, BA District, to clarify the status of multi-family units in the BA District, Sec. 19-10-3, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara gave an overview of the proposal. The BA District list standards for a Multifamily but doesn't explicitly list Multifamily as a permitted use. This adds a definition to the Ordinance for Multifamily, which differentiates it from Multiplex, which for a time were considered the same type of building.

Mr. Ciraldo opened the Public Hearing and, with no one coming forth, he closed the Public Hearing.

Mrs. Schenkel asked about the setbacks.

Ms. O'Meara stated the setbacks were incorporated under Other Uses in the Ordinance.

Mr. Griffin made the following motion:

Motion for the Board to Consider

BE IT ORDERED that, based on the information submitted and the facts presented the Planning Board recommends the BA District Zoning Amendments to the Town Council for adoption.

Mr. Kennealy seconded the motion. **7 in favor, 0 opposed.**

Mr. Ciraldo asked for a motion to adjourn

Mr. Hatem made a motion to adjourn.

Mrs. Schenkel seconded the motion. **7 in favor, 0 opposed.**

Meeting adjourned at 8:45 p.m.

Respectfully Submitted,

Laurie Palanza

