

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

January 19, 2010

7:00 p.m. Town Hall

Present: Peter Hatem, Chair
James Huebener
Beth Richardson
Victoria Volent

Elaine Falender
Liza Quinn
Barbara Schenkel

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 December 15, 2009 meeting. Mrs. Richardson moved to approve the minutes as presented and was seconded by Mrs. Schenkel. The motion passed, 7-0.

OLD BUSINESS

Election of Officers for 2010

Mr. Hatem then called for the election of officers. Mrs. Richardson nominated Mr. Hatem as Chair, seconded by Mrs. Schenkel. Mrs. Schenkel then nominated Mrs. Richardson as Vice-Chair, seconded by Ms. Quinn. The slate was approved 7-0.

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 Public Hearing.

David Titcomb of Titcomb Associates made the presentation on behalf of the Berry Estate. He also introduced Steve Bradstreet who did the engineering on the project and Jim Logan of Albert Frick Associates. Steve Candors, Attorney for the estate, was also present.

He addressed the comments from the last meeting and the Town Engineer's letter.

A small portion of Hannaford Cove Road encroaches on the property. A couple of the culverts also encroach, and the applicant will grant an easement to the Town for the road, culverts and access to maintain the culverts.

Since the other lot (the Pond Lot) proposed by the applicant is not acceptable to the Town for open space, the applicant will pay the open space impact fee to the Town.

He said there is a letter from Mr. Egan, an abutter, asking for restrictions on roads within the project. He said there is no reason to comply with this request because there is no road proposed at this time. If there was ever any development to happen in the future, which is hypothetical at this point, it would need to be addressed by the Planning Board at that time. He does not feel it is appropriate to put such a condition on this project now.

Late today Mr. Titcomb received a memo from the Conservation Commission requesting that the septic systems be located within the building envelopes and be a minimum of 25 ft. from wetlands. He spoke about the septic system on Lot 2 which lies partly outside the building envelope, but is not anywhere near the wetlands. On Lot 3, the system is 20 ft from the RP-2 wetlands, and on the other lots, they are more than 25 ft. from any wetlands. He asks that these facts be considered by the Board.

Mr. Hatem asked why the Conservation Commission wants the septic systems in the building envelope.

Ms. O'Meara, who also staffs the Conservation Commission, replied that it is an easy way to ensure that the septic systems stay a certain distance from the wetlands. If there is no restriction, the builders can move the septic systems anywhere the State Plumbing Code will allow, which is less restrictive than the Conservation Commission would like.

A discussion of Lot 3 ensued and James Logan, site evaluator for Albert Frick Associates, spoke about the site. He said he did not do the septic designs but he did review the soils evaluation and he did the wetlands delineation. He said the corner of the septic system is 21 ft. from the wetlands.

He disputed the need to put the septic system on Lot 2 within the building envelope, because it is nowhere near the wetlands. He is not able to say if the septic system on Lot 3 can be moved back 4 ft to comply with the proposed 25 ft from the wetlands. He requests that the Board leave it where it is now located on the plan.

Mr. Hatem then opened the public hearing.

James Wagner of 30 Hannaford Cove Road said his primary concern is the wetlands. He said he has not reviewed the wetlands assessment, but wants to know if there is total compliance with the wetlands designations, and setbacks. He is concerned about the preservation of the aquifers. He questions the delineation of RP-2. Is it RP-1? He requests a peer review of the soil evaluation.

His second concern is about Dr. Holt's property. He wants to know what the plans are for that property. We do not want Hannaford Cove Road to be a pass through for traffic from Broad Cove. He is concerned about traffic for his three children's safety.

His third concern is lighting on the street. There is only one light post now and we all like it that way. We would object to street lights.

His fourth concern is for traffic and the safety of his three young children.

Florence Braff of 69 Hannaford Cove Road, is concerned that this area could be used at some time in the future as access to backlands. She shares Mr. Wagner's concern about a possible through way and the lighting. Her primary concern is the wetlands. Her land backs onto critical wetlands. She cannot tell whether the wetlands drain towards Hannaford Cove Road or in another direction. She wants an overall plan for development not just one small piece at a time. She is concerned about the hydrology of the entire area. Her lot has water rising higher in the past couple of years. She thinks something has changed in the water systems over the last two years.

Reed Gramse of 12 Cunner Lane wondered why the subdivision is giving away 5 ft of the Road. Does the Town want to widen the road? He is concerned about the traffic.

Ms. O'Meara explained that the road appears to actually lie on the applicant's land, and the easement was just to correct that. There is no intent to widen the road.

Richard Berman of 58 Hannaford Cove Road thinks the applicant has the A team in Titcomb Associates. He also thinks that Al Frick seems to be the expert on the wetlands. He assumes the professionals are correct.

His Question had to do with why the Town will get an easement for the road, not a deed.

Ms. O'Meara replied that an easement was offered by the applicant rather than a deed for the land.

Mr. Berman would like the impact fee to be spent in the neighborhood. He agrees with the applicant on the septic systems setbacks. He wants no street lighting. He can see the night sky and wants no street lights.

He wants no cut-through roads.

Eileen Kalikow of 53 Hannaford Cove Road has lived there since 1979. She has concerns about the wetlands and the septic systems. The wetlands exist all along the road. Many of us have wells, so we are concerned about the septic systems. She was concerned about the summer water that the residents get from Portland Water District.

Tim Norton, an attorney, is representing Tom Egan who is a direct abutter. He is concerned about the setbacks from the wetlands on Lot 4. He would like to have a peer review of the wetlands on the plan.

The most significant issue for Mr. Egan is the possible road. Is there a contemplated road use? He wants to know if there have been discussions about a road, and he wants a condition on the plan prohibiting such a road.

Mrs. Richardson said that this has never been raised by the applicant. There is nothing on this in the proposal. When asked, the applicant has said there is no proposed road. She asked where this issue is coming from.

Mr. Norton said Mr. Egan has no interest in purchasing this lot, but he thinks it is the most possible place to put a road. Mr. Egan is very concerned about a road coming through there.

Ms. Falender noted that she could not even see where the road could go.

Mr. Norton replied it could go over Lot 4.

There were no further comments, so the public hearing was closed.

Steve Canders, attorney for the estate of Henry Berry, spoke for the applicant. He addressed the comment that he was not answering questions about the use of the land. He noted that the Board has the authority to insist that they put in a road to the abutting land in order to preserve access. As far as restricting the addition of a road, the applicant is not interested in putting in a road, they only want 3 new homes.

Mr. Titcomb answered a few of the public concerns. There are no street lights proposed. The Town is getting an easement instead of a deed because chances are that the Town does not own the fee in the road.

Jim Logan of Frick Associates spoke about the differences between RP-1 and RP-2 wetlands. He spoke about how he had done his work on this piece of property. He said there are no drainage issues with this property. There is no wetland impact proposed. This is not a critical wetland.

Ms. Quinn asked how he delineates the boundaries of the wetlands.

Mr. Logan gave a reply of how the soils and vegetation change from the wetlands to the upland.

Ms. Quinn asked what time of the year he was there.

Mr. Logan replied that it was in the fall of 2008, before the snow flew.

Ms. Falender asked about the portion of Lot 4 that does not show a 25 ft setback from the wetland.

The idea was that the Board might consider allowing a driveway there so trees from the buffer that exists would not have to be cut down.

Mr. Titcomb added that functionally it works better to have the driveway and septic system in that location than anywhere else on that lot.

Mrs. Schenkel inquired if they were required to have a 25 ft setback.

Ms. O'Meara replied that they are not required to have a specific number of feet of buffer from the RP-2 wetland.

Mrs. Schenkel thinks the applicant has hired a very reputable surveyor. She is willing to accept the opinion of the experts on the wetlands.

Ms. Quinn said that in her lay opinion Lot 4 is too wet to be a buildable lot.

Mr. Huebener shares Ms. Quinn's concerns about Lot 4.

Mr. Logan said that, in his opinion, Lot 4 is the best lot in the subdivision. It has the biggest piece of upland of all the lots. He also demonstrated the stream that flows across and the direction of the flow. He also showed the stream that was man-made across the upland in order to drain a small hollow area. It can even be filled in if someone wants to.

Florence Braff of 69 Hannaford Cove Road spoke up and was concerned that she had not made herself clear during the public hearing. All the water in the wetlands on the western side of Hannaford Cove Road does not drain towards Two Lights Road. Some of it drains towards Hannaford Cove Road. She believes it is all an integrated system.

James Wagner has been a litigator for 19 years and he feels that a peer review is not to be feared. He would like to see a peer review.

Mr. Hatem asked for a decision from the Board about whether they want a peer review.

Ms. Quinn, Mr. Huebener and Mr. Hatem said they were not inclined to ask for a peer review.

Mr. Huebener then spoke about the road and any possible restriction the Board should put on this land.

Ms. O'Meara said there is no proposed road. This is against what the Board's standards have been, where the subdivision standards actually encourage the provision for road rights-of-way to adjacent vacant land. There is not anything she has seen in the plans or presentations to have a road on that land.

Mr. Hatem is against putting the restriction on this land.

Mrs. Richardson is also against putting a restriction on the land as a result of speculation.

Mr. Hatem then asked the Board to consider the Conservation Commission's recommendation about the septic system locations. He said he is not inclined to require them to be within the building envelopes.

Mr. Titcomb spoke briefly about the septic system on Lot 3 and requested that it be allowed to stay 20 ft. from the wetlands. He said the 25 ft is an arbitrary number and they are asking for a 5 ft. waiver in just one location. He said it might even be possible to move it further from the wetlands but they do not know that for sure. He is asking for flexibility in this one area.

Ms. Falender asked why the Conservation Commission is requesting this provision here when we do not do this Town-wide.

Ms. O'Meara replied that almost all new subdivisions in Town have public sewers, so this issue has not come up recently.

Ms. Falender and Mrs. Richardson felt the Board was being asked to make a new ordinance and that this is not their job.

Ms. O'Meara said the Conservation Commission is consistent in its concerns about wetland impact. The State plumbing code will allow a septic system immediately adjacent to a wetland and the Conservation Commission did not want that to be a possibility in this area since there is no restriction on this project as to where the systems could be moved.

Mrs. Volent asked if the septic system needs to be kept clear of all vegetation.

Mr. Logan replied that you may not plant woody trees or shrubs on the system itself.

Mrs. Volent said that there would be no vegetative buffer if you are too close to the wetland. She would be in favor of the 25 ft. buffer.

Mrs. Schenkel was in favor of the 25 ft. buffer.

Mrs. Richardson is concerned about the precedent, and maybe we need an ordinance.

Ms. Falender is also concerned that 25 ft. seems arbitrary without an ordinance.

Mr. Richardson made the following motion:

Findings of Fact

1. The Estate of Henry Berry III is requesting Minor Subdivision Review of a 4-lot subdivision on a 9 acre lot located at 110 Two Lights Rd and Hannaford Cove Rd, which requires review under Sec. 16-2-3, Minor Subdivision Review.
2. The Town Engineer has identified engineering details which should be added to the plans.
3. The applicant has agreed to pay an open space impact fee in the amount of \$13,365 to meet the Subdivision Ordinance Open Space standard.
4. The plans include delineation of building envelopes, which are intended to restrict activities on the lot.
5. The subdivision plan includes the preparation of easement deeds, the final language of which is still under development by the town and applicant's attorneys.
6. Lots 2-4 include underdrain flat swales to capture stormwater. These swales are designed with a top layer of soil medium and would aesthetically and functionally be enhanced by landscaping.
7. 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 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 approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated 1/13/2010;
2. That a note be added to the plans stating that if the septic systems are moved from the locations as shown on the plans, they must be no closer than 25 ft. from the RP-2 wetlands;
3. That easement deeds be submitted in a form acceptable to the Town Attorney and Town Manager and signed by the applicant;
4. That a landscaping plan be submitted for installation over the soil medium in the flat swales;
5. That, prior to the issuance of a building permit and/or commencement of construction, that the full amount of the open space impact fee for the subdivision (\$13,365) be paid to the Town.
6. That a note be added to the plans restricting activities outside the building envelope to the installation of driveways, utilities and septic systems as shown on the approved subdivision plans;
7. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

Ms. Quinn seconded the motion and it was approved 7-0.

NEW BUSINESS

Woodlands Assisted Living of Cape Elizabeth Site Plan - Lon Walters of Woodlands Assisted Living of Cape Elizabeth LLC is requesting Site Plan Review of the redevelopment of the site located at 126 Scott Dyer Rd to a 72 bed assisted living facility, Sec. 19-9, Site Plan Completeness.

Peter Bethanis, architect, is here to represent Mr. Walters. Mr. Thayer is still on an airplane, so Mr. Clooney from Mr. Thayer's office will be talking about the site work. He gave an overview of the project.

There are currently two buildings on the property. A one story building which they propose to raze and a two story building which they propose to turn into a 72 bed Alzheimer's unit. They propose to have the two floors work independently by having each floor with a grade entrance. The second floor

would have a ramp as a grade level entrance. The first floor also has a proposed new entrance.

There would be 36 patients on each floor. There are 2 elevators in the building. A new storage area is planned in the actual footprint of the building that will be razed.

He talked about a courtyard he designed for the upstairs patients. He talked about the safety issues for Alzheimer's patients, and how he made the courtyard both safe and pleasant for them.

Mr. Bethanis then addressed the items in the memo from Ms. O'Meara dated January 19, 2010.

Mr. Lon Walters questioned what financial documents were required from him.

Ms. O'Meara referred him to the Town Manager to ask him what letters he needs.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Woodlands Assisted Living of Cape Elizabeth, LLC for Site Plan Review of the redevelopment of the vacant facility located at 126 Scott Dyer Rd to a 72 bed assisted living facility be deemed complete.

Mrs. Schenkel seconded the motion and it was approved, **7-0**.

The Board then began a discussion with the applicant of the items on page 2 of Ms. O'Meara's memo.

Mr. Walters is not in favor of changing the name of the facility. He said they are not proposing a street with a duplicate name. He said this is our legal name and it is used by their other 5 facilities in the state. He is resistant to changing it.

Mr. Hatem is concerned about the safety issue, and also sympathetic about the brand name.

Mr. Walters said it is a big deal for them.

Mr. Hatem was very concerned about the potential for a delay in response to an emergency at the Woodlands apartments on the other side of town.

Ms. Falender agreed that it is a public safety issue and the Board needs to be sensitive to it. She said they cannot ignore a letter from the Police Chief calling it a danger. She asked Mr. Walters to think of some creative way to call this something other than the Woodlands.

Mr. Bethanis then discussed the Fire Chief's recommendation about the elevators. He said they were going to all the trouble of having a grade level entrance for the second floor, so he doesn't think they will need to use the elevators for an emergency. He also noted that they will locate the hydrant wherever the Chief wants it.

On the subject of the RP1 buffer, that is just on a service road and he proposes to leave that little portion out of the road. It is not an area where the public will go. The other piece was proposed by the Fire Chief to turn his trucks around. The third parcel was a mistake on the drawing.

The air conditioning pad was discussed by David Walters, general Contractor for the project. He agreed that it will be moved out of the RP1 buffer.

Mr. Bethanis noted that he has talked about the second floor room earlier. The snow on the ramp will have to be physically removed. The pedestrian walkway will be shown on the next set of plans.

Mr. Bethanis then responded to the Town Engineer's letter on an item by item review.

Mr. Bob Clooney, Engineer with Thayer Engineering, then told the Board he is working with FEMA about the flood zone. They are trying to get an actual elevation of the 100 year flood zone line. They are filing a letter of map amendment with the State Planning Office and FEMA to get the flood zone corrected to elevation 9 ft, which would leave this out of flood plain.

Mrs. Volent would like the floor plans for the second floor to be labeled in detail like they are for the first floor.

Mr. Lon Walters said they will be labeling those plans.

The Board agreed that they do not need a site walk.

Mrs. Richardson made the following motion:

BE IT ORDERED that the above application be tabled to the regular February 16, 2010 meeting of the Planning Board (at which time a public hearing will be held).

Mr. Huebener seconded the motion and it passed, 7-0.

Winnick Woods Parking Lot Site Plan Amendment - The Town of Cape Elizabeth is requesting an amendment to the previously approved Winnick Woods parking lot Site Plan to remove two conditions on the approval, Sec. 19-9-6, Site Plan Amendment.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the request and other materials submitted and the facts presented, the request of the Town of Cape Elizabeth to amend the approval for the Winnick Woods parking lot site plan to remove conditions relating to hours of use of the trail and dog leashing be approved.

Mrs. Richardson seconded the motion.

Ms. Falender asked if they should be removing all restrictions on dogs.

Ms. O'Meara replied that the Town is requesting the Conservation Commission make recommendations for a town wide policy for dogs on public lands, so the Town Council asked for this to be removed until the Conservation Commission sets those rules.

Mrs. Schenkel asked how long it would be before those guidelines are ready.

Ms. O'Meara replied that she expects the process to be initiated within a month.

The Board then voted to approve the motion, 7-0.

OTHER BUSINESS

Agricultural Amendments - The Town Council has forwarded to the Planning Board a request to prepare amendments to the Zoning Ordinance that implement recommendations in the Comprehensive Plan related to promoting agriculture, Sec. 19-10-3, Zoning Ordinance Amendments.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the draft amendments and the facts presented, the agricultural amendments are tabled to the regular February 16, 2010 Planning Board meeting, at which time a public hearing will be held.

Mr. Huebener seconded the motion and it was passed, 7-0.

Mrs. Richardson made the motion to adjourn, seconded by Mrs. Schenkel. The Board was unanimous and the meeting was adjourned at 10:30 pm.

Respectfully submitted,

Hiroimi Dolliver