

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

May 18, 2010

7:00 p.m. Town Hall

Present: Peter Hatem, Chair
 Elaine Falender
 Barbara Schenkel
 Liza Quinn
 Victoria Volent

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 March 16, 2010 meeting. Ms. Falender moved to approve the minutes as presented and was seconded by Mrs. Volent. The motion passed, 5-0.

OTHER BUSINESS

Election of Vice Chair - Vice Chair Beth Richardson has resigned from the Planning Board and nominations for a new Vice Chair will be taken.

Mr. Hatem called for nominations and Ms. Quinn nominated Ms. Falender. Mrs. Schenkel seconded the nomination. Ms. Falender said she would accept the position and she was elected by a vote of 4-0.

CONSENT AGENDA

Jay Cox Farm Stand Site Plan Amendment - Jay Cox is requesting an amendment to the previously approved farm stand located at 1148 Sawyer Rd to install lighting for the parking lot and walkway, Sec. 19-9, Site Plan Amendment.

Mr. Jay Cox of 1148 Sawyer Road, spoke to the Planning Board and explained that he wants to install a flood light in the parking lot and pathway lighting as shown on the site plan. Since there was no discussion by the Board, Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jay Cox to amend the previously approved site plan for the farm stand located at 1148 Sawyer Rd to add a light to the parking area and walkway lighting be approved as a Consent Agenda item.

Ms. Falender seconded the motion and it was passed, 5-0.

NEW BUSINESS

Rudy's of the Cape Restaurant Site Plan Amendment- Two Lights General Store LLC is requesting an amendment to the previously approved 80-seat restaurant/convenience store located at the existing Rudy's establishment at 517 Ocean House Rd to remove the requirement for a crosswalk across Route 77, Sec. 19-9, Site Plan Amendment.

Since the representative for the project was not present, the Board decided to move on to the next agenda item.

Shore Road Private Accessway/Resource Protection Permit - MC Associates is requesting a Private Accessway Permit and Resource Protection Permit for a lot located at 1055 Shore Rd (U7-2B), Sec. 19-7-9, Private Accessway Permit Completeness and Sec. 19-8-3, Resource Protection Permit Completeness.

John Whitten with Terradyne Consultants represented MC Associates as their engineer. He said the property is a small wooded lot of 100 ft. wide and 350 ft. deep. It does not meet the standards for road frontage and lot area. The applicant would like to receive a private accessway permit in order to sell this lot as a house lot. The road would extend 150 ft. into the property with a 14 ft. wide driveway with grassy sides.

A strip of wetlands flows through the property and brings flow from the abutting conservation land to a smaller wetland at Shore Road. That wetland drains through a 24 in. culvert that outlets to the Delano Park area, and then to the ocean. Mr. Whitten said he has studied the area and the 24 in. culvert is adequate to handle the flow from the impervious area they propose to add. The peak flow should be improved because they will change the flow rate.

There are 4 test pits on the site, but not yet an HHE 200 plan. They plan to access public water, not a well.

They are proposing a 270 sq. ft. wetlands fill for the Resource Protection Permit.

Sight distances will be enhanced on the southern side by the removal of a 15 ft. by 40 ft. section of ledge. That will give them 200 ft. of sight distance in that direction and there is 270 ft. in the other direction.

Mr. Hatem then asked about item 6. on the May 12, 2010 letter from Stephen Harding.

Mr. Whitten replied that he will revise the grading so there will not be sheeting, but will be pushed toward the wetland.

Mrs. Schenkel asked if there is a sewer line in Shore Road, and was informed that there is not one there.

Mr. Whitten agreed to withdraw his request to ask for a waiver of the 1 ft. contours, and will modify his plan in accordance.

Mrs. Schenkel asked about the rainfall amounts and how different the numbers are from county to county.

Mr. Whitten replied that the differences are very small from one to the other and it was a typographical error to use the wrong figure in his report.

Ms. Quinn and Mrs. Schenkel were questioning how Mr. Whitten's calculations were really going to work to decrease the sheet flow. Ms. Quinn questioned how stormwater would impact properties with these 8-9 hour storms we have had.

A discussion of storm water runoff rates and storm water standards ensued. Mr. Whitten was explaining his theories.

Ms. Falender questioned item no. 5 on the engineer's letter.

Mr. Whitten said that the Fire Chief told him that he meets the standard as long as the turnaround will accommodate a B-40 standard vehicle.

Ms. Falender told the applicant that there are a couple of letters from the Conservation Commission and the Delano Park Association that will need to be addressed. It seems they will not be needed to be considered for a completeness review, but will be addressed at the next step of the process.

Mrs. Schenkel told the applicant that she recommends he come back with his figures in order and answer the possible complaints. He should be as thorough as possible when he comes back before the Board.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of MC Associates for a Private Accessway Permit and a Resource Protection Permit for a lot located a 1055 Shore Rd be deemed complete.

Mrs. Schenkel seconded the motion and it passed 4-1(Quinn).

The Board decided that they do not need another site walk. They have already had one site walk and feel that is enough.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of MC Associates for a Private Accessway Permit and a Resource Protection Permit for a lot located a 1055 Shore Rd be tabled to the regular June 15, 2010 meeting of the Planning Board, at which time a public hearing will be held.

Mrs. Volent seconded the motion and it was passed 5-0.

Rudy's of the Cape Restaurant Site Plan Amendment- Two Lights

General Store LLC is requesting an amendment to the previously approved 80-seat restaurant/convenience store located at the existing Rudy's establishment at 517 Ocean House Rd to remove the requirement for a crosswalk across Route 77, Sec. 19-9, Site Plan Amendment.

Patrick Carroll of Carroll Associates is representing Rudy's of the Cape. They received site plan approval on March 16. There was a lot of discussion of overflow parking and a need to secure a crosswalk from that overflow parking across Route 77 if permits could be gotten was added as a condition of approval.

Mr. Carroll said he had been in contact with Bob Malley, the Public Works Director, and was told that there are DOT guidelines that have to be met before a permit can be granted for such a crosswalk. Rudy's cannot meet these guidelines. The DOT does not allow a crosswalk in an area with a speed limit over 35 mph. and the speed limit is 40 mph. in the area in question. The Town Council has requested a reduction to a 35 mph. limit, but has no response from the MDOT.

Mr. Carroll says they can meet the accessibility guidelines on their side of the road, but not on the other side of the road. There is no sidewalk on the opposite side of the road, and they cannot get approval for a crosswalk to nowhere.

Mr. Hatem asked if the applicant is requesting that the condition be completely removed.

The response is that yes, they want it removed.

Ms. Schenkel asked why they couldn't park at the new building right behind the property.

Mr. Carroll replied that Mr. Ingalls is trying to sell his property and didn't want to tie it up into an agreement. Also, the access to the Ingalls property is from Davis Point Road, which is private.

Ms. Quinn suggested that people could park along Route 77.

In response to her question, Ms. O'Meara confirmed that parking is not allowed on any of the paved surface of Route 77.

Ms. Schenkel feels that people need to take care of themselves, and watch out for their own safety.

Mrs. Volent likes the crosswalk as a place of safety and a way to funnel pedestrian traffic into one area rather than crossing just anywhere.

Ms. O'Meara noted that the Town Council is interested in this issue, but no decisions are being made as yet.

Ms. Falender feels that the viability of the parking at St. Bart's is in question. This is not a safe place to cross the road and she is very troubled by removing the condition. The parking lot at Rudy's is already overflowing and we haven't even added more seats yet. The overflow parking we have required is across the street and not a safe place to access. She is reluctant to agree to take it off our site plan.

Mr. Hatem is in agreement.

Mrs. Falender then said that if they remove the condition it opens the question of the overflow parking again. If the crosswalk is not possible, then the agreement with St. Bart's is not a viable overflow parking location.

Ms. Quinn thinks the overflow parking should be on the grassy shoulder of the road.

Mr. Carroll replied that he has the required number of spaces for the number of seats in the plan.

Mrs. Schenkel asked if there is adequate parking on site, can we require additional parking. Why are we asking for more than the standard?

Ms. Quinn feels we are over reaching. She would be in favor of removing the condition requiring a crosswalk.

Ms. Falender is not in favor of removing the condition without a public hearing. The neighbors were clearly concerned about the adequacy of the parking. Mrs. Volent also said that parking was one of the major issues at the public hearing and she is not in favor of removing the condition without another public hearing.

Mr. Hatem is not in favor of removing the condition tonight. He would like to schedule it for public hearing next month. He then asked Ms. O'Meara how much of the project or amendment could be opened up for discussion.

Ms. O'Meara replied that they are only limited by the ordinance.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the materials submitted and the facts presented, the request of Rudy's on the Cape, located at 517 Ocean House Rd, for an amendment to the previously approved Site Plan to delete condition 4 which requires installation of a crosswalk be tabled to the regular June 15,2010 meeting of the Planning Board at which time a public hearing will be held.

Ms. Falender seconded the motion.

Ms. Falender wanted to make it clear that to the extent that we are opening up discussion of the crosswalk, we are also opening up the discussion of the adequacy of the overflow parking. To me this opens the adequacy of the parking.

Mr. Carroll asked if the entire project could be up for approval.

Ms. O'Meara said that the reality is there are no legal limits on what can be discussed in the public hearing, nor is there a legal way to restrict the deliberations of the Board.

Mrs. Schenkel feels that we are being unfair to this applicant and she will vote against the proposed amendment. She does not feel it is fair to ask the applicant to exceed the standards of the ordinance.

The motion passed 4-1(Schenkel).

Mrs. Schenkel moved to adjourn and was seconded by Ms. Quinn. The Board adjourned at 8:15 m. by a vote of 5-0.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary