

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

August 16, 2011

7:00 p.m. Town Hall

Present: Elaine Falender, Chair                      Liza Quinn  
          Josef Chalal                                        Henry Steinberg  
          Carol Anne Jordan                            Victoria Volent  
          Richard Olfene

Also present was Maureen O'Meara, Town Planner.

The minutes of the July 19, 2011 meeting were approved as presented, 7-0.

CONSENT AGENDA

**Golden Ridge Subdivision Amendment Extension** - Golden Ridge LLC is requesting a 90-day extension of the Planning Board approval granted May 17, 2011, to add a lot at the end of Golden Ridge Lane, Sec. 16-2-4(f).

There was no discussion of the item.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the request submitted and the plans and materials previously approved, the Planning Board approves a 90-day extension of the Golden Ridge Subdivision Amendment granted May 17, 2011 to November 14, 2011.

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

**Rosewood Subdivision Amendment** - Joe Frustaci is requesting a 90-day extension of the Planning Board approval granted May 17, 2011, to add a lot at the end of Rosewood Drive, Sec. 16-2-4(f).

Since there was no discussion, Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the request submitted and the plans and materials previously approved, the Planning Board approves a 90-day extension of the Rosewood Subdivision Amendment granted May 17, 2011 to November 14, 2011.

Mr. Olfene seconded the motion and it was approved, 7-0.

## OLD BUSINESS

**Stonegate Subdivision Amendment** - Early Bird Group is requesting an amendment to the Stonegate Subdivision to add a lot located on Stonegate Rd (U31-9E)), Sec. 16-2-5, Amendments to Previously Approved Subdivisions Public Hearing.

Rick Licht of Licht Environmental Design and Rusty Pillsbury, applicant, were there to present the project. Mr. Licht outlined the changes since the last Board meeting on July 19, 2011 and the site walk on July 21, 2011. The plans have been updated to address concerns by the Public Works Director. The driveway permit is completed and approved. He noted that the big concern has been about the buffering of the subject lot. The rear buffer has been increased to 50 ft. and they have added elderberry and lilac bushes in the side buffer on the west side of the lot.

The buffer plantings on Stonegate Road should not be part of this plan because it is a separate agreement with the Stonegate Association. The applicant has paid the amount agreed upon, and will have no further control of the planting and maintenance of that area.

Ms. Falender opened the public hearing. There were no members of the public present, so the public hearing was closed.

Mr. Chalot asked for a definition of buffer.

Mr. Licht said they were using the Stonegate Association covenants. He cited a few of the restrictions on tree cutting, and side, front and rear property line buffer areas.

Ms. Falender asked about whether the restrictions on tree cutting etc. would apply to the entire 50 ft. at the rear of this lot since the covenants only specify a buffer of 15 ft.

Mr. Licht replied that the Board could specify whatever restrictions should apply.

Ms. Falender asked if the Town has enforcement of these covenants, or just the association.

Ms. O'Meara replied that the Town has no enforcement authority of these rules.

Ms. Quinn noted that a buffer is required under the Subdivision Ordinance.

Mr. Licht said that they were concerned that there might be too many restrictions placed on the homeowner. He also noted that buffering is not screening. He is

concerned that the house may be shut off from the neighborhood. They want sunlight and a sense of neighborhood. He cited 16-3-1-F of the Subdivision Ordinance that says direct sunlight shall be preserved. He does not want a complete shield.

Ms. Jordan commented that this is only 1 lot, not 16 lots. This lot and the one to the west were all one lot, so it's difficult to see how this will look in 10 years or so after the plantings have had time to grow.

Ms. Falender asked about the fact that only one tree is identified for preservation. Are any other trees to be preserved?

Mr. Licht replied that the intent is to keep those trees but they do not want any further restrictions within the building window. They may remove those trees, but they do not intend to do so.

Mr. Pillsbury said the homeowner should have the right to do whatever they wish inside the building envelope. He does not want to hinder the lot any further.

Mr. Chalot said that whatever is inside the building envelope can be cut down at any time. So looking at the plan it looks like the buffer on the west side [outside the building envelope] is pretty sparse.

Mr. Pillsbury noted that they have added trees and plantings on that side and they do not want to completely screen the lot. One of the biggest attributes of this lot is its western exposure to the sunsets.

Ms. Volent agrees that the plantings on the west side are a bit spotty. She does not agree with calling lilac bushes trees. She asked if the developer would be willing to add a few more bushes.

Mr. Pillsbury agreed to plant 3 more lilacs.

Mr. Steinberg does not think you need to screen between these two homes.

Ms. Jordan noted that lilacs will grow and fill in and create a screen. She is not inclined to request more lilacs.

Ms. Falender agreed that she does not see the need for more buffering.

Ms. Quinn disagreed and feels strongly that you need more buffering between the lot on Mitchell Road and the Stonegate subdivision.

Mr. Chalot said if you get a few low shrubs in here to create a sense of what is Stonegate and what is not, he would agree to that. He would like to add a few more shrubs to close that gap. A low height is acceptable.

Ms. Falender wanted discussion of the plantings on Stonegate Road. She wants to know why the applicant wants to remove the plantings from the permit.

Mr. Pillsbury said that he has an agreement with Stonegate Association about those plantings. He is to pay \$5,000 and the association is to do the planting. He has paid his money and feels he has no further obligation.

Mr. Licht pointed out that Stonegate Association has the responsibility to do the planting and the maintenance, and Early Bird has no control over them.

Ms. Falender said they could leave the landscaping on the plan and add a note that there is an agreement and that Mr. Pillsbury has paid the agreed upon amount. They will need to get a letter confirming that this has been done.

Ms. Jordan asked when the Stonegate Association will be meeting to accept this lot.

No date has been set.

Ms. Falender requested that the plan be named to say it is an amendment to the subdivision.

Mr. Licht agreed.

Ms. Volent made the following motion:

#### Findings of Fact

1. Early Bird Group LLC is requesting an amendment to the previously approved Stonegate Subdivision to add a lot located at 10 Stonegate Rd, which requires review under Sec. 16-2-5, Amendments to previously approved subdivisions.
2. The Town Engineer has recommended a revision to the plans;
3. The subdivision standards require that a buffer be provided around the perimeter of the subdivision and existing vegetation outside the building envelope could provide that buffer. Areas where there is no existing vegetation can be planted to create a buffer.
4. A new lot will be added to the subdivision, triggering the open space impact fee.

5. The application substantially complies with Sec. 16-3-1, Subdivision Standards.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Early Bird Group LLC for an amendment to the Stonegate Subdivision to add a lot located at 10 Stonegate Rd be approved, subject to the following conditions:

1. That the plans be revised per the Town Engineer's letter dated 8/10/2011;
2. That a table of proposed landscaping listing total number of plantings, including 3 additional lilacs north of the proposed elderberry, and a minimum size at time of planting be added to the plans;
3. That a preservation plan be added to the plans describing the measures to be taken to preserve existing vegetation during construction;
4. That a performance guarantee be posted in amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager or that all plantings be installed and inspected prior to issuance of a building permit for the lot.
5. That the building envelope be labeled and that a note be added to the plans that activities outside the building envelope shall be limited to the installation of driveways and utilities and the maintenance of existing lawn areas and preservation of woodlands ;
6. That the applicant pay an open space impact fee of \$4,455 dollars;
7. That the applicant shall modify notes 12 and 15 on the plan as requested by the Public Works Director;
8. That the title block of the plan include the words Stonegate Subdivision Amendment;
9. That the Stonegate covenants be amended to include this added lot as a part of the Stonegate Association;
10. That a note be added that the developer's obligation will be deemed satisfied when the Town receives a letter from the Stonegate Homeowner's Association acknowledging that the developer's full required payment for the landscaping along Stonegate Road has been received; and

11. That there be no alteration of the site nor issuance of a building permit until the plans have been revised to reflect the above conditions and the recording plat has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds

Mr. Steinberg seconded the motion and it was approved, 7-0.

#### OTHER BUSINESS

**Open Space Impact Fee Update** - The Planning Board will consider a recommendation to the Town Council to update the Open Space Impact fee.

Ms. Quinn introduced the topic by reading the following:

At the August 2, 2011 workshop, the Planning Board reviewed the current open space impact fee and discussed updating the fee with current U.S. Census data and 2011 assessed values. An updated calculation of the fee is attached.

Ms. O'Meara reminded the Board that it is not just the fee that is affected, but the amount of land required to be set aside for each lot developed.

Mr. Steinberg would like to see different fees for different density levels in the Town.

Ms. Volent said she is in favor of keeping it up to date.

Mr. Chalot said the Council is the one to decide to increase the fees. We are not recommending that they increase the fees, just that these are the new numbers. He is not in favor of increasing the fees in this economy.

Ms. Volent notes that the recommendation is an update, not an increase.

Ms. Falender said that the major impact of this has been an increase of the open space in the Town. The intent is not a fee, but an increase in open space. Perhaps we could reverse the order of how we phrase it.

Mr. Steinberg is still against any increase in either a fee or the amount of land to be set aside.

Ms. Jordan wants to phrase the recommendation to be an update, and leave it to the Council what methodology they employ to do that.

Mr. Olfene asked where we find the method of computation.

Ms. O'Meara said it is in the Subdivision Ordinance.

Mr. Olfene said we are performing an act of due diligence by apprising the Council that there may be a need to update this calculation.

Ms. Quinn said the ordinance is the one to dictate what must be done. There may be two sides, but the ordinance must be followed.

Ms. Quinn moved to table the updating of the open space impact fee to the next workshop.

Mr. Chalot seconded and the motion was approved, 7-0.

The Board then unanimously voted to adjourn.

The meeting was adjourned at 8:40 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary