

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

September 15, 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 August 18, 2009 meeting. Mrs. Richardson moved to approve the minutes and was seconded by Mrs. Schenkel. The motion passed **6-0**.

NEW BUSINESS

Winnick Woods Site Plan ~ The Town of Cape Elizabeth is requesting Site Plan Review to expand the parking lot for Winnick Woods, a 71 acre open space located on Sawyer Rd, Sec. 19-9, Site Plan Review Completeness and Public Hearing.

Steve Harding of Oest Associates, the Town Engineer presented the proposal to the Board. The Town is planning to expand the gravel parking lot off Sawyer Road. There are now 2 to 4 spaces. After the expansion there will be 8 spaces. Timber wheel stops will be installed at the end of each space. The expansion will be 35 ft from the side line of the property (10 ft is the requirement). Only one substantial tree will have to be removed. No adverse drainage, no utilities will affect the lot.

The entry to the trail will be moved and a sign will also be moved.

Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for Site Plan Review to expand the parking lot at Winnick Woods, a 70+ acre open space parcel located on Sawyer Rd be deemed complete.

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

Mr. Hatem opened the public hearing.

Bruce Moore of 1108 Sawyer Road asked the Board to please consider expanding the buffer to the parking lot. His property abuts the lot and he had hoped the expansion of the parking area would be on the side away from his house, but it is towards his house. He said that 2 to 3 times a month a biking group comes and fills up the lot. He says most people are polite, but he requests a bulletin board or kiosk that reminds people

that there is private property next to this parking lot. Some people have their dogs unleashed and the dogs come over to his house and disturb his dog. He would like dogs to be leashed at least for the first a couple hundred yards of the trail.

Mr. Moore would also like a rule that people leave the parking lot by ½ hour after sunset. Bicyclists ride around at night on the trails with their lights on and then stand around and talk after their ride.

The Board asked him some questions about the existing buffer and what he is proposing.

Mr. Moore replied that there are mostly hemlocks already there and he would like to have more of them. He has planted some trees already and would want to have more, probably hemlocks.

Ms. Quinn commented that on her visit today she found it well used. She did not find any signage regarding rules of use, dog rules etc. She thought the Moore property was well buffered and quite far away. She is not in favor of the Town paying for more trees as a buffer.

Mr. McGovern, Town Manager, said the Town has a leash law in effect. Dogs may be off leash on the old town farm property and the back of Fort Williams Park, and must be leashed everywhere else. He said the Board may set hours of use, and that he would defer to the Board on the buffering.

Mr. Moore said he would be willing to provide the evergreens for the buffering at his expense if it is not in the budget for the Town to do so.

The Board discussed the hours of use, and how to set limits.

Ms. O'Meara suggested that the Planning Board has the option of deferring the hours of use issue to the Conservation Commission.

Mrs. Schenkel would also like to have signage regarding both hours and dogs.

Mr. Hatem closed the public hearing.

Mr. Dolan made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting Site Plan Review of the construction of a parking lot at Winnick Woods, a 70+ acre open space parcel located on Sawyer Rd, which requires review under Sec. 19-9, Site Plan Regulations.

2. The existing parking lot was designed to provide a buffer between the parking and the nearest neighbor to the west.
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 the Town of Cape Elizabeth for Site Plan Review to expand the parking lot at Winnick Woods, a 70+ acre open space parcel located on Sawyer Rd be approved, subject to the following conditions:

1. That the applicant limit hours of use to open no earlier than ½ hour before sunrise and no later than ½ hour after sunset, subject to review and revision by the Town of Cape Elizabeth's Conservation Commission; and
2. That the applicant post appropriate signage regarding use restrictions on the parcel, including (i) hours of use, and (ii) requiring that all dogs must be leashed at all times.

Mrs. Richardson seconded the motion and it was approved, **6-0**.

Cross Hill Lots 1 and. 21 Subdivision Amendment ~ Juan Perez-Febles is requesting an amendment to the previously approved Cross Hill Subdivision to shift the common lot line of lots 1 and 21 in order to include an existing driveway entirely on lot 1, Sec. 16-2-5, Subdivision Amendment.

Juan Perez-Febles spoke to the board about his proposal. He wants the driveway that exists for Lot 1 to be all on within the boundary of Lot 1. He bought his home in 1976 and then acquired the property next door. Since he owned both lots, it was not a problem that the driveway was over the property line. He would like to move the line to prevent potential problems in case he sells lot 1 as a separate lot.

There was no discussion from the Board.

Mrs. Richardson made the following motion:

Findings of Fact

1. Juan Perez-Febles is requesting an amendment to the previously approved Cross Hill Subdivision to adjust the lot 1 and 21 common boundary so that an existing driveway is completely located on lot 1, which requires review under Sec. 16-2-5, Amendments to previously approved subdivisions.
2. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Juan Perez-Febles to amend the previously approved Cross Hill Subdivision to adjust the lot 1 and 21 common boundary so that an existing driveway is completely located on lot 1, be approved.

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

Edwards Resource Protection Permit ~ Jeffrey and Houri Edwards are requesting a after the fact Resource Protection Permit to fill 152 sq. ft. of RP2 wetland for a sport court on their property located at 59 Hunts Point Rd, Sec. 19-8-3, Resource Protection Permit Completeness.

Jeffrey Edwards of 59 Hunts Point Road addressed the Board on his own behalf. He wants an after the fact permit because the sport court is already in place, and has been there for more than 2 years. He has owned the property since March of 2008. He said there were no building permits on file when they signed a purchase and sale contract. Bruce Smith issued an after the fact building permit and identified the small encroachment into the wetland area.

Mr. Edwards stressed the fact that the encroachment is very small and is only fill and is now completely vegetated. The encroachment is not the sport court itself.

Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jeffrey and Houri Edwards for an an after-the-fact Resource Protection Permit to fill 152 sq. ft. of RP2 wetlands for a sport court located at 59 Hunts Point Rd be deemed complete.

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

The Board felt they did not need a site walk.

The Board then discussed whether they need to hold a public hearing.

Ms. O'Meara informed the Board that they are not required to hold a public hearing and they are able to approve the project without any hearing if they so choose.

After further discussion it was decided to vote on final approval at this meeting.

Mr. Dolan agreed, but wanted to express his concern over the precedent. He worries that a homeowner who goes ahead and constructs something over a wetland and then comes in and gets approval afterwards is circumventing the needed procedure.

Mrs. Richardson said that we have sometimes granted after the fact approval and sometimes not. But this one is different because it is de minimus and the others were not. And the Town Engineer has agreed there is not a problem with this one.

Mr. Dolan asked if there is a penalty for this encroachment. It appears that the only penalty in this case was double the building permit fee for building without a permit.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jeffrey and Hourri Edwards for an an after-the-fact Resource Protection Permit to fill 152 sq. ft. of RP2 wetlands for a sport court located at 59 Hunts Point Rd be approved.

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

Ms. O'Meara presented the amendments to the Board. She noted that she has included relevant portions of the Comprehensive Plan with the proposed zoning amendments. The amendments under discussion were proposed in the Comprehensive Plan and are now being considered in order to bring the zoning into agreement with that document.

The proposal is to increase the density allowed in the Town Center and to allow mixed use buildings as long as the first floor is nonresidential.

Ms. Quinn inquired about the difference in the density allowed for rooming houses and the greater density for residential units proposed in these amendments.

After discussion, it was decided to leave the rooming house density as it is, and continue to support the proposed amendments.

Mr. Hatem opened the public hearing.

Peter Konstantino, representing Slick Rock who owns property at 349 Ocean House Road, spoke in support of the proposed amendment. He said the market is not there to fill a building with offices. Allowing residences will help fill the buildings and make such projects economically feasible.

The public hearing was closed.

Mrs. Schenkel made the following motion:

BE IT ORDERED that the Town Center Amendments, which increase the density

allowed for multi-family units, be recommended to the Town Council for consideration.

Mrs. Richardson seconded the motion and it was approved **6-0**.

Mr. Dolan asked Ms. O'Meara about the results of the Town Council meeting as it considered the Shoreland Zoning Amendments the previous night.

The Council adopted the amendments after public hearings and comments.

Mr. Dolan wanted to publicly commend Ms. O'Meara for her work and representation of the Board in that matter.

Mr. Dolan moved to adjourn the meeting seconded by Ms. Richardson. The Board voted **6-0** to adjourn and the meeting was adjourned at 8:10 pm.

Respectfully submitted,

Hiromi Dolliver