

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

December 15, 2009

7:00 p.m. Town Hall

Present: Peter Hatem, Chair  
James Huebener  
Beth Richardson

Thomas Dolan  
Liza Quinn  
Barbara Schenkel

Absent: Elaine Falender

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and called for additions or corrections to the minutes of the November 17, 2009 meeting. Mrs. Schenkel moved to approve the minutes as presented and was seconded by Mrs. Richardson. The motion passed, **6-0**.

OLD BUSINESS

**Cape Café Site Plan** - James Wagner, Dr. Samir Haydar and David Leopold are requesting Site Plan Review for a 60-seat, 2,294 sq. ft. café in the Pond Cove Shopping Center located at 327 Ocean House Rd, Sec. 19-9, Site Plan Public Hearing.

James Wagner made the presentation for the applicant. He reviewed the memo from the Town Planner and he noted the comments about the other tenant and said he would not address that unless specifically requested to do so. He also noted that the Town Planner has visited the site with the Fire Chief. Mr. Wagner indicated that he is willing to accept a condition to the approval that the Fire Chief has final approval of the design of the patio.

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

Mrs. Schenkel doesn't feel the Board has any jurisdiction over the other tenant. She also doesn't think this tenant should have to screen everyone else's dumpsters.

Ms. Quinn said she agrees with Mrs. Schenkel.

Mr. Huebener asked if this was the final site plan. Since it is, he feels that the applicant should use white-out and a ruler to make a neater plan for the permanent record.

Mr. Wagner said he would do that if the Board requests it.

Mrs. Richardson asked Ms. O'Meara about the right title and interest issue. We have no power there, but the application standards require us to have indication of right title and interest.

Ms. O'Meara noted that there are various documents that the Board has found acceptable evidence of title, such as a survey, a purchase and sale agreement or a lease. This applicant has given us that sort of documentation.

Mr. Hatem noted that we have not received any written claim, nor did anyone come forward during the public hearing to present a claim that this is not a permitted use under the terms of the lease.

Mr. Dolan made the following motion:

#### Findings of Fact

1. James Wagner, Dr. Samir Haydar and David Leopold are requesting Site Plan Review for a change of use of an existing space in the Pond Cove Shopping Center, located at 327 Ocean House Rd, to restaurant for the Cape Café Wine Bar, which requires review under Sec. 19-9, Site Plan Regulations.
2. The application includes a rear patio which is proposed in an area that includes multiple emergency fire exit doors.
3. The application substantially complies with the standards of Sec. 19-9-5, Site Plan Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of James Wagner, Dr. Samir Haydar and David Leopold for Site Plan Review for a change of use of an existing space in the Pond Cove Shopping Center, located at 327 Ocean House Rd, to restaurant for the Cape Café Wine Bar be approved with the following conditions:

1. That the patio location and design be revised to comply with emergency fire exit requirements as determined by the Fire Chief.
2. That the final site plan be amended to present a more professional appearance such that the final document be clearly readable and acceptable to the Town Planner.

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

## NEW BUSINESS

**Berry Subdivision** - The Estate of Henry Berry III is requesting Subdivision Review of a 4-lot subdivision located at 110 Two Lights Rd (U40-19), Sec. 16-2-3, Minor Subdivision Completeness.

Mr. David Titcomb represented the Berry estate and made the presentation to the Board. The proposed subdivision is on Hannaford Cove Road at the intersection of Two Lights Road. The property is nine acres and four lots are proposed. The existing house will be on one lot, and there will be three new lots to be created. Hannaford Cove Road is a very narrow road and it actually encroaches on the Berry property in a couple of places. A couple of culverts also encroach. The applicant will grant a 5 ft. easement to the Town for the road and also for maintenance of the culverts.

The lots are served by public water, and all the other items requested for completeness will be taken care of in the next submission.

The electric service will be by overhead lines.

The applicant is requesting that the Town accept a separate parcel for the open space requirement. Since there is no appropriate space on this parcel for public access, the applicant is willing to pay the Open Space Impact Fee if the separate parcel is not acceptable to the Town.

Mr. Titcomb also noted that the lots are oversize for this neighborhood.

Mrs. Schenkel asked about the proposed location of the driveways. She also asked if they plan to denote the driveways on the plan.

Mr. Titcomb responded that they will not be opposite the existing houses on the other side of the road.

Mrs. Richardson asked if the intention was to keep the remaining house on lot 1.

Mr. Titcomb replied that it is the intent to keep that house.

Mr. Huebener asked about the setback from the RP-2 wetlands.

Ms. O'Meara replied that the Board has a great deal of discretion about what it can require for that setback. She also followed up on the inclusion of driveways on the plan, and said that if they are shown on the plan and the purchaser wants the driveway in a different location, they would need to come back to the Board for permission to move the location. Mrs. Schenkel withdrew her request to show driveways on the plan.

Mr. Dolan requested an explanation from Ms. O'Meara of the cash payment of the impact fee.

Ms. O'Meara outlined the practice and its history back to the 1970's. She also explained how the fees are calculated.

Mr. Dolan also asked if there is a requirement to place the utilities underground.

Ms. O'Meara replied that the Board can grant a waiver on the utilities.

Mr. Hatem said he sees that this is not a new neighborhood and that they will be using existing poles.

Mr. Dolan said his perspective is that anytime you can require underground utilities, you should.

Mr. Titcomb noted that there will be no new poles required. They will use only the existing poles.

Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Estate of Henry Berry III for Minor Subdivision Review of a 4-lot subdivision on a 9 acre lot located at 110 Two Lights Rd and Hannaford Cove Rd be deemed complete.

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

Mrs. Schenkel asked about the lack of contour lines and numbers. She was assured that they are on the plan and they are difficult to read in the reduced version. She will receive a large scale plan at the site walk.

After a brief discussion the site walk was set for Tuesday, Dec. 22, 2009 at 7:30am.

Mr. Dolan made the following motion:

BE IT ORDERED that the above application be tabled to the January 19, 2010 Planning Board meeting, at which time a public hearing will be held.

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

Mr. Hatem wanted to publicly thank Mr. Dolan for his years of service on the Planning Board, since he will be leaving the Board after this meeting.

Mr. Dolan moved to adjourn the meeting and was seconded by Mrs. Richardson. The motion passed, **6-0**.

The meeting was adjourned at 7:50 pm.

Respectfully submitted,

Hiroimi Dolliver