

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

July 17, 2007

7:00 p.m. Town Hall

Present: Barbara Schenkel, Chair  
Paul Godfrey  
James Huebener  
Beth Richardson

Scott Collins  
Peter Hatem  
Jack Kennealy

Also present was Maureen O'Meara, Town Planner.

Mrs. Schenkel called the meeting to order and called for comments or corrections of the minutes of June 19, 2007. Mrs. Richardson made a motion to accept the minutes and Mr. Kennealy seconded. The minutes were approved without amendment 7-0.

CONSENT AGENDA

**Jordan Family Subdivision.** The Jordan Family would like to amend the previously approved 3-lot subdivision located at the end of Deer Run Rd. (R5-30) to include a phasing plan, Sec. 16-2-5, Amendment to previously approved subdivisions.

There were no questions or discussion by the Board. Mr. Godfrey made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Jordan Family to amend the previously approved Jordan subdivision located at the end of Deer Run Rd to create a phasing plan be approved.

Mr. Kennealy seconded the motion and the motion was approved 7-0.

**Lot 96/97 Cross Hill Subdivision Amendment.** Stephen Parkhurst is requesting an amendment to the previously approved Cross Hill Subdivision to realign the common property line for lots 96 and 97 located at 2 and 4 Peppergrass Rd. (U60-20/19), Sec. 16-2-5, Amendment to previously approved subdivisions.

Since there were no questions or discussion from the Board, Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Cross Hill LLC to amend the common

boundary of lots 96 and 97, located at 2 and 4 Peppergrass Rd, in the Cross Hill subdivision be approved.

Mr. Collins seconded the motion and it was approved, 7-0.

**Dietz/Herrera Cross Hill Subdivision Amendment.** Margaret Dietz of 1198 Sawyer Rd. (U59-52-1) and Richard and Heidi Herrera of 1206 Sawyer Rd. (U59-19) would like to amend their common boundary line so that a paved area on the Dietz lot could be used as a driveway for the Herrera lot, Sec. 16-2-5, Amendment to previously approved subdivisions.

Since there was no discussion by the Board, Mr. Kennealy made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Dietz and Richard and Heidi Herrera for an amendment to the lot 63 lot line, located at 1198 and 1206 Sawyer Rd, of the Cross Hill Subdivision be approved.

Mr. Huebener seconded the motion and it was approved, 7-0.

OLD BUSINESS

**Bothel Subdivision.** Stephen and Patricia Bothel are requesting Minor Subdivision Review of a proposed 5-lot subdivision located at 90-98 Ocean House Rd. (U26-6/6A/7), Sec 16-2-3, Minor Subdivision Public Hearing.

Mr. John Mitchell, of Mitchell and Associates, introduced the project to the Board. He outlined the changes that have been made to the plans since the last submission. He summarized new notes added to the plans, and metes and bounds added. He also noted that there are now two new legal documents, an easement for the 50 ft. right of way and open space, and a document outlining restrictions and covenants on the open space.

Mr. Mitchell also noted that they are requesting four waivers; Storm water, Scale on the plan, Road to remain unnamed, and Financial capability. The reason for these waivers is that there are no plans for any new improvements. This phase is just to delineate the boundaries of the existing structures on the land.

Mrs. Schenkel opened the public hearing.

Angela O'Neil of 30 Westminster Terrace, Canterbury on the Cape, wants to know about the land in the back of the plan. She asked about what the plans are for that land, and how it will affect Canterbury.

Mr. Mitchell responded that the applicant has no plans to develop this property in the foreseeable future. There have been plans drawn up to show what is possible, but that is not on the agenda right now. Considering the cluster zoning, it is possible to place 17 lots on the land, but that was only an exercise to show what is possible, not what is proposed.

Ms. O'Neil also asked how close to Canterbury the property lies. Mr. Mitchell estimated that it is approximately 300 ft from Canterbury.

Ms. O'Meara also noted that any development of the back land is not a part of the current agenda.

Stephen Monaghan of 29 Westminster Terrace said that he is here mainly to be educated. How close to the line would the development come? What is the minimum setback to the line?

Ms. O'Meara replied that the RB Zone requires cluster development, so it is not possible to tell how close to the line any development would come. The plan shown has about 300 ft. from the line to the nearest lot.

There were no further questions, and the public hearing was closed.

The Board had no further questions for the applicant, so Mr. Godfrey made the following motion:

#### Findings of Fact

1. Stephen and Patricia Bothel are requesting Minor Subdivision Review of a 5 lot subdivision located at 90 and 98 Ocean House Rd, which requires review under Sec. 16-2-3, Minor Subdivision Review and Sec. 19-7-2, Open Space Zoning.
2. The applicants will be preserving two open space parcels in compliance with the Subdivision Ordinance Impact Fee and the Open Space Zoning Provisions.
3. The application substantially complies with Sec. 16-2-3, Minor Subdivision Review, and Sec. 19-7-2, Open Space Zoning Provisions.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephen and Patricia Bothel for Minor Subdivision Review of a 5 lot subdivision located at 90 and 98 Ocean House Rd be approved, subject to the following condition:

1. That open space deeds be submitted in a form acceptable to the Town Attorney and signed by the applicants

Mr. Huebener seconded the motion and it was approved, 7-0.

**Inn by the Sea Site Plan Amendments** - The Inn by the Sea LLC is requesting an amendment to the previously approved site plan for an expansion that will add 15 guest rooms, parking, a utility shed, landscaping and miscellaneous renovations to the Inn by the Sea, located at 40 Bowery Beach (U17-40), Sec. 19-9, Site Plan Public Hearing.

Scott Teas, Architect for the project, opened the remarks on the project. Since there were no questions on the building itself, Mr. Teas turned the meeting over to Steve Bradstreet of Edwards and Kelsey, Civil Engineers.

Mr. Bradstreet addressed the items in the memo of July 17, 2007. He said he had met with the Fire Chief to address the concerns that he had. He outlined those items and the resolution of those issues. He also discussed some of the landscape plans and then referred the items about plantings in the planters to Barry Hosmer.

Barry Hosmer, Landscape Architect talked about why the use of planters is proposed and what will be in those planters. It will be a seasonally changing assortment of flowers, greens, etc.

Mr. Bradstreet then discussed the new lighting plans and that they will have the property lines delineated. The criteria about light at the property lines will be met. They will have no difficulty meeting the standard.

Overflow parking will be available at St. Bartholomew's. He noted that there is an agreement with the church. He said they will have no problem meeting all the conditions in the memo from Oest Associates.

Mrs. Schenkel opened the Public Hearing.

There were no questions or comments, so the Public Hearing was closed.

Mrs. Schenkel then called for questions or comments from the Board.

Mrs. Schenkel asked if there have been any problems with the septic system in the last 3 to 5 years.

Mike Zimmerman of Olympia Development stated that there have been no problems with the septic system in the last 3 to 5 years, even in the height of the summer season.

Mrs. Schenkel then asked if there were any upgrades to the Septic system planned as a result of this expansion and addition of rooms.

Mr. Bradstreet replied that the current system is adequate to meet the addition.

Mr. Godfrey had further questions about the annual testing of the system. Who has responsibility? Who will do the testing?

Mr. Bradstreet replied that Al Frick would be testing, with Mark Cenci either duplicating or reviewing them. Then the results would be sent to Bruce Smith, Code Officer for his approval.

Mr. Godfrey also questioned the sight distances for the temporary entrance.

Mr. Bradstreet noted that the distances are very adequate, and do not need to be measured precisely because there is more distance than needed for the speed limit in effect.

Mr. Godfrey also questioned the lack of pavement detail for the short term pavement.

Mr. Bradstreet said it would be the same as the other paved areas, and was not included as a separate item.

Mr. Collins wanted an explanation of the use of parking at the church.

Mr. Bradstreet explained how the number of needed parking spaces is figured for larger events. The number available on site is not enough to accommodate a large event, so an agreement has been reached with St. Bartholomew's Church to use additional parking there when needed.

Mr. Collins wondered if the Planning Board needs to put a restriction on the number of guests at an event.

Ms. O'Meara said the board has put such a limit on the Inn. She gave a brief history of outdoor events at the Inn, and noted that the additional parking is needed in order to hold large events. She also noted that it is possible the Inn would host more than 176 guests at an event and this may be an opportunity to open this up so there will not be a violation in the future.

Mr. Zimmerman stated that the General Manager of the Inn had told him there were no plans to have any event with more than 150 people in attendance.

Ms. O'Meara said that with the added parking available in the agreement, the Inn could host 176 people at an event.

Mr. Zimmerman reiterated that 150 would be the maximum number for them, but that they are planning to keep the restaurant open during special events for their regular guests who are not involved in those special events. Ms. O'Meara noted that if the Inn would leave the restaurant open, they could not use the "restaurant" spaces to meet the parking requirement for outside events. Without those spaces, outside events would be limited to 128 guests. If the Board wanted to assume that some of the guest rooms would be occupied by people attending the outside events, then some shared parking of the guest room spaces with outside event spaces could be approved.

A long discussion of number of parking spaces ensued. The discussion centered upon how many guests at large functions would be staying at the Inn, and therefore could be considered shared parking spaces. How would the Inn accommodate more cars than expected, and how many parking spaces will be needed to keep the restaurant open. The applicant offered that when the Inn had run out of spaces in the past, they have requested permission for additional spaces at St. Barts, which they received. At the end of the discussion, the Board asked how they could approve the project this evening rather than table it to next month. The applicant prefers that the Board set conditions, rather than table the application. If they choose to change the conditions, they can do more research on the parking and return with a new application.

Mr. Hatem made the following motion, which was seconded by Mr. Huebener:

#### Findings of Fact

1. The Inn by the Sea is proposing an expansion that will add 15 guest rooms, parking, a utility shed, landscaping and miscellaneous renovations to the Inn by the Sea located at 40 Bowery Beach Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer has identified several construction details that should be addressed to avoid conflicts during construction.
3. The Site Plan regulations restrict light levels to no more than .5 foot-candles at the property line.
4. The Planning Board has previously decided on conditions that are needed to hold outdoor events.
5. The applicant will be removing most of the landscaping in the front of the property and should show how those areas will be revegetated.

6. The application substantially complies with Sec. 19-9, Site Plan Regulations.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Inn by the Sea LLC to add 15 guest rooms, parking, a utility shed, landscaping and miscellaneous renovations to the Inn by the Sea located at 40 Bowery Beach Rd be approved, subject to the following conditions:

1. That the plans be revised per the Town Engineer's letter dated 7/11/07;
2. That additional foot-candle lighting information be provided for the area west of the new parking lot demonstrating that the lighting level is less than .5 foot-candles at the property line;
3. That the Inn by the Sea no longer be required to perform water quality testing but be required to have a Maine registered soil scientist inspect the septic system once a year on or about September 15 and submit the results of this inspection to the Town of Cape Elizabeth Code Enforcement Officer;
4. That the previous conditions on holding outdoor events apply to this approval, subject to modification that the total number of guests for outside events is capped at 150 with the restaurant to remain open and six guestrooms to be considered shared parking spaces ;
5. That a landscaping plan for the area between the addition and the sidewalk be provided; and
6. That there be no alteration of the plan nor issuance of a building permit until the plans have been revised to reflect the above conditions.

The Motion was approved, 7-0.

#### NEW BUSINESS

**Ocean House Child Development Center Site Plan** - Laurie Grant and Peggy Littlefield are requesting Site Plan Review to expand a day care facility from 35 to 60 children and relocate from the Methodist Church located at 280 Ocean House Rd to the former Maxwell Farm Market located at 185 Spurwink Ave (U28-15A), Sec. 19-9, Site Plan Completeness and Public Hearing.

Before any discussion of this application, Ms. O'Meara disclosed that her child is a student at this Center, and she has discussed this potential conflict with the

Town Manager and the Board. The Board has the option to contract for another planner to review this project.

Mrs. Schenkel noted that the Board was unanimous in agreement that Ms. O'Meara would be fair and impartial in her review of this project.

Laurie Grant, co-owner along with Peggy Littlefield, introduced the project. They are proposing to move the Center to the former Maxwell's Farm Market and expanding the number of children to be served. They will be using the existing building, existing parking, lighting, and landscaping. They will convert the first floor into classrooms and the only addition will be to add fencing for a play area outside. This will accommodate up to 47 children. As they are able and enrollment increases, they would like to expand into the basement area and enlarge the play area to accommodate up to 60 children.

Mr. Kennealy questioned the interior square footage requirements. Are they set by the State?

Ms. Grant replied with the numbers that are required by the State for a child care center.

Mr. Hatem made the following motion:

Based on the plans and materials submitted and the facts presented, the application of Laurie Grant and Peggy Littlefield for Site Plan Review and a Conditional Use Permit to expand the Ocean House Child Development Center from 32 to 60 children and relocate the day care facility from the Methodist Church located at 280 Ocean House Rd to the former Maxwell's Farm Market located at 185 Spurwink Ave be deemed complete.

Mr. Collins seconded the motion and it was approved, 7-0.

Mrs. Schenkel opened the public hearing. No one came forth with questions or comments, so the public hearing was closed.

Mrs. Schenkel had a question for Ms. O'Meara. She asked if the applicants would need to come back to the Board when they enlarged to 60 students.

Ms. O'Meara said that if the approval was for 60 students, they would not need to come back again, when they expanded to that number. If the approval was for 47 students, then they would need another approval in order to expand beyond that number.

Mr. Huebener made the following motion:



## Findings of Fact

1. Laurie Grant and Peggy Littlefield are requesting Site Plan Review to expand the Ocean House Child Development Center from 32 to 60 children and relocate the day care facility from the Methodist Church located at 280 Ocean House Rd to the former Maxwell's Farm Market located at 185 Spurwink Ave, which requires review under Sec. 19-9, Site Plan Regulations and Sec. 19-5-5 Conditional Use Standards.
2. The applicants are seeking approval to expand from 32 to 47 children, with long-term expansion to 60 children.
3. The day care facility will be located in a developed site which has previously received site plan approval and minimal site changes are proposed.
4. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-5-5, Conditional Use Standards.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Laurie Grant and Peggy Littlefield for Site Plan Review and a Conditional Use Permit to expand the Ocean House Child Development Center from 32 to 60 children and relocate the day care facility from the Methodist Church located at 280 Ocean House Rd to the former Maxwell's Farm Market located at 185 Spurwink Ave be approved, subject to the following conditions:

1. That prior to the expansion of the day care facility from 47 to 60 children, a state license for 60 children be obtained and the fenced-in play area be increased to a minimum of 75 sq. ft. per child.

Mrs. Richardson seconded the motion and it was approved, 7-0.

**Jonesy's Convenience Store Site Plan** - Gregg Jones would like to request Site Plan Review to convert the gas/service station located at 298 Ocean House Rd (U22-78) to a Convenience Store/gas station, Sec. 19-9, Site Plan Completeness.

Gregg Jones spoke first to explain that he wants to discontinue operating as a service station, and convert to a convenience store and sandwich shop.

Ron St. Pierre project manager for R. H. Foster, spoke to outline the plan. He addressed the issues raised by Ms. O'Meara in her memo dated 7/17/07. He said they are providing a deed for the property, have added abutters names on the plans, and spoke about the changing curb cuts. He also addressed the other items in the memos.

Mrs. Schenkel addressed the requested waiver of the financial capacity. She informed the applicant that the information provided would not be shown to the Board, or the public, only to the Town Manager.

The applicant will provide that information to the Town Manager.

Mr. Collins had a question about the lighting, and the need to have more information about the light at the boundary of the property. Mr. St. Pierre assured the Board that he will provide that information.

The utilities were addressed next. It was noted that a force main is shown on the plan, but in actuality, according to Mr. St. Pierre, it has never been built. The other utilities, water and electric, are also not shown on the plan, and the Board is reluctant to grant a waiver for them to remain unmarked on the plan.

Mr. Godfrey and Mr. Hatem are feeling that this application is not complete at this time. They are of the opinion that this is not ready for a public hearing. Given the size and importance of the project, Mr. Godfrey does not feel that this application is complete.

Ms. O'Meara was asked if it was her professional opinion that the application was complete or incomplete. She said incomplete and noted many of the deficiencies, such as unclear boundaries, the force main, the setback of the existing building, and the lack of a surveyor's stamp on the boundary plan. She acknowledged the sentiment of the Board to support a local businessman, but if that is set aside, there are too many items missing.

Mr. Hatem asked if the Board could deem the application incomplete and still schedule a public hearing for next month. Ms. O'Meara explained that the public likes to have a complete application available for review prior to the public hearing. Mrs. Richardson expressed concern with compromising the integrity of the public hearing.

Mr. Godfrey made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Gregg Jones for site plan review to convert Jonesy's, an existing gas/service station located at 298 Ocean House Rd to a gas station/convenience store be deemed incomplete.

Mr. Hatem seconded and the motion passed, 6 in favor-1 opposed (Collins).

The Board expressed regret at refusing to pass this project along, but they felt it was too important a parcel to not have all the information in good order.

**Crescent Beach Retirement and Assisted Living Community LLC Site Plan** - Canyon Creek Development LLC would like to request Site Plan review of the redevelopment of the Viking nursing home located at 126 Scott Dyer Rd (U45-4) ) to a 60 bed assisted living and 40 unit eldercare housing facility, Sec. 19-9, Site Plan Completeness.

Steven Bae and Albert Castaneda from Canyon Creek Development of Salem Oregon, introduced the project, and announced the plan to host some of the disabled athletes who will be here for the Beach to Beacon race in a few weeks.

Chris DiMatteo of Sebago Technics reviewed the site plan. He noted the wetlands and upland and wooded buffer. The proposal is to remove an existing wing of the building which had 60 nursing home beds, and replace it with another building which will have 40 senior apartments.

Mr. Kennealy made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Canyon Creek LLC for site plan review of the Crescent Beach Retirement and Assisted Living Community, including 55 assisted living beds and 40 eldercare apartments, located at 126 Scott Dyer Rd be deemed complete.

Mrs. Richardson seconded the motion and it was approved, 7-0.

David Schaeffer, of Woolley-Morris Architects, then answered questions from the board about the size and composition of the units. He also talked about the materials to be used in the construction of the building. There will be a mix of studios and one and two bedroom units. More one bedroom units are planned than studios or two bedroom units.

A site walk was scheduled for Tuesday August 7, 2007 at 6:00p.m.

Mrs. Richardson made the following motion:

BE IT FURTHER ORDERED that the above application be tabled to the regular August 21, 2007 meeting of the Planning Board, at which time a public hearing shall be held.

Mr. Huebener seconded the motion and it was approved, 7-0.

Mr. Kennealy made a motion to adjourn, seconded by Mrs. Richardson, and it was unanimous.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Hiromi Dolliver  
Planning Board Secretary