

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

July 21, 2009

7:00 p.m. Town Hall

Present:	Peter Hatem, Chair	Beth Richardson
	Elaine Falender	Barbara Schenkel
	Liza Quinn	Thomas Dolan

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and called for discussion or corrections of the minutes of June 16, 2009. Mrs. Richardson moved to accept the minutes without correction. Mrs. Schenkel seconded and the motion carried, 6-0.

CONSENT AGENDA

1. 2 Davis Point Lane Site Plan Amendment – Andrew Ingalls of Alana LLC is requesting an amendment to the previously approved mixed use building, located at 2 Davis Point Lane, to change the second floor from 2 – 2,000 sq. ft. multi-family units to 4 – 1,000 sq. ft. multi-family units, Sec. 19-9, Site Plan Amendments.

Mr. Ingalls described the change requested and that there would be no exterior changes.

Mr. Hatem asked if there will be enough parking spaces. Mr. Ingalls responded that there are 28 parking spaces and we are asking for some shared parking spaces, but expect we have more parking than we'll need.

Mr. Dolan asked the Board if Public Hearing would be necessary. Mr. Hatem gave negative response.

Mrs. Schenkel made the motion to approve the Site Plan Amendment. Mrs. Richardson seconded the motion and it was passed 5 – 0 – 1 (Dolan abstain).

2. Blueberry Ridge Subdivision Amendment – Joseph Frustaci is requesting an amendment to the previously approved Blueberry Ridge Subdivision, located off Mitchell Rd, to designate lot 12 as the second required moderate income affordable housing lot, Sec. 16-2-5, Subdivision Amendment.

Mr. Frustaci explained that he had inadvertently replaced lot 12 as an affordable lot in a prior request when he intended to retain it as an option.

The Board had no discussion of the request.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joseph Frustaci for an amendment to the previously approved Blueberry Ridge Subdivision, located off Mitchell Rd, to re-designate lot 12 as a moderate income affordable lot be approved as a consent agenda item.

Mrs. Schenkel seconded the motion and it was passed 6 – 0.

OLD BUSINESS

Cape Elizabeth Family Medicine Site Plan Amendment – Dr. Craig Johnson is requesting an amendment to the previously approved site plan for the building located at 1226 Shore Rd to relocate and revise a proposed storage shed, Sec. 19-9, Site Plan Completeness.

Mark Wilcox, who represented the applicant, gave a presentation on the new plan. The Board was generally satisfied with the new and improved plan. Questions were raised regarding landscaping and erosion control. Mr. Wilcox noted that flags will be put out during the next few days to show the buffer line.

Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. Craig Johnson, of Cape Family Medicine located at 1226 Shore Rd, for an amendment to the previously approved site plan to relocate and change a previously approved storage building be deemed complete.

Mrs. Schenkel seconded the motion and it was passed 6 – 0.

The Board generally agreed that no site walk was needed, and that some Board Members had individually visited the site. Mr. Dolan made the following motion:

BE IT FURTHER ORDERED that, the above application be tabled to the regular August 18, 2009 meeting of the Planning Board at which time a public hearing will be held.

Mrs. Schenkel seconded the motion and it was passed 6 – 0.

Mahoney Resource Protection Permit – Michael and Andie Mahoney are requesting a Resource Protection Permit to construct a driveway in a new location over an RP2 wetland for a lot located at 1 Autumn Tides Lane, Sec. 19-8-3, Resource Protection Permit Completeness.

John Mitchell represented the applicant and presented the plans. He noted that utility information would be added to the plans and showed where utilities had already been stubbed to the site.

Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Michael and Andie Mahoney for a Resource Protection Permit to alter 980 sq. ft. of wetland with a driveway crossing for a lot located at 1 Autumn Tides Lane be deemed complete.

Mrs. Schenkel seconded the motion and it was passed 6 – 0.

Board Members did not think a site walk was needed.

Mr. Dolan made the following motion:

BE IT FURTHER ORDERED that the application be tabled until the regular August 18, 2009 meeting of the Planning Board at which time a public hearing will be held.

Mrs. Richardson seconded the motion and it was passed 6 – 0.

Shore Road Tara LLC - Lee Wilson is requesting Site Plan Review for a retail/office/multi-family unit use building change of use located at 553 Shore Rd, Sec. 19-9, Site Plan Completeness.

Mr. Hatem disclosed that he is serving on the CEEF Board with Lee Wilson but feels that he can be impartial in the discussion of the project.

John Mitchell, representing the applicant gave a presentation of the plans. He reviewed the buffering/landscaping along the property boundary.

The Board raised questions about leased parking spaces across the road, exterior lighting of the building and a cost difference between sewer and the existing subsurface wastewater disposal system.

Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Shore Road Tara LLC for Site Plan Review of a change of use of an existing building located at 553 Shore Rd from single family home to a multi-use building of retail/office/multi-family unit be deemed complete.

Mrs. Richardson seconded the motion and it passed 6 – 0.

A site walk has been scheduled for July 23, 2009 at 5:30 p.m.

Mr. Dolan made the following motion:

BE IT FURTHER ORDERED that the above application be tabled to the regular August 18, 2009 meeting of the Planning Board, at which time a public hearing will be held.

Mrs. Richardson seconded the motion and it passed 6 – 0.

Shoreland Zoning Amendments – The Town Council has referred to the Planning Board a request to prepare amendments to the Zoning Ordinance to bring it into compliance with the State Minimum Shoreland Zoning requirements, which includes both text and map amendments to the Official Zoning Map, Sec. 19-10-3, Amendments Public Hearing.

Town Planner Maureen O'Meara, in her Power Point presentation, explained the changes in the Shoreland Zoning Amendments. The Town's existing RP1 buffer often overlaps the shoreland zoning area, making depiction of map changes confusing. One map of the existing zoning and the other map shows the changes for each area has been prepared, except for Crescent Beach where the only change is the addition of a heavy black line denoting designation as moderate or high value for wildlife.

Mr. Dolan asked if the former procedural error was corrected and if notices were sent to the abutters.

Ms. O'Meara said yes. She also noted that state law does not require that individual maps be mailed to impacted property owners, but that was done as well. Property owners were identified using the maps.

Mr. Hatem opened the Public Hearing and invited citizens to speak.

Mr. Jack Roberts, 185 Fowler Road

His property is 110 feet back of Fowler Road and he believes that the property should not be affected and does not belong to the Shoreland Zoning. He invited Planning Board members for a site walk any time to show the group before any decision is made.

Mr. Nelson Silva, 11 Old Colony Lane

He is the President of the Home Owners' Association of Old Colony Lane. He noted that the map on the notices were too small and was hard to see. He has concerns that vegetation is growing and appearing at places where it wasn't before and this will negatively affect property sales in the area. He suggested beaver activity is enlarging the wetland area, impacting property values and the saleability of property.

Mr. Hatem closed the Public Hearing.

The Board asked about the map changes. Ms. O'Meara noted that in the late 1990s the Town Council spent considerable time and effort to amend wetland regulations in Cape Elizabeth. It was the wetland regulations adopted in 1990 that had the greatest impact on properties. The Shoreland Zoning regulations are usually not as restrictive as the wetland regulations locally adopted by the Town.

Mr. Hatem asked if there is some sort of relief available for property owners.

Ms. O'Meara explained that although the Town's wetland regulations are stricter than the State's, there are nonconforming provisions that allow some expansion of existing buildings. She reviewed those options and also noted a variance option.

Mrs. Schenkel suggested that maybe a sixth exemption needs to be added to the already existing five to cure the problem, perhaps reducing the buffer to 100' for existing buildings.

Ms. O'Meara pointed out that the current Zoning Ordinance already includes what she is suggesting by allowing expansion for structures more than 100' from the wetland.

Mr. Hatem suggested putting power in the hands of the Zoning Board of Appeals to allow variance if/where possible.

Mr. Dolan asked about precedence of field mapping over current mapping where wetland increases. What owners can do?

Ms. O'Meara stated that the Zoning Ordinance specifies the physical characteristics needed to be designated a wetland, such as very poorly drained soils or obligate wetland vegetation, so those areas were designated wetlands in 1990. The Ordinance also clearly states that field verification and the best mapping will control.

Ms. Quinn asked what to do in case of Fowler Road where the field testing shows no wetland? Should they ask for the Code Officer's written opinion?

Ms. O'Meara pointed out the sections of the Zoning Ordinance that Code Officers can make the determination to approve permits or to refer applicants to the Planning Board. It may be that what Mr. Roberts wants to do is allowed under the non-conforming provisions.

Mr. Dolan expressed his appreciation and thanks to Ms. O'Meara for the great job she did with the maps and the detailed explanation.

Mr. Hatem noted that subject was fully addressed from planning point of view and the task is to decide whether to make recommendation to Town Council. Motion is need on maps and text.

Ms. Richardson referred to the definitions in Mr. Cox's e-mail. Ms. O'Meara said that the requested additional sentence could be added to the tributary stream definition. The Planning Board agreed to add the sentence.

Mr. Dolan made the following motion:

BE IT ORDERED that the 2009 Shoreland Zoning Amendments and amendments to the Official Zoning Map be recommended to the Town Council for consideration.

Ms. Quinn seconded the motion. Mr. Dolan and Ms. Quinn agreed to amend their motion to add the sentence. The motion passed 6 – 0.

Mr. Dolan made the motion to adjourn the meeting.

Mr. Hatem seconded the motion and closed the meeting.

Meeting ended at 9:10 p.m.

Respectfully submitted,
Aniko Varadi