

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

January 18, 2005

7:00 pm Town Hall

Present: David Sherman, Chair
David Griffin
Barbara Schenkel
Paul Godfrey
Jack Kennealy
Peter Hatem

Absent: John Ciraldo

Also present was Maureen O'Meara, Town Planner.

Mr. Sherman opened the meeting. The first order of business was approval of the December minutes. With no comments forthcoming, he asked for a motion.

Mr. Griffin made a motion for the minutes to be accepted as written. Mrs. Schenkel seconded. The motion carried 6 in favor, 0 opposed.

Mr. Sherman reviewed correspondence and moved to the first order of business, election of Officers. He asked for a nomination for Chair of the Planning Board for 2005.

Mrs. Schenkel nominated Mr. Sherman as Chair for the Board for 2005.

Mr. Hatem seconded the motion and carried 6 in favor, 0 opposed.

Mr. Sherman asked for a nomination for Vice Chair for 2005.

Mr. Kennealy nominated Mrs. Schenkel.

Mr. Griffin seconded the motion and carried 6 in favor, 0 opposed.

CONSENT AGENDA

Nelson Private Accessway Amendment - Dr. Robert and Janet Nelson would like to amend the previously granted Private Accessway for a lot located at 2 Ann Arbor Drive to add a definition for the building envelope that allows the placement of accessory structures outside the building envelope, Sec. 19-7-9, Private Accessways.

Mr. Sherman reminded the Board that, for substantive discussion, the item would have to be removed from the Consent Agenda.

Mr. Griffin asked if there had been any correspondence concerning this project.

Ms. O'Meara stated no.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. Robert and Janet Nelson for an amendment to the Private Accessway Permit granted for 2 Ann Arbor Drive to add a definition of activities allowed inside and outside the building envelope be approved as a Consent Agenda item.

Mrs. Schenkel seconded the motion and carried 6 in favor, 0 opposed.

OLD BUSINESS

Grover Rd Subdivision Amendments and Private Accessway Permit - Leland P. Murray, III and Stephen Murray are requesting amendments to the previously approved Grover Rd Subdivision to reconfigure existing lots, build a public road and construct a private accessway for lot 1, all located at the end of Grover Rd (U20-7), Sec. 16-2-5, Amendments to Previously Approved Subdivision Plans Public Hearing, and Sec. 19-7-9, Private Accessway Public Hearing.

Mr. Griffin recused himself.

John Mitchell, Mitchell & Associates, represents the Murrays. He stated the 1.7 acre property is located between Fowler and Grover Roads. The proposal consists of the extension of Grover Rd terminating with a hammerhead turnaround. With the exception of reconfiguration of two lots, the subdivision will remain as previously approved. The roadway is being designed as a public road in accordance with Town Standards. There are on site septic systems that have been designed by Albert Frick. Electric, Telephone and cable will run underground from an existing utility pole. There will be red maples planted, two per lot, on both sides of the roadway. Four catch basins within the road area will all be connected with a stormdrain pipe to discharge onto an abutter's property. They are in the process of getting a signed easement from the abutter. They are requesting waivers for a sidewalk and substituting a pathway to be created from Grover Rd to Fowler Rd. They are asking for a reduction in side slope from 3-1 to 2-1 in a localized area. They are requesting a waiver for a detention basin, as there are no downstream impacts. The last waiver requested is for the road maintenance agreement as the road will be public. He asked that the application be tabled, as they were unable to get the necessary revisions made prior to the meeting.

Mr. Sherman opened the Public Hearing. With no one coming forward, he closed the public hearing.

Mr. Godfrey asked Ms. O'Meara what the process was for the Town to accept the road as public.

Ms. O'Meara stated that the Planning Board will review a project, and it is the Board's responsibility to make sure the road is built in accordance with Town's standards. After the project is built, the applicant will apply to the Town Council for acceptance of the road. The Town Engineer and Public Works Director will visit the road regularly and verify road construction is in accordance to the plans. At the end, the Town Engineer will submit a punch list for the Town Manager of what needs to be completed for the road and finally the Council will determine acceptance.

Mr. Sherman asked what the rationale was in asking for the sidewalk waiver.

Mr. Mitchell stated that there is not an existing sidewalk to connect to. Town staff recommended a pathway to connect to Fowler Road, as there are plans for a sidewalk in the future.

Mrs. Schenkel made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Leland and Steve Murray for amendments to the previously approved Grover Rd Subdivision to reconfigure existing lots, build a public road and construct a Private Accessway for lot 1, all located at the end of Grover Rd (U20-7) be tabled to the February 15, 2005 meeting of the Planning Board.

Mr. Kennealy seconded the motion and carried 5 in favor, 0 opposed.

NEW BUSINESS

Higgins Resource Protection Permit - Thomas and Susan Conley Higgins are requesting a Resource Protection Permit to construct a driveway over an RP2 wetland on a lot located adjacent to 1084 Sawyer Rd, Sec. 19-8-3, Resource Protection Permit Completeness.

Albert Frick, Albert Frick Associates, presented the Higgins application. He stated the proposed parcel is 84,152 sq. ft. and is current owned by Alice Larrea. In order to access the building site, the applicant would need to cross a small area of RP2 wetlands that is approximately 23 ft. wide and 37 ft. long and would allow them access to the upland knoll and build a 28' x 40' house with an attached 24' x 24' garage with an onsite septic system and public water. The applicant attempted to avoid the wetland by obtaining an easement over the abutting lot, but it was not feasible.

Mr. Sherman stated that the first item is to determine completeness.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Thomas Higgins and Susanne Higgins Conley for a

Resource Protection Permit to construct a driveway over a wetland located on a lot west of 1084 Sawyer Rd be deemed complete.

Mr. Hatem seconded the motion and carried 6 in favor, 0 opposed.

Mr. Sherman stated the Board needed to determine if a site walk and/or Public Hearing would be in order.

Mrs. Schenkel stated she thought there should be a Public Hearing as there was a letter from a neighbor, but did not think a site walk would be necessary, as you wouldn't be able to see anything.

Mr. Sherman stated there would be a Public Hearing scheduled February 15, 2005.

Mr. Hatem made the following motion.

BE IT FURTHER ORDERED that the above application be tabled to the regular February 15, 2005 meeting, at which time a public hearing shall be held.

Mrs. Schenkel seconded the motion and carried 6 in favor, 0 opposed.

OTHER BUSINESS

BA Wetlands Zoning Amendment - The Town Council has forwarded to the Planning Board a request to consider an amendment to the Zoning Ordinance that would reduce the RP1 Buffer from 250' to 100' for properties in the BA District which are served by public sewer, Sec. 19-10-3, Amendments Public Hearing.

Mr. Sherman asked Ms. O'Meara for clarity on the scope of this amendment and the amount of property this would affect.

Ms. O'Meara stated that the proposed amendment would only impact properties in the BA District and properties immediately adjacent to the BA District as well as adjacent to a wetland. There are two BA Districts. One is in the northerly part of Town, on Shore Road, where there is no wetland so it would not be affected by this amendment. The other BA District, which is on the southerly end of Route 77, does have a wetland to the west and this amendment would impact property owners. The RP1 wetland has a buffer of 250'. There are four existing ways to reduce the buffer to 100' from the current ordinance. The first is if the buffer is established from a sand dune rather than an actual wetland. A second is if the wetland is less than 2 acres in size. The third way is if property is in a densely developed area. The fourth way is if the development site is topographically distinct from the wetland. The proposed amendment would add a fifth criteria that if the property is in the BA District and is connected to public sewer and water, than you would be eligible to reduce your buffer from 250' to 100'.

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

Mr. Griffin asked if the memo from the Conservation Commission had been publicized.

Ms. O' Meara had stated that no unique effort was made to publicize. The letter was sent to the Planning Board, Town Council and was available to the public from her office.

Mrs. Schenkel stated there was a resident who called her and she told them about the Public Hearing in which they could voice their opinions.

Mr. Griffin stated he would be in favor of recommending this to the Council.

Mrs. Schenkel stated that since there were buildings already nonconforming to the Ordinance and the limited amount of BA District, she would be in favor of recommending to the Council.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the materials and facts presented, the Planning Board recommends the BA District Wetlands Amendment to the Town Council for adoption.

Mr. Kennealy seconded the motion and carried 6 in favor, 0 opposed.

Undersized lots Zoning Amendment - The Town Council has forwarded to the Planning Board a request to consider an amendment to the Zoning Ordinance that would reduce the minimum buildable lot size for lots served by public sewer to less than 10,000 sq. ft. The draft amendment would reduce the minimum lot size from 10,000 sq. ft. to 7,500 sq. ft. and require that lots comply with the Mandatory Affordable Housing Provisions, Sec. 19-7-4 and will be reviewed in compliance with Sec. 19-10-3, Amendments Public Hearing.

Mr. Sherman stated this had been discussed at multiple workshops and asked Ms. O'Meara for a summary of this proposed amendment.

Ms. O'Meara stated that nonconforming lots existed prior to current zoning and when they were created, they were legal. There is a separate set of setbacks for those nonconforming lots. The Town Council forwarded a request to the Planning Board to look at undersized lots and the opportunity to create affordable housing in Cape Elizabeth. The Planning Board looked at lots from 7500 s.f. to 10,000 s.f. and on public sewer. Allowing the lots to be developed as affordable housing would respect the original intent of the Ordinance, making the lots buildable that are currently unbuildable.

Mr. Kennealy asked for an estimated number of lots that this would effect.

Ms. O'Meara stated it would be difficult to ascertain an exact number as the assessing maps reflect ownership and not all the lots that have been recorded in subdivisions. If a person owned two lots, the maps may show only one lot. Under the ordinance, a property owner may break off one of the subdivision lots and be able to develop it separately. Because of that, a separate data layer was created on the GIS mapping system in 1999. Using this layer, lots were eliminated if located in wetlands, if public sewer was not available, and those with conservation easements on the lots. The estimated number of lots is 41.

Mr. Sherman asked if the lots were located in one area.

Ms. O'Meara stated they were predominantly located in the northern part of Town in the Oakhurst neighborhood. There are also lots located on Rt. 77 south of Mitchell Road.

Mrs. Schenkel asked about the sales of affordable housing in subdivisions where required and asked about the apparent need of affordable housing.

Ms. O'Meara stated the Town monitors the income of the buyer, the cost that the house can be sold for, that the new property owner meets the income guidelines, and that the deed rider has been incorporated into the deed, making the lot permanently affordable. She does not maintain a list of potential buyers, however, there are calls regularly from single parents, older couples, and young families. These calls get directed to builders where they get placed on a waiting list. A lot more calls come in than affordable housing is available.

Mrs. Schenkel asked the difference between affordable and moderate income housing and the maximum amount they could sell for.

Ms. O'Meara stated low income housing is defined as 50-80% of median income for the Portland area. Moderate housing is 80-150% median income. The Maine State Housing Authority provides new figures yearly. The most current affordable housing sales information would be \$134,773.00 for low income. Moderate income would result in a selling price of \$252,699.00. The maximum income allowed would be \$46,800.00 for low income housing and \$80,750.00 for moderate income housing. These numbers are from end of year 2003.

Mr. Sherman opened the Public Hearing.

John McHugh, 255 Mitchell Road, realizes there is a problem with affordable housing not only in Cape Elizabeth, but in all of Southern Maine. He stated that he would be a potential beneficiary if there were an amendment to the Ordinance. He stated the character has changed from rural to suburban. He bought his home with his perception of affordable and believed he was making a secure investment. He submits that allowing smaller lots will add pressure to municipal services and that younger families with school age children would be moving into those homes and there are already enough problems managing the school budget. He feels that the affordable housing would compromise the

quality of construction and could negatively impact the value of his home. He believes there would be a lot of implications from this amendment and urged the Board to look strongly at it.

Jeffrey Armstrong, 18 Avon Rd, wanted to speak against the proposed amendment as it would change the character of neighborhoods, especially where he lives as there are a lot of paper streets with smaller lots. It would be unfair to some people who bought their house next to these properties when at the time they could not be built on due to the Ordinance. He stated that some lots in his neighborhood could be divided into 3 buildable lots. He asked why Shore acres wasn't mentioned as a neighborhood with any of these lots.

Ms. O'Meara stated that most of the undeveloped lots in Shore Acres are already buildable under the 10,000 sq. ft nonconforming lot provisions.

Mr. Armstrong stated some those lots have been combined, so there could be 2 or 3 lots.

Ms. O'Meara stated that was correct, however, that was taken into consideration with 1999 GIS mapping. She said there probably are some lots less than 10,000 sq. ft., but most were already buildable.

Mr. Armstrong asked how would you control the price of the affordable house.

Ms. O'Meara stated that you when you apply for a building permit for an affordable home, you would have to demonstrate that you have put a deed restriction on the lot that says it will be permanently affordable. This restriction will also state that when the property is sold in the future, it will have to be sold to someone in the low or moderate income range for the low or moderate income price. The value of the property can increase as income in the region increases.

Paul Vose, 4 Shaw Farm Road, is a proponent of high density development. He stated he values the farming heritage of the Town and pleased with the development rights of the Jordan Farm. He believes in established neighborhoods, it is a good place to put housing. He believes it important to be respectful of the people already living there. Zoning Ordinances change with the needs of the community, and that people should stay informed. He also feels that if you buy a home at \$500,000, it is an awkward fit to build a home from \$130-\$230,000 next door to it. He also does not advocate ignoring affordable housing and feels there is a real need for it. He asked if on subsequent sales of affordable units, is it possible to lower the price in a soft market.

Ms. O'Meara stated that there is a time limit of 12 months, and then the Town can step in and buy the property. If the Town denies buying the property, the seller may drop the price.

Mr. Vose agrees with making the lots buildable, but not affordable and questioned the legality of forcing the lots to be affordable.

Mr. Sherman closed the Public Hearing.

Mr. Kennealy asked if existing lots could be subdivided.

Ms. O'Meara stated there are 200 subdivisions recorded in the Town that started from the 1800's. This provision applies to lots that are already recorded that can be divided. This is not subdividing land, these are lots that have already been subdivided and held in common ownership by a single owner.

Mr. Kennealy asked how many affordable lots does the Town have currently

Ms. O'Meara stated there were 6 properties that are occupied and 3 that have been approved and pending construction.

Mr. Godfrey asked about the reduced road frontage and if that was due to the smaller lot size.

Ms. O'Meara explained that the reduced road frontage amendment is a companion amendment that seemed to fit logically with these amendments. Creating a separate road frontage for nonconforming lots is consistent with the other separate standards in the Ordinance. Ms. O'Meara stated that making a 7500 s.f. lot with 125' road frontage would not be consistent with the intent of the nonconforming provisions.

Mrs. Schenkel stated her concern that people working in this town are unable to afford to live in this town and older people who will not be able to afford the taxes to continue to live here. She is inclined to lean toward moderate income housing.

Mr. Hatem stated it is an option for the builder to choose low income or moderate income affordable housing.

Mr. Griffin stated he is interested in having the Town get revenue from these lots to be developed. He is not in favor of restricting the property owners to the mandatory affordable housing. He would like the property owner to be able to choose if they want their property to be affordable.

Mrs. Schenkel stated she respectfully disagrees and believes the Town desperately needs affordable housing. This restriction is less restrictive than not being able to build at all.

Mr. Sherman echoed Mrs. Schenkel's comments. This provision is adding to the property owner's rights, not taking them away. He believes one caveat is that a lot of people may not know this would affect them and wondered if it could be published in the Cape Courier.

Ms. O'Meara stated the lots are identified but may not be exact because the wetlands mapping is not exact and an accurate accounting would require a lot by lot buildability analysis. Notices may be sent if directed, however, there is also a desire to conserve

expenditures, and a final decision was made to provide public notice as required by the Ordinance.

Mr. Hatem is not in favor of individual noticing. He is strongly in favor of the proposal and though it is not perfect, it is a start. He is sensitive to issues from raised from the audience and is open to other ideas.

Mr. Sherman stated that it would behoove anyone in the neighborhoods mentioned tonight to let their friends and neighbors be aware of this issue.

Mr. Hatem made the following motion.

BE IT ORDERED that, based on the materials and facts presented, the Planning Board recommends the Undersized lots Amendments to the Town Council for adoption.

Mr. Kennealy seconded the motion and carried 6 in favor, 0 opposed.

Mr. Griffin made a motion to adjourn.

Mrs. Schenkel seconded the motion and carried 6 in favor, 0 opposed.

Meeting adjourned at 8:35 p.m.

Respectfully submitted,

Laurie Palanza
Minutes Secretary

