

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

November 26, 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 discussion or corrections of the minutes of October 16, 2007. Mr. Hatem moved to accept the minutes, and Mrs. Richardson seconded. The minutes were approved without amendment, 6-0.

Mrs. Schenkel also thanked Mr. Kennealy for his service to the Planning Board. He is leaving the Board, and this is his last meeting.

OLD BUSINESS

Maskewitz/McMullin Resource Protection Permit - Dianne Maskewitz and Scott McMullin are requesting a Resource Protection Permit for 4,191 sq. ft. of previously filled wetland and pond for landscaping located at 221 Fickett Street (R4-51-5), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Attorney Bob Danielson introduced the item to the Board on behalf of the applicants. He also introduced Cole Peters, wetland scientist, with T R C, in Portland. Mr. Danielson stated that although the property is not zoned RP2, it has characteristics of an RP2 wetland, and the Code Officer issued a notice of violation, for filling 4191 square feet of wetland, on January 18,2007.

Mr. Danielson outlined the history of the project. The house was built in 1999, and an occupancy permit was issued in 2000. In 2004 the house was sold to the McMullins. In January 2007 a notice of violation was issued for the filling of wetlands. It appears that this filling occurred in the year 2000, but no one is sure of this date. Mr. Danielson and Mr. Peters have met twice with the Cape Elizabeth Conservation Commission. As a proposal to gain an after the fact permit, a mitigation plan was proposed.

Mr. Peters presented the mitigation plan to the Board. He displayed a plan showing the property. He showed the mitigation area which is on the property. That area will be almost double the area of the violation. The proposal is to plant 100 shrubs of four different types. Those shrubs have been chosen for their habitat value. The shrubs will be planted 10ft on center and will establish a thicket 18in. to 24in. in height. The plants

will come in individual containers and the installation will be done with a hand spade to dig a hole, setting in the plant, and stomping it in with the foot. This planting method will minimize the possibility of erosion in the area.

Mrs. Schenkel opened the public hearing. Since there was no comment from the public, the public hearing was closed, and the discussion opened to the Board.

Mr. Danielson was invited to raise his objections to the conditions of approval in the memo from the Town Planner. Condition 1 referred to erosion control, and he doesn't feel there will be any erosion in the plan, so he would like to have that waived.

The second condition calls for a performance guarantee. He noted that the plantings would cost about \$2000 and a performance guarantee would just be a slap in the face on top of that cost. He is requesting the waiver of that fee.

In response to a question by Mr. Hatem, Ms. O'Meara explained that the performance guarantee was recommended by the Conservation Commission. They have been frustrated by the lack of action by some prior applicants, not this applicant or this property, who have not performed the remedial work promised.

Mr. Collins asked who would be doing the planting.

Mr. Cole replied that the Pearson Nursery would likely supply the plants and do the planting as well. He also said the plants will have the usual 1 year guarantee and will be monitored for their survival.

Mr. Danielson then requested that the third condition be clarified to state that the monitoring by the Code Officer be done annually for two years.

Condition 4 refers to having something recorded as an attachment to the deed. Mr. Danielson questioned whether resource protection permits are typically recorded.

Ms. O'Meara responded that they are not normally recorded, but the Conservation Commission wants it in the deed so that the current and future owners will be on notice that this mitigation area needs to be preserved.

Mr. Danielson made it clear that he did not want the McMullins to be singled out.

On Condition 5, Mr. Danielson noted that the McMullins never asked for a building permit.

Ms. O'Meara noted that the condition is standard for Planning Board approval.

Mr. Hatem questioned the enforcement conditions requested by the Conservation Commission.

Ms. O'Meara said the Conservation Commission would not have approved this plan without the proposed mitigation. It was very important to them that the mitigation plan should actually happen. They want the Board to come up with enforcement procedures to ensure that the work gets done.

A discussion ensued about the performance guarantee. Several Board members expressed an opinion that in this case they did not feel a performance guarantee was necessary or fair.

On condition 3, the Board agreed that an annual report was sufficient.

Mr. Hatem expressed his doubts about putting a restriction on the deed.

The Board had a discussion about whether or not to place any restriction on the record, and what form it might take.

Mr. Huebener asked what are these magic plants and what will they do?

Mr. Peters said the plants were chosen because they are the right plants for the area, they are hardy, and they have fruit that wildlife likes.

Mr. Godfrey noted that he is in favor of a performance guarantee. He says it is the only way the board has to enforce that the work is done, and done properly. He feels the wetland being created needs to be protected. He says he favors a restriction to assure that this area doesn't get mowed over in the future.

Mr. Kennealy and Mr. Collins both agreed with Mr. Godfrey.

Mr. Hatem suggested that the Board move forward with the conditions as a whole, rather than voting on them one at a time. He was in favor of dropping the performance guarantee, but keeping the rest of the conditions.

Erosion control was discussed at length, and it was agreed that Mr. Peters could write a letter describing the planting method that will be used, and that will be sufficient to cover that condition.

Mr. Collins asked what document will be recorded.

Mrs. Richardson was concerned about the details to be included in a recorded plan. After further discussion it was agreed that the existing plan will be recorded, without any further conditions included.

Mr. Collins questioned when the planting will be done.

Mr. Peters said it could be done in the spring, or even this week if the approval is granted.

Mr. Hatem made the following motion:

Findings of Fact

1. Dianne Maskewitz and Scott McMullin are requesting an after the fact Resource Protection Permit to fill 4,191 sq. ft. of wetland and pond for landscaping located at 221 Fickett Street, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The Conservation Commission has reviewed the application and endorsed issuance of a permit as long as implementation and enforcement of the mitigation plan are required.
3. The mitigation plan will require vegetation removal and soil disturbance that could result in soil erosion if the area is not properly stabilized.
4. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dianne Maskewitz and Scott McMullin for an after the fact Resource Protection Permit to fill 4,191 sq. ft. of wetland and pond for landscaping located at 221 Fickett St be approved, subject to the following conditions:

1. That the plans or materials be revised to describe erosion control measures as stated on the record by the applicant;
2. That, for the two years following the implementation of the mitigation plan, the applicant annually submit to the Code Enforcement Officer a report prepared by a professional wetland scientist evaluating the condition of the mitigation area with the approved plan;
3. That the applicant record this approval and approved plan in the Cumberland County Registry of Deeds; and
4. That there be no alteration of the site until the plans and materials have been revised to comply with the above conditions and submitted to the Town Planner.

Mrs. Richardson seconded the motion.

Mr. Huebener then said that he disagrees with the whole concept. He feels it's a waste of money and time, including the Board's time.

The Board voted 6-0 to approve the motion. Mr. Huebener abstained.

OTHER BUSINESS

Small Wind Energy Zoning Amendments - The Planning Board is considering amendments to the Zoning Ordinance that would permit the installation of small windmills in the RA, RB, RC, TC, BA, BB and FWP Zoning Districts, Sec. 19-10-3, Amendments

Mrs. Schenkel opened the discussion with an acknowledgement that some of the Board have attended workshops, and the Board has held discussions on the topic. She opened the topic to questions or discussions from the Board. Mrs. Schenkel has a question about the definitions. She noted that a 100 Kilowatt system is a large commercial application and she said most home systems are much smaller, about 8-10 Kilowatts.

Mr. Kennealy agreed and suggested that the standard be set at 20 Kilowatts. It was agreed to replace the 100 Kilowatts with 20 Kilowatts.

Mr. Collins made a suggestion for a change in the wording of the 5th standard of sec. 19-8-13. He wants to make it clear that the foundation design takes into consideration the conditions at the foundation site. He also wants to know what will be provided by the licensed professional engineer.

Mr. Godfrey suggested eliminating the last sentence entirely, and then there was a discussion of what standards are even available and what it might entail in this situation. The discussion centered upon what about a system designed and built in a homeowner's garage might need in terms of review. The installation was considered to be very important and the consensus of the Board was that the second part of the standard could be removed and only the foundation and installation need to be certified to ensure the safety of the neighbors.

The Board agreed to delete the second sentence and to modify the first sentence to read: For small wind energy systems with less than a 100% setback: If the monopole base is located with a setback of less than 100% of the small wind energy system height from the property line, then the Code Enforcement Officer shall require that the wind energy system structure and foundation design taking into consideration soil conditions at the installation site, be certified by a State of Maine Licensed Professional Engineer.

Mrs. Schenkel noted that she is very concerned about aesthetics, and yet she wants to move this forward to the public.

Mr. Huebener wants the 100 ft height maximum to be defined to the center of the rotor shaft, and not to the top of the blades. After a brief discussion, the Board agreed to keep

the measurement consistent for all definitions, and the agreement is to measure 100 ft. to the center of the turbine.

Mrs. Richardson made the following motion:

BE IT ORDERED that the Planning Board will hold a public hearing at its regular meeting on December 18, 2007 to hear comments on proposed amendments, as amended, to the Zoning Ordinance that would make small windmills a permitted use.

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

Ms. O'Meara requested the Board's approval of the draft Status Report Memorandum to be submitted to the Town Council.

Mr. Hatem made a motion to authorize Ms. O'Meara to send the draft memorandum. Mr. Collins seconded and the Board approved, 7-0.

Garage Sales Limitation Recommendation - The Town Council has asked the Planning Board to make a recommendation to limit to the number of garage sales that may be held annually.

Mrs. Schenkel asked if the Board had any discussion on this topic. She noted that they have discussed it at their workshop and agreed that the current sign ordinance covers any problems.

Mrs. Richardson also noted that the Zoning Ordinance covers excessive sales by making it a retail use.

After a brief discussion, Mrs. Richardson made a motion to send the memo to the Town Council. Mr. Hatem seconded the motion and it was approved, 7-0.

Mr. Hatem made a motion to adjourn. It was seconded by Mr. Godfrey and approved, 7-0. The meeting was adjourned at 8:30 p.m.

Respectfully submitted

Hiromi Dolliver
Board Secretary