

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

August 18, 2009

7:00 p.m. Town Hall

Present: Peter Hatem, Chair  
James Huebener  
Liza Quinn

Beth Richardson  
Barbara Schenkel  
Thomas Dolan

Absent: Elaine Falender

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and asked for additions or corrections to the minutes of the July 21, 2009 meeting. Mrs. Richardson moved to approve the minutes and was seconded by Mrs. Schenkel. The motion 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 Public Hearing.

Mark Wilcox, a Cape Elizabeth architect, presented on behalf of Dr. Johnson. He had a slide that showed an aerial view of the property and pointed out various features and how the drainage would flow. He also showed the new plan which includes an erosion control plan. He said the site of the garage is the same as shown on the previous plan, but they may add a cupola.

The public hearing was opened. There being no one coming forth to speak, the public hearing was closed.

Mrs. Schenkel asked for confirmation of the plans for the overhead utility line.

Mr. Wilcox said there is no easement, nor an agreement with CMP for that line as yet.

Mrs. Schenkel made the following motion:

Findings of Fact

1. Dr. Craig Johnson, of Cape Family Medicine located at 1226 Shore Road, is requesting an amendment to the previously approved site plan to relocate and change a previously approved storage building, which requires review under Sec. 19-9-6, Site Plan Amendments.

2. The applicant intends to extend electrical service to the garage from the abutting private property, but has not yet obtained permission from the abutter or CMP.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE, 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 Road, to amend the previously approved site plan to relocate and change a previously approved storage building be approved, subject to the following conditions:

1. That written permission from the abutter and CMP be provided to extend overhead electrical service to the new garage, or alternative plan that extend electrical service from the main building, be submitted to the Town.
2. That the applicant be permitted to add a small cupola in the location depicted by the presentation to the Planning Board.
3. That no building permit be issued or alteration of the site occur until the above condition has been met.

Mrs. Richardson seconded the motion and it was approved, 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 Public Hearing.

Mr. John Mitchell of Mitchell and Associates represented the Mahoneys. He said the Mahoneys are purchasing lot 1 of the Autumn Tide subdivision. The driveway as designed on the subdivision plan is not on the side of the planned house that allows maximum enjoyment of the view, and the request is to move the location of that driveway to better accommodate their plans. The driveway will cross an RP2 wetland and overall be shorter. They are proposing to alter 980 sq. ft. of wetland, and will keep the driveway narrow to lower the impact as much as possible. Mr. Mitchell said they had delineated the utilities on the plan as requested by the Town Engineer.

The public hearing was opened. Since no one came forth to speak, the public hearing was closed.

There being no questions or discussion from the Board, Mrs. Richardson made the following motion:

Findings of Fact

1. Michael and Andie Mahoney are requesting a Resource Protection Permit to alter 980 sq. ft. of wetland with a driveway crossing for a lot located at 1 Autumn Tides Lane, which requires review for compliance with Sec. 19-8-3, Resource Protection Regulations.
2. 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 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 approved.

Ms. Quinn seconded the motion and it was passed, 6-0.

**Tara Site Plan** - Shore Road Tara LLC 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 Public Hearing.

Mr. John Mitchell of Mitchell and Associates presented the project on behalf of Tara LLC. They are proposing to convert the existing 2 ½ story Victorian house as a multi-use building. The first floor would have a small boutique retail shop, the second floor would house offices and the top floor would be a small studio apartment.

Access would be the same as exists now, but they propose to widen the driveway from 10 ft. to 18 ft. A total of 10 parking spaces is required. There is only room for 6 spaces on the property, so they will lease 4 parking spaces across Shore Road next to the Fire Station. Brick sidewalks will be along Shore Road and a painted crosswalk from the leased parking has been added across Shore Road. Buffering for the neighboring properties will be a solid wooden fence and vegetated buffers. They will also remove and old concrete walkway on the abutting property and replace it with loam.

The public hearing was opened.

David Sanford, 1 Charles Rd, said most of the issues have been addressed. He has brought a letter from his wife and their attorney addressed to the Board. He complimented the Board for their serious consideration of the differences we have had with Lee Wilson about this matter. He also thanked John Mitchell and Lee Wilson for their willingness to consider their needs.

Harry Hardy of 6 Charles Road was concerned that the Town does not have the ability to enforce the use of the handicap parking space because it is on private property. He also expressed concern about access to Shore Road. He cited a recent garage sale there and noted how many people parked in no-parking zones, and how many backed out across Shore Road creating a dangerous situation. He said there are 16 children on Warren Avenue and there is a need to be concerned. It is not easy to turn around in the driveway and come out head first onto Shore Road, especially in the winter when there

is snow and a fence on the property. He wants the Town to require the owner to remove the snow.

No one else came forward, so the public hearing was closed.

Mr. Dolan noted the letter the Board had received today from the Sanfords, and wants to include it in the approval.

Mrs. Schenkel said the agreements are already on the plan and she does not want to attach the letter. There are things that are in the letter that have not been agreed upon between the parties.

There ensued a discussion of what sort of activities might or might not happen on the porch.

Ms. Wilson said it would be normal usage of the porch, not commercial use.

There are zoning restrictions which govern the hours and type of use permitted.

Mrs. Richardson does not want the letter attached. She said the agreements are already in the plans and there is still uncertainty in the letter. She wants to go with what has been presented and reviewed.

Ms. Quinn also does not want to include the letter. She had questions as to the removal of the sidewalk on the abutter's property and felt it was unclear how the work would be contracted for.

Mr. Mitchell said there is a note on the plan that spells this out. And he said he is glad the Board has agreed to leave out the letter. In general, the plans reflect the bullet points in the letter, but the letter has many property dimensions which are not consistent with the plans.

Ms. Quinn wants to know who will pay for the crosswalk.

Ms. O'Meara said the applicant will pay for the crosswalk.

Ms. Quinn would like the sidewalk to be extended north along the abutting property.

Ms. O'Meara would like to see a sidewalk there, but there is no way to require one unless the abutting property owners come for a site plan review, and then they can be required to add a sidewalk.

Mr. Dolan commended the applicant for the mitigation with their neighbors and particularly for the striped crosswalk. He does not believe the intended use for this site is appropriate given the parking and circulation, therefore he cannot support this plan.

Mrs. Richardson made the following motion:

## Findings of Fact

1. Shore Road Tara LLC is requesting Site Plan Review for change of use of an existing building located at 553 Shore Road from single family home to a multi-use building of retail/office/multi-family unit, which requires review under Sec. 19-9, Site Plan Regulations and the new BA District requirements in Sec. 19-6-5.
2. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-6-5, BA District Design Standards.

THEREFORE 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 for change of use of an existing building located at 553 Shore Road from single family home to a multi-use building of retail/office/multi-family unit be approved.

Mr. Huebener seconded and the motion was approved 5-1 (Dolan).

## NEW BUSINESS

**Crescent Beach Retirement and Assisted Living Community Site Plan** - The Savings Bank of Maine is requesting reapproval of the redevelopment of the facility located at 126 Scott Dyer Rd for 55 assisted living beds and 40 eldercare apartments, Sec. 19-9, Site Plan Review and Public Hearing.

Chris DiMatteo of Sebago Technics and Elizabeth Boepple of Lambert Coffin Haenn were there to represent the Savings Bank of Maine.

Mr. DiMatteo gave an overview of the project and said it was the same as the plan which was approved in 2007 and extended in 2008. It is a 5 acre site surrounded by both RP-1 and RP-2 wetlands. There is a substantial existing buffer. The impervious area will be decreased by the implementation of this plan. A new pedestrian walkway will be added as well as a new driveway.

Ms. Quinn asked why the driveway isn't extended all the way around the building.

Mr. DiMatteo said that it would exceed the permissible impervious area to do that.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Savings Bank of Maine for reapproval of the building located at 126 Scott Dyer Rd for 55 assisted living beds and 40 eldercare apartments be deemed complete.

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

Mr. Hatem then opened the public hearing. Since no one came forward to speak, the public hearing was closed.

Mr. Dolan inquired about the 45 day deadline.

Ms. Boepple explained about the foreclosure process that covers a court order in Oregon as well as Maine.

Mrs. Schenkel made the following motion:

#### Findings of Fact

1. Savings Bank of Maine is requesting a reapproval of the building located at 126 Scott Dyer Rd for 55 assisted living beds and 40 eldercare apartments, which requires review under Sec. 19-9, Site Plan Regulations.
2. The applicant will be auctioning the property to a new owner.
3. The plans and materials submitted were originally approved by the Planning Board in August, 2007 and it is in the town's interest if the property is not left vacant to further deteriorate.
4. The application substantially complies with Sec 19-9, Site Plan Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Savings Bank of Maine for reapproval of the building located at 126 Scott Dyer Rd for 55 assisted living beds and 40 eldercare apartments be approved, subject to the following conditions:

- 1 That any change in ownership will require an amendment to this approval for the Planning Board to review the financial and technical capability of the new owner.
2. That there be no issuance of a building permit nor commencement of work on the site, excluding general maintenance, until the above condition is met.

Mrs. Richardson seconded the motion.

Ms. Quinn was concerned that condition no. 1 would scare away a new owner.

Mrs. Schenkel noted that the Planning Board does not do the actual review of the financial capacity, but that such a review is in the best interest of the town.

Mr. Dolan completely agrees with Mrs. Schenkel and said the Board would be remiss if they did not review the capacity of the applicant to complete the project.

The board approved the motion 6-0.

## OTHER BUSINESS

**Town Center Amendments** - The Cape Elizabeth Planning Board has prepared amendments to the Town Center District that increase the density allowed for multi-family units, as recommended in the 2007 Comprehensive Plan, from 1 unit/7,500 sq. ft. to 1unit/3,000 sq. ft., Sec. 19-10-13, Zoning Ordinance Amendments.

Ms. O'Meara outlined the proposed amendments. She noted that the Comprehensive Plan proposed a greater density for the Town Center District and these amendments are the implementation of that plan.

She noted each change in the Zoning Ordinance.

Mr. Huebener made the following motion:

BE IT ORDERED that the Town Center Amendments, which increase the density allowed for multi-family units, be tabled to the regular September 15, 2009 meeting of the Planning Board, at which time a public hearing shall be held.

Mrs. Richardson seconded the motion and it passed, 6-0.

Mrs. Richardson moved to adjourn the meeting. Mr. Dolan seconded and the motion passed 6-0. The meeting was adjourned at 8:30 pm.

Respectfully submitted,

Hiromi Dolliver