

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

May 20, 2008

7:10 p.m. Town Hall

Present: Barbara Schenkel, Chair
Thomas Dolan
Jim Huebener

Elaine Falender
Peter Hatem

Absent: Scott Collins
Beth Richardson

The Town Planner, Maureen O'Meara was also present.

Mrs. Schenkel opened the meeting when a quorum was present at 7:10. The April 15, 2008 minutes were approved by a vote of 5-0.

Mrs. Schenkel noted that the Planning Board had received several new emails, in addition to those in the packet.

Mrs. Schenkel commended the Cape Farm Alliance for its new publication, and encouraged everyone to visit its website: www.capeelizabethfarms.com.

Maureen O'Meara noted that a petition signed by over 200 people in support of Rudy's of the Cape had been submitted to Town Hall today. The petition encourages the Town to update ordinances necessary for this business to survive.

NEW BUSINESS

Comfy Cape Day Care Expansion Site Plan Amendment

Rachel Sunnell, architect for Kim Newman, presented two sheets: the Site Plan Boundary Survey, representing the original Conditional Use Submittal from 1997, and a sheet with photos representing the proposed amendments to the original plan. Three improvements were presented: moving the sign out of the right of way and onto the property line near the driveway, straightening the fence on the north side so it is parallel with the property line, and providing more parking.

A discussion of the distance of the fence from the abutting property line questioned fence setbacks.

Ms. O'Meara noted that there is no setback requirement for fences.

Mr. Huebener asked about the original approval for 12 children.

Mrs. Schenkel noted that concern had been expressed in the original submittal about having 12 children.

Ms. O'Meara said that receiving approval for 12 children doesn't preclude returning and asking for an increase in numbers.

Ms. Falender asked for a clarification of the wetland delineation.

Ms. O'Meara said it was a bit foggy; it had been submitted originally to clarify the Bowdler property.

Mrs. Schenkel expressed concern about the fence being moved closer to the property line. She noted that there had been a fair amount of concern from neighbors. She also said that she had driven by several times and had not seen children outside.

Ms. Falender said she wanted a site walk. Her concerns are the additional noise and traffic from an increased number of children. Perhaps more effective buffering is necessary.

Ms. Newman explained that the increase would be mostly infants who are siblings, because parents want to keep siblings together.

Ms. Falender thanked the applicant for the new plans, the extra work, and the expense.

Ms. Newman asked the Planning Board if she is following all the ordinances, and if she could get conditional approval prior to the site walk.

Mr. Hatem questioned the value of a site walk to confirm the numbers of children outside.

Mr. Dolan commended the applicant and said he would be available for a site walk.

Mr. Huebener asked if a site walk would really change our minds.

Ms. Newman explained the scheduled playtime and said that 20 children would never be outside at any one time.

Mr. Hatem said that the concern has to do with the fence and the buffering, not with seeing the children outside.

Mrs. Schenkel asked if it would be possible to give conditional approval and require that a certain number of children be infants, who would not be outside. The gap in the landscaping and the placement of the fence are the primary concerns.

Ms. Newman said she is willing to make these changes.

Ms. Falender said she feels she owes it to the neighborhood to take a look because of the differences in description made by the applicant and by the neighborhood. She is also concerned about the Planning Board getting into the business of monitoring the numbers and ages of the children, which she sees as a responsibility of the State, not the Town. Buffering is what we need to evaluate.

Mr. Dolan noted that the conditions to approval are the numbers of children.

Mr. Newman said the actual number would be limited to 19 children: 4 infants, 5 toddlers, and up to 10 pre-school children.

Mr. Dolan said this is a usage issue; that the Code Enforcement Officer has the authority to regulate and enforce the Planning Board's approval. The applicant is willing to have no greater than 10 children outside at one time, to amend the existing plan to keep the fence where it is, and to install a planted buffer on her property to fill a gap of approximately 10 feet.

Mr. Hatem made the following motion, seconded by Mr. Dolan:

Findings of Fact

1. Kim Newman of Comfy Cape Day Care, located at 11 Scott Dyer Rd., is requesting an amendment to the previously approved Site Plan to expand the day care from 12 children to 19 children, which requires review under Sec. 19-9, Site Plan Regulations.
2. The applicant substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-8(C), Day Care Facility Standards.

that, based on the plans and materials submitted and the facts presented, the application of Kim Newman of Comfy Cape Day children, be approved, subject to the following four conditions:

1. That no more than 10 students are outside on the play area at any time;
2. That the fence be extended along its current line to the west, not closer to the abutter's property, so that the total square footage does not exceed 2,000 square feet;
3. That additional landscape buffering is installed as a solid hedge along the north side of the fence approximately 10 linear feet, using no greater than 4 six-foot tall arborvitae or similar trees. The applicant shall maintain these trees as part of this approval, and
4. That a plan be submitted reflecting the above changes to the Planning Department.

The motion was approved by a vote of 5-0.

Following the vote to approve and after the applicants had left, abutting property owners Mark and Michael Bowdler voiced dissatisfaction with the decision. Ms. O'Meara explained that comments were accepted only during public hearings.

Mr. Dolan asked if there is a precedent regarding reconsideration of a vote.

Mr. Hatem explained that a Planning Board member could present an appeal within 30 days of a decision. A court appeal can also be made.

Ms. O’Meara explained the procedure for public comment in response to a question from another member of the public. She said that the State’s Right to Know Law regulates town meetings. When procedures are not followed, comments cannot be heard and recorded, thus are prevented from being part of the public record.

Inn by the Sea Site Plan Amendments

Steve Bradstreet, of Oak Engineers, returned at the request of the Board to show plans that indicate the orientation of the mechanical building.

As there was no discussion, Mr. Dolan made the motion:

that, based on the plans and materials submitted and the facts presented, the Planning Board approves the placement of the mechanical building located at the Inn by the Sea, located at 40 Bowery Beach Road, as depicted on the most recently submitted plans.

The motion was seconded by Mr. Hatem and passed 5-0.

Eastman Meadows Condominium Subdivision Review

Owens McCullough of Sebago Technics, engineer for Wyley Enterprises LLC, began with a PowerPoint presentation. The visuals included additional information presented to the Board, and also revisited the whole package. He incorporated information from the recent MEREDA Conference, “The Graying of Maine”, which focused on age demographics, specifically baby-boomers between the ages of 45-65.

Mr. McCullough summarized Board requests from the previous meeting to address a number of issues, which are included in the Town Planner’s Memorandum. These include sight distance, hydrant flow information, road width (increased from 20 to 22 feet), the addition of fire hydrants, the road design acceptance by the Public Works Director, maintaining the aesthetics of Eastman Road by not creating a gravel path, housing types, and traffic calming. Other features described included underground utilities, street trees, sanitary sewer and pump station, and looped driveway access.

Mr. McCullough described the wetlands alteration for the road as it applies to sidewalk construction and landscaping to create a more substantial buffer to the Brock residence. This results in an increase from 150 sq. feet to 1,309 sq. feet.

Mr. Huebener mentioned that Mary Brock doesn't want the sidewalk there, as stated in a letter.

Mr. McCullough said that the developer is aware of objections to the sidewalk, and has been working closely with the Planning Department on its design.

Mr. McCullough pointed out the delineation of open space, a request from Ms. Falender, and also identified the 3 vernal pools.

Ms. O'Meara clarified a density question asked by Mrs. Schenkel.

Mrs. Schenkel asked about providing access from Tanager Way to the existing structure, the farmhouse. She feels that just leaving it alone violates the zoning code. Another approach is to provide a private access way.

Mr. McCullough responded that the code allows the creation of a private access way by physically creating a strip of land—a 40-foot right of way, which becomes a private road for a short distance, 20 feet.

Mrs. Schenkel asked where the road goes.

Ms. O'Meara explained that, after 40 feet it goes right back into the lot—it's a dead end. Access to the lot comes off the new private road, not off Eastman Road.

Mr. McCullough described the improvements to be made to the 20' private road.

Mrs. Schenkel asked about the third alternative.

Mr. McCullough used the example of the Leighton homestead being preserved in connection with the Leighton Farms subdivision. A lot was created for the existing farmhouse.

Mr. Dolan asked for an explanation.

Ms. O'Meara explained the concept of keeping it as it is, not a new lot, but a remnant of an existing lot.

Mr. McCullough suggested pursuing a waiver to reduce the width of the 20-foot road to 12 or 14 feet, so that it looks like a driveway.

Mr. Dolan is worried about the Standard getting watered down. He asked for the Town Planner's opinion.

Ms. O'Meara explained that there are times when we need to make the ordinance work for existing situations. The bigger picture in this case means preserving the rural character of Eastman Road as much as possible. This speaks to the goals of the Town. Tearing down the farmhouse and building a condominium would not add to the character of the place the way leaving the farmhouse would. She explained that the Board has the authority to provide waivers to road standards.

Mr. Dolan agreed that a 12-14 foot black top road would be acceptable.

Mrs. Falender asked if the owner of the farmhouse lot would own the private road.

Mr. Dolan asked if the farmhouse is a separate legal lot.

Mr. McCullough said the farmhouse would be preserved as its own individual lot rather than being rolled in the condominium development.

Mr. Dolan asked that evidence of a coordinated effort on the part of the developer and Public Works to address the issue of re-paving the road after sewer installation be a condition of final approval.

Mrs. Schenkel asked a question about net residential acreage, with reference to a letter by Sawyer Road resident, David Plimpton, who is concerned about a possible miscalculation involving an unusable area of wetland.

Mr. McCullough clarified that the land in question is usable and meets code requirements. It is accessible if a trail is constructed.

Mrs. Schenkel asked about the 29 catch basins and their function.

Mr. McCullough explained the system for catch basins, which collects rainwater.

Mr. Dolan made a motion for Preliminary Approval;

that, based on the plans and materials submitted and the facts presented, the application of Wyley Enterprises LLC for Preliminary Subdivision Approval, a Resource Protection Permit, and Private Road approval for Eastman Meadows, a 46-unit condominium with clubhouse and 1 single family lot located at 68 Eastman Rd., be approved, subject to the following condition:

1. That the plans submitted for final approval address the comments of the Town Engineer in his letter dated 5/13/08.

The Planning Board recommends to the Town Council that the lot located at 68 Eastman Rd. be designated a Sewer Service Area to allow public sewer to be extended at the developer's expense to the new Eastman Meadows Condominium Project.

The motion was seconded by Mr. Huebener and passed 5-0.

OTHER BUSINESS

BA Wetlands Zoning Amendment

Mr. Dolan made the motion:

That, based on the information presented, the Business A Wetland Amendments that allow the RP1 Buffer to be reduced to 100 feet and that allow expansion of nonconforming uses where there are no exterior changes, located in Sec. 19-6-9 of the Zoning Ordinance be joined with the ongoing BA District Zoning overhaul as one package.

Mr. Hatem asked for a status update.

Ms. O’Meara said Stantec would do the wetlands mapping by mid-June. She read part of the contract and said that we can request that the surveyors attend the Planning Board meeting, although this is not in the contract.

The motion was seconded by Mr. Dolan and passed, 4-1. (Mr. Huebener)

Mr. Dolan asked if Stantec can be available to attend a Planning Board meeting to answer questions. Ms. O’Meara said she would make the request.

Bed and Breakfast Zoning Amendments

At the request of the Town Council, the Planning Board is considering amendments to the Zoning Ordinance that will make Bed and Breakfasts a permitted use on lots with frontage on an arterial, collector, or rural connector road, Sec. 19-10-3.

The proposed amendments would create a definition of homestay, where up to two rooms may be rented to guests for any length of time.

A revised definition of Bed and Breakfast is also proposed. The Bed and Breakfast is limited to 6 rooms, where meals may or may not be served, to guests who can stay up to 14 days.

Bed and Breakfasts (B&B) are proposed to be a permitted use in the RA and RC District. This would allow conversion of existing structures to B&Bs and also new construction of structures as B&Bs.

Beginning in the Space and Bulk Standards section, existing structures could convert to a B&B on a lot of any size. B&Bs proposed in new construction would need a minimum lot size of 80,000 sq. ft. in the RA District, the same lot size required for individual single-family lots. New construction in the RC District would require 20,000 sq. ft.

Bed and Breakfasts are proposed to be permitted in the RA and RC Districts where the lot fronts on an arterial or collector road. There are 259 lots fronting on an arterial road (Route 77) and 429 lots fronting on a collector road (Shore Rd, Mitchell Rd, and Scott Dyer Rd).

In the RA District, the required amount of road frontage is 50’ for existing buildings and 125’ for new construction. Road frontage is proposed to be

50' for existing buildings and 100' for new construction in the RC. All B&Bs would be required to have the minimum frontage on an arterial or collector road. Sec. F in each district would require B&Bs to have Site Plan Review.

Finally, the Off Street Parking section has been augmented to require a parking space for employees in a B&B or homestay.

Mrs. Schenkel opened the Public Hearing, noting that emails the Planning Board had received on this amendment were overwhelmingly negative.

Carl Dittrich, 500 Ocean House Road, presented his proposal to rent 1 room in his house. He cited the lack of reasonably priced rentals in the town.

David Sanford, 1 Charles Road, is concerned about the house near his that advertises 4 rooms for rent on the Internet. The noise resulting from this rental, in a location where houses are close to each other, is problematic. He is concerned about the implications of the zoning for B&Bs on places such as this.

Charles Freeman, 3 Charles Road, objects to a business being permitted in a residential district. He spoke about the Shore Road rental and the disruptive effect it had on his family because of the close proximity of the houses.

Maureen O'Meara clarified that currently B&Bs are not permitted in residential areas, and that the purpose of this hearing is to solicit public input. She said the Board is not endorsing anything.

Emily Materson, 2 Charles Road, lives across the street from the Freemans and the Sanfords. She distributed photographs that illustrate the density and scale of houses there. She objects to B&Bs because of the population density.

Mr. Hatem commented that the Performance Standards of Site Plan Review would disqualify most of the homes near hers.

Ms. O'Meara elaborated that no conversion could take place without Site Plan Review, and that restrictions such as the required parking and buffering would eliminate some lots even though they might conform to minimum lot size.

Ed Materson, 2 Charles Road, expressed his concern about establishing a precedent in BA zones. He inquired about opportunities for further input, or if this is a closed matter. His primary concern is noise. His neighborhood is particularly vulnerable.

Angela Best, 12 Pond View Road, objects to a separate structure being used as a B&B. She also questions the adequacy of setbacks.

Joyce Wilson-Sanford, 1 Charles Road, spoke of the personal investment in residents make in their neighborhood, for which short-term renters have no incentive. Following up on a comment by Mr. Materson, she mentioned the entry into the northern part of Cape Elizabeth, which she feels could be emphasized, with the clear intention of avoiding a hodge-podge appearance.

Mr. Hatem asked if she would feel the same way if the owner occupied the B&B. Ms. Wilson-Sanford said she didn't know.

Maria Sorenson, 3 Dean Way, expressed her concern about a potential snowball effect. If one room is approved for a B&B, it could become 2 or 3 rooms.

Joe Faria, 2 Dean Way, is concerned about establishing a precedent--that the approval of something small could become something larger.

Shawn Tamir, 1 Crescent View Ave., spoke about his experience of a Bed and Breakfast as an upscale enterprise appropriate for a town like Cape Elizabeth. His perception is different from those who object, he said. He added that he is interested in opening a B&B at his home. He wants the requirement to be changed to a location within 100' of an arterial and the inclusion of a greater number of rooms, to a limit of 14.

Mrs. Schenkel reminded the public that the Planning Board is looking at overall standards and soliciting general rather than specific comments.

Mr. Dolan concurred that the Planning Board members have read your email and are soliciting comments about the concept of a B&B. They are not voicing opinions either for or against a proposal. He expressed appreciation for Mr. Tamir's presentation.

Mark Pendarvis, 19 Kettle Cove Road and the owner of Kettle Cove Take-Out, feels that renting out rooms in homes is more problematic than the development of an upscale B&B. He is in favor of a clear definition.

As there were no further comments, the Public Hearing was closed.

Mr. Hatem wants to schedule a workshop to continue the discussion of issues the Board may not have thought of, for example, the different neighborhoods, different areas of town, the number of guest rooms, and the actual number of units.

Mr. Dolan made a motion to table the discussion until the next workshop. It was seconded by Mr. Hatem and passed, 5-0.

Mr. Hatem moved to adjourn.

The motion was seconded by Mr. Dolan, and passed 5-0, at 10:30pm.

Respectfully submitted,

Suzi VanWye, acting secretary