

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

October 19, 2004

7:00 pm Town Hall

Present: John Ciraldo, Chair
David Griffin
Barbara Schenkel
Peter Hatem

Absent: Jack Kennealy
David Sherman
Peter Cotter

Also present was Maureen O'Meara, Town Planner.

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

Mr. Griffin made a motion for the minutes to be approved as amended. Mr. Hatem seconded the motion. **4 in favor, 0 opposed.**

Mr. Ciraldo reviewed the agenda and correspondence.

OLD 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 41 Bowery Beach Rd, Sec. 19-5-5, Conditional Use Review and Sec. 19-9, Site Plan Public Hearing.

Scott Teas, THR Architects, reviewed components of the submission, which include 11 additional guest rooms, a meeting room of 1200 sq. ft., restroom changes, kitchen expansion, and fitness center. They are also proposing to increase the parking lot by 13 spaces and upgrade the entrance with landscaping and red cobblestones as well as adding street trees along Bowery Beach Road.

Mr. Ciraldo opened the Public Hearing.

Raymond Neveu, 32 Bowery Beach Road, stated that his property is the closest to the Inn and would be most affected by the proposal. He stated his confidence in Mr. Teas for the design of the project. He believed since some of the activity from the east side lawn would be brought inside, this addition would reduce noise.

Carol Burwell, Notary Public from Westbrook, has performed wedding ceremonies at the Inn. She believes that the additions proposed would be an asset to the Inn and does not see any detriment to the environment or community. She does not believe the proposal will increase traffic significantly. She stated the Inn has preserved the environment beautifully.

Mike Mowles, Town Councilor, stated the Inn has always been a great community partner and has brought forward a good plan. He stated that there was another item on the agenda modifying the setback in the BB District and that if the counsel could have approved it that night, they would have had enough counselors to stamp it on the spot. The Inn made a compelling request in improving frontage of the building and safety concerning traffic.

Philip Holt, 66 Scott Dyer Rd, is employed by the Inn by the Sea. The Inn has more business in summer than in winter and employs many of the local students for the busy season. He stated that expanding the parking lot is not significant. When the Inn had two events being held, they would have to shuttle guests from the church, which doubles the traffic. When the east lawn is no longer having events, the amount of traffic will be reduced.

Tracy Carson, disc jockey from Saco, has performed at the Inn by the Sea. He wanted to give a different perspective as he talks to guests directly. He stated that there was a woman in tears because she was so happy that her family could be there together and that she praised the gardens, location and staff.

Don Forman, disc jockey from South Portland, stated he has done about a dozen of weddings at the Inn and wanted to emphasize that the Inn does not contract the DJ's, they are contracted by the guest. He said the Inn is diligent about having DJ's sign a noise contract. Someone on the staff checks the sound pressure level as they are concerned about the neighbors.

Whitney Lecht and Hilary Nelson, residents of Cape Elizabeth, thought the Inn was a great place to work during the summer and allowed them to save money for college.

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

Mrs. Schenkel stated that she thought it is a lovely project and would be a great addition.

Mr. Ciraldo asked the applicant to address the engineer's report.

Steve Bradstreet, Aquarion Engineering Services, said the concrete curve pavement build-up will be detailed on plans and they will reference DOT specifications for materials and installation. The lighting specification design will be reviewed and improved by Al Frick and will be incorporated into the plans as necessary. Overflow parking spaces will be incorporated and shown on plan.

Mr. Griffin made the following motion.

Motion for the Board to Consider

Findings of Fact

1. HMH Limited Partnership is proposing an expansion of the Inn by the Sea, located at 40 Bowery Beach Rd, which requires review under Sec. 19-9, Site Plan Review and Conditional Use Review under Sec. 19-5-5.
2. The Town Engineer has recommended that additional information be added to the plans.
3. In order to comply with the Off-Street parking requirements, there must be 9 overflow parking spaces available.
4. The Code Enforcement Officer is relying on the State Department of Health Engineering to review the adequacy of the septic system.
5. The Planning Board conducted a prior detailed review focusing on hosting outside events at the Inn by the Sea in a manner that complies with Site Plan Standards, particularly noise standards, which needs to be incorporated into this approval.
6. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-5-5(d), Conditional Use Standards.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of HMH Limited Partnership for Site Plan Review and Conditional Use Review of an expansion of the Inn by the Sea located at 40 Bowery Beach Rd (U17-40/39) 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;
2. That the 9 overflow parking spaces be shown on the plans;
3. That an erosion control plan be submitted;
4. That evidence of issuance of approval of the septic system by the State Department of Health Engineering be submitted;
5. That the prior Planning Board approval regulating outside events remain in effect except that the total number of guests be reduced to 172 attendees; and
6. That there be no alteration of the site nor issuance of a building permit until the plans and materials have been revised to reflect the above conditions.

Mrs. Schenkel seconded the motion.

Mr. Ciraldo made an amendment to number 5 of the Findings of Fact. **4 in favor, 0 opposed.**

NEW BUSINESS

Dunham Private Accessway Permit - Tom Dunham is requesting a Private Accessway Permit to construct a dwelling on a lot located at 11 Becky's Cove Lane (R2-4), Sec. 19-7-9, Private Accessway Permit Completeness and Public Hearing.

Sandy Dunham, 11 Becky's Cove Lane, stated that this is a lot they had purchased with the purpose of building a home on. They are asking for approval for the 12ft wide roadway that they have been using for the past 25 years to access the cottage adjacent to where they would be building new home. The road has been in existence for 100 years and has managed to handle traffic fine. She stated they had to build a retaining wall and that a crane was able to navigate the road as well as dump trucks. She said they wanted to keep the road at 12 ft wide as it deters people from coming to property and keeps the integrity of the road. Widening the road would mean removing about 10 very large old trees. She stated that Chief McGouldrick had been to the property and asked for two pine trees to be trimmed. The neighbors have had the trees removed. He had also asked for a hammerhead turnaround so the fire trucks could turnaround. She said that has been added to the plans and intends to get a small easement from the McGinns to allow this. The person that plows the driveway had told her that the plow would get caught where the pavement meets the dirt. She stated they have a verbal agreement from the Strout's for a 30ft right of way to allow for snow plowing and a verbal agreement from the McGinn's for a 250 sq. ft. access easement for emergency vehicles. The following items would be added to the plan: more details of the hammerhead turnaround, culvert information, and that the standards for proper erosion control would be adhered to during the building process. The building envelope would be revised to exclude any encroachment into the 75ft zoning set back and 30ft from any uncontested property line. There will be a clean up of the overlap of the deeds and lot one will not be affected by that.

Mr. Ciraldo reminded the Board that the item needed to be reviewed for completeness. He asked the applicant if she had in writing the emergency access easement of 250 sq. ft.

Mrs. Dunham stated no.

Mr. Hatem asked about the culvert in the driveway crossing.

Dwight Anderson, Deluca Hoffman Associates, stated they have shown for the 12" culvert but are lacking elevations and that will be added to the plans with the other minor adjustments.

Mrs. Schenkel made the following motion.

Motion for Completeness

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tom Dunham for a Private Accessway Permit for a lot located at 11 Becky's Cove Rd (R2-4S-1) be deemed complete.

Mr. Griffin seconded the motion. **4 in favor, 0 opposed.**

Mr. Ciraldo opened the Public Hearing.

Frank Strout, 1184 Shore Rd, stated he was in full support of the proposal. He said he is the person that plows and is not in favor of paving beginning of the road as the pavement will chip and break away.

Mr. Ciraldo closed the Public Hearing.

Mr. Hatem stated that they needed the proposed easement prior to an issuance of a building permit. He asked Ms. O'Meara if anyone on behalf of the Town reviewed the format of the easement.

Ms. O'Meara stated that she would read it and see if emergency rights were granted and send it to the Town Attorney for review.

The Board members questioned the transfer of land from lot 2 to lot 1.

The applicant agreed to change the note on the plan and not transfer property from the nonconforming lot.

Mr. Griffin asked about the status of the cottage.

Mrs. Dunham stated the cottage would probably be used by their handicapped child, or it could be used as a guest cottage.

Mr. Griffin stated he was uncomfortable waiving the asphalt entrance. He stated that there have been other applicants that were not granted waivers that have asked. He also stated it was dangerous for bike riders due to pebbles from the driveway ending up in the street. He asked Ms. O'Meara about a seawall that infringes on the shoreland 75ft setback.

Ms. O'Meara believes that to be an existing wall. She is aware of situations where seawall had been constructed in order to preserve property within the 75' setback.

It was confirmed that the wall wasn't existing and would have to be pushed back from the 75' high water mark.

Mr. Ciraldo echoed Mr. Griffin's concerns about being consistent with waiving the asphalt. He stated the Fire Chief and Public Works Director wanted the 14' width utilized and felt they should stay with the Ordinance concerning that. He said the applicant must

also cleanup the language concerning deeds and move the stonewall out of the 75' setback.

Mrs. Schenkel asked how many and how large the trees were along the roadway.

Mrs. Dunham stated there were 10 really large trees and would change the road immeasurably.

Mrs. Schenkel stated that there is a precedent for changing the width of the road due to trees. She would be concerned with removing all the trees for one house. The Fire Chief had initially said that the road would be ok.

Mr. Dunham stated the trees were 18" in diameter and that the neighbors had just done a significant amount of landscaping.

Mrs. Schenkel stated that she would be comfortable leaving the 12' width and protecting the trees is paramount.

Mrs. Dunham stated that it would be a shame to cut down the trees as the road has served them well for 25 yrs. The Fire Chief had not made any issue about being unable to navigate the road.

Mr. Ciraldo questioned the easement on the road that could make it become a private road.

Ms. O' Meara stated that Mr. Haffenreffer had called to make sure she was aware of his ROW to use Becky's Cove Lane. If Mr. Haffenreffer were to use Becky's Cove Lane as access to his property, the accessway would have to come back to the Planning Board and upgrade to a Private Road.

Mr. Ciraldo questioned the benefit of adding 2 ft of road and cutting down the existing trees. He is persuaded to waive the 14 ft roadway and save the trees.

The Board discussed the issue of two letters from the Fire Chief where initially the 12' road width was acceptable and a later letter wanting the road at 14'.

Ms. O' Meara had spoken with the Chief several times and that he feels strongly that standards should be adhered to and that the applicants have made a compelling case. She gave an overview of the history of what happened prior to knowing this had to go before the Planning Board.

Mr. Griffin is uncomfortable waiving the road width because of the Fire Chief's letter and thought a site walk might be helpful.

Mrs. Schenkel stated that, if there were a site walk, the Fire Chief should be there. It really troubles her that he initially stated it was alright and then saying he needs the 14 ft width.

Mr. Ciraldo stated that there are several streets that do not meet the 14 ft width.

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

Findings of Fact

1. Tom Dunham is requesting a Private Accessway Permit for a lot located at 11 Becky's Cove Lane, which requires review under Sec. 19-7-9, Private Accessways.
2. The Town Engineer has recommended design details that should be added to the plans.
3. The Planning Board finds, to promote better neighborhood development or that there is an existing private access under sec.19-7-9 d.4 b.6, that the requested waivers of right-of-way and traveled way width should be granted.
4. The 10' paving requirement on Becky's Cove Lane adjacent to Shore Rd is necessary to protect the pavement and travel safety on Shore Rd.
5. The building envelope should reflect the area available for construction on the lot that is not otherwise restricted or reserved for other uses.
6. The applicant should demonstrate right, title or interest over any area on the plan, which is designed to meet town standards, including easements for emergency vehicles.
7. The application substantially complies with Sec. 19-7-9, Private Accessways.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tom Dunham for a Private Accessway Permit for a lot located at 11 Becky's Cove Rd (R2-4S-1) be approved, subject to the following conditions:

1. That the plans be revised to reflect the comments of the Town Engineer in his letter dated 10/12/04, paragraphs 5, 6, 7, and 8.
2. That a right-of-way width for Becky's Cove Lane, for the benefit of the lot located at 11 Becky's Cove Lane, be a minimum of 30';
3. That the traveled way width of Becky's Cove Lane be a minimum of 12 ft.
4. That the first 10' of Becky's Cove Lane extending from Shore Rd be paved;

5. That the building envelope for 11 Becky's Cove Lane be revised to exclude the private accessway right-of-way and the 75' Shoreland Zoning setback and be at least 30' from an uncontested property line;
6. That the easement from the McGinns be obtained in a form approved by the Planning Department, prior to issuance of a building permit.
7. That any approval granted by the Planning Board will not include the conveyance of land from lot 1 as depicted on the plans; and
8. That there be no alteration of the site nor issuance of a building permit until the plans and materials submitted have been revised to demonstrate compliance with the above conditions.

Mrs. Schenkel seconded the motion. **4 in favor, 0 opposed.**

U.S. Cellular Tower Site Plan - U.S. Cellular, represented by LCC International, is requesting Site Plan Review to construct a 180' tall telecommunications tower located off Bowery Beach Rd (R6-29), Sec. 19-9, Site Plan Completeness, and Sec. 19-8-12, Tower Performance Standards.

Ed Shaw, LCC International, gave an overview of the application submitted to the Board. He stated that SYTDesign had been unable to provide the adjustment for the meeting where the lease area would be moved from wetland. They are planning for 6 carriers on the Tower. One of the stations will be designated for the Police Chief, which he has been in communication with. He stated that 4 of the carriers would have generators, 2 would not. Four diesel generators are proposed. He addressed the comments made by the Engineer of BH2M. He discussed the Town Tower Performance standards in reference to lighting. He has contacted the FAA and is waiting for determination that lighting is not required for a tower of 180 ft in that location.

Mr. Ciraldo reminded the Board that they are determining completeness.

Mrs. Schenkel asked if the letter of financial capability had been submitted.

Mr. Shaw stated he left a letter for Mr. McGovern. He had surmised they would use the letter from the Strout Tower. He will be submitting an updated letter of financial capability.

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 U. S. Cellular to construct a 180' tall

telecommunications tower and utility building(s) located off Bowery Beach Rd (R6-29) be deemed complete.

Mr. Hatem seconded the motion. **4 in favor, 0 opposed.**

A site walk was scheduled for October 28th at 7:30 am.

Mr. Hatem made the following motion.

Motion for the Board to Consider

Moved that application of US Cellular be tabled to November 16, 2004 at which time a Public Hearing will be held.

Mr. Griffin seconded the motion. **4 in favor, 0 opposed.**

OTHER BUSINESS

BB District Front Setback Amendment - The Town Council has referred to the Planning Board a request to reduce the front yard setback in the BB District, Sec. 19-6-6, from 100' to 50', Sec. 19-9-6, Zoning Ordinance Amendments Public Hearing.

Mr. Ciraldo opened the Public Hearing. With no one coming forward, he closed the Public Hearing. He stated that he believes this is a good amendment and would vote for approval.

Mr. Hatem made the following motion.

Motion for the Board to Consider

BE IT ORDERED that, based on the materials submitted and the facts presented, the Planning Board recommends an amendment to the Zoning Ordinance that reduces the front yard setback in the BB District (Sec. 19-6-6) from 100' to 50'.

Mr. Griffin seconded the motion. **4 in favor, 0 opposed.**

Mr. Griffin made a motion to adjourn.

Mr. Hatem seconded the motion. **4 in favor, 0 opposed.**

Meeting adjourned at 9:15p.m.

Respectfully Submitted,

Laurie Palanza

Minutes Secretary