

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

November 16, 2010

7:00 p.m. Town Hall

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

Absent: James Huebener

Also present was Maureen O'Meara, Town Planner.

Ms. Quinn made a motion to approve the minutes of the October 19, 2010 meeting. Mrs. Schenkel seconded the motion and it was passed 6-0.

CONSENT AGENDA

Cottage Brook Subdivision Phasing Amendment - Cottage Brook LLC is requesting an amendment to a previously approved Cottage Brook subdivision, located in the vicinity of Dermot Drive and Killdeer Rd, to revise its phasing plan by dividing the subdivision into additional phases, Sec. 16-2-5, Subdivision Amendment.

Jim McFarlane of Spurwink Woods, LLC, one of the owners of the project, spoke on behalf of the proposal. He noted that Skip Murray, another owner, was also present. He said the request is to change the phasing due to economic conditions. He described the boundaries of where they wish to move the phase lines.

Ms. Falender made a motion to move this item to the regular agenda and was seconded by Mrs. Volent. The motion carried 5-1.

Ms. Falender noted a letter from Richard Bryant that was received by the Board at about 4:00 pm today. Mr. Bryant cited the Town limitations on dead end roads and that he believes this will create an illegal dead end road.

Mr. McFarlane replied that they had started the work on this subdivision about 5 years ago, and it had an entrance and an exit into another neighborhood via Killdeer Road. They were aware of the dead end road provisions which allow a maximum of 2000 ft. and 20 homes. That was why they had a second means out of the subdivision. They also designed the subdivision all the way to the Maxwell property in hopes of gaining another exit and connectivity. Mr. Bryant wrote a referendum eliminating Killdeer Road as a method of egress. That referendum passed, meaning that this could only be a gated access that could

be used by fire, police and other emergency vehicles. This referendum created a long dead end road with an emergency access, and they have worked with that fact.

Mr. Hatem noted that this is not the approval for the entire plan. It is just a phasing.

In response to a question from the Board, Ms. O'Meara gave a bit of the history of the project's original approval, and said that the emergency access at Chicory Way brought the subdivision into compliance with the ordinance.

Mr. Hatem noted that they have already approved this project, and this is not the ultimate build out.

Again in response to a question from the Board, Ms. O'Meara said if Chicory Way was a through road, then there would be opportunities for the applicant to come in from different directions. It is up to the Planning Board to decide if the phasing plan has to meet the standard. The subdivision plan has already been found to meet the ordinance. Once the subdivision plan is recorded, it conveys rights to the Town for a right of way for this project. Even if the developer walks away tomorrow, there are still rights held by the Town to connect up whatever gets built, to Chicory Way.

Ms. Falender asked about the calculation of the 20 houses or 2000 ft. She wants to know where that line is.

Ms. O'Meara said that from the Spurwink Road end, it is reached by the time we get to the beginning of the project. The project was not considered to be on a dead end road because of the emergency exit on Chicory Way.

Ms. Falender wants to know if it was inherent in the original approval that the dead end standards did not have to be met in each phase but in the entire project.

Mr. Hatem and Mr. McFarlane both said that was true.

Ms. Falender then said it seems to her that the change in the phasing line doesn't alter that legal situation and is no longer an issue we need to deal with.

Mr. Hatem agrees.

Ms. Quinn agrees.

Mrs. Volent asked about the inclusion of the turnaround on Lot 11 and whether it is included in Phase 3.

Mr. McFarland said that when Chicory Way is constructed, the turnaround must be built.

Mrs. Schenkel is concerned about 11 more houses going in with only one access. Maybe the road [connecting to Chicory Way and Killdeer Rd] needs to be constructed with phase 2.

A discussion ensued about how bonding covers the Town in case a developer comes in and starts a lot of site work, but then abandons the project and the Town is left to finish the work. The bond allows the Town to go in and fix problems if the developer does not perform. The advantage of phasing is that the developer only has to provide a performance guarantee for the improvements within the phase. The town should not allow any work in a phase where a performance guarantee has not been posted.

Then Mr. Hatem recognized that a member of the public wished to make a comment.

Alison Darling of 35 McCauley Road said she has been involved with this since it started and is miffed because there was never any discussion of phases. The whole entire development was approved, not phases.

Mr. Hatem replied that the phasing was part of the approval. The entire project was approved, but the phasing has to do with bonding and construction, not approval. There were originally 3 phases but the developer is now asking to go to 5 phases.

Ms. Darling feels that the entire road should be built now for safety concerns. She also said she had not received notices of prior Planning Board meetings. Ms. O'Meara explained that as a direct abutter to the project, she was sent a public notice of Planning Board meetings and records of those notices are available for review in the Town office.

Susan Gilbert Hirshon of Dermot Drive is very concerned about safety. She asks the Board to do a site walk at 5 minutes before 8:00 am. to see how dangerous the corner is with kids and parents waiting for the bus and cars and trucks going through a very narrow street. She said a 20 ft. wide street is very dangerous. There is one entrance and one exit into that neighborhood and it is a disaster waiting to happen.

Steve Bromage of Hamlin Street said he accepts that the subdivision is coming as the economy improves. He is concerned about the increased volume of vehicles in the area of the intersection of Spurwink, Hamlin, and Stephenson

Streets. That intersection is not adequate. He wants the Town to re-evaluate the safety issue there.

Mr. Hatem said that issue is outside the Board's authority. This subdivision is approved and the only thing we are considering is the phasing.

Ms. O'Meara said she is aware of the neighbors concerns and has brought this matter to the Police Chief. He has sent officers out there to check it out.

Skip Murray spoke next, and informed the Board that they want the phasing in order to cut the cost of the infrastructure. Water, Sewer, drains etc. need to be built. He would have no problem adding a dirt road to the bonding of the phase. He can construct a dirt road wide enough to accommodate a fire truck and put in a temporary gate of a couple of posts and a chain. He has no problem with this as an added condition.

Ms. Quinn believes the safety issue is not Chicory Way, but getting South Street to connect to Spurwink Road. It is a private solution, not a political one.

A discussion ensued about whether the road can be approved without a new plan. It was suggested that there is a standard in the ordinance for an emergency accessway, and this gravel road could be required to meet that standard.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Spurwink Woods LLC for an amendment to the previously approved Cottage Brook Subdivision to revise the phasing plan to create smaller phases be approved subject to the following conditions:

1. That the boundary line of Phase 3 be revised to include the turn around area that is adjacent to Chicory Way; and
2. That Phase 2 shall include the construction of a graveled accessway along South Street and continuing along Chicory Way to the gated intersection with Killdeer Road to be constructed in accordance with the standards for an Emergency Access Road.

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

NEW BUSINESS

Inn by the Sea 600 Cottages Site Plan Amendment - The Inn by the Sea

is requesting an amendment to the previously approved Site Plan for the Inn by the Sea, located at 40 Bowery Beach Rd, to demolish the "600" cottages and build a new building for 10 hotel units, Sec. 19-9, Site Plan Amendments.

Mike Zimmerman from Olympia Company, representing Inn by the Sea LLC, spoke about the proposal. He also said Steve Bradstreet from Oak Engineers and Mark Burnes were there. He said they would like to demolish the "600 Cottage" which now has 6 two-bedroom units and replace it with a new building with 8 one-bedroom units and 2 two-bedroom units. The current building is in disrepair and hard to maintain. He also told the Board that they are not asking for approval tonight, but only for completeness.

Steve Bradstreet said the new building does not change any of the site amenities. They will remove the sidewalks to reduce the impervious surface. All the utilities will remain the same. The one change they are looking for is 2 underground storage tanks for providing service to the "600 Cottage". He said that there were some comments from Amec and they have made the changes to the plans as suggested. They will have new plans for the next meeting.

Ms. Falender noted that there are significant differences in the building volume calculations between their calculations and Bruce Smith's calculations. She is concerned that significant plan alterations may be needed, not minor differences.

Mark Burnes, architect, addressed this part of the project. They have taken the decks out and removed a small service area and have brought the square footage into the permissible range. They will add back about 670 sq. ft. of deck to give relief to the exterior of the building. He will meet with Mr. Smith again this week.

Ms. Falender said that she is inclined to move the entire process to next month's meeting since the Board does not have the current proposal in front of them. All the plans they have are not accurate.

Ms. Quinn was concerned about the calculation of the square footage, not the volume.

Ms. O'Meara noted that the Planning Board's job is to determine compliance with the Site Plan Regulations, not the Zoning Ordinance. It is the job of the Code Officer to interpret and determine compliance with the Zoning Ordinance.

Mrs. Schenkel is not concerned with going ahead with completeness. She does have a question about the removal of the service area and how that will affect the noise from the air conditioners that were supposed to be behind that area.

Ms. Quinn said she had no problem with calling the plan complete, but it is the applicant's risk if they do not bring a good plan next time.

Mr. Burnes spoke up and said they have a plan to present to Mr. Smith and they will have a responsible plan for the next meeting.

Mrs. Volent had questions about the impervious surface and how it is calculated.

Ms. Jordan can't see any reason to deny completeness.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Inn by the Sea LLC, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 cottage" be deemed complete.

The motion was seconded by Mrs. Schenkel and it passed 4-2.

Ms. Quinn said she does not feel that the new building is in character with the current buildings.

Mr. Hatem opened the public hearing.

Diane Neveu of 32 Bowery Beach Road has concerns about the noise levels of the air conditioning and the sight lines.

Howard Heller of Richmond Terrace is concerned about many aspects of this proposal. He is concerned about the aesthetics, the noise level and the water and sewage. He is not against or for the plan at this point. He said the public needs time to see the plans. He is also concerned about year round use rather than summer only.

There were no further comments and the public hearing was closed.

Mrs. Schenkel wants to see more information about the placement and noise levels from the air conditioning units.

Ms. Falender wanted to mention that Al Frick had a concern about the grease trap. The report was dated in January 2010 and this issue has still not been resolved.

Mike Zimmerman responded to that concern by saying that the entire septic system needs to be shut down in order to do the work and there has not been an opportunity to do that yet. They hope to get to it soon.

Ms. Falender made the following motion:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Inn by the Sea LLC, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 cottage" be tabled until the December Planning Board meeting, at which time a public hearing will be held.

The motion was seconded by Mrs. Schenkel and passed 6-0.

OTHER BUSINESS

Roosters Zoning Ordinance Amendment - The Town Council has referred to the Planning Board a request to consider amendments to regulate roosters, Sec. 19-10-23, Zoning Amendments.

Ms. O'Meara summarized the proposed amendments to note that minimum lot size of 40,000 sq. ft. is needed in order to keep a rooster.

Ms. Quinn made the following motion:

BE IT ORDERED that the draft Rooster Amendments to the Zoning Ordinance to be tabled to the December 21, 2010 meeting of the Planning Board at which time a public hearing shall be held.

Mrs. Volent seconded the motion and it passed 6-0.

Ms. Quinn moved to adjourn and was seconded by Ms. Jordan. The motion passed 6-0. The meeting was adjourned at 8:35 pm.

Respectfully submitted,

Hiroimi Dolliver
Minutes Secretary