

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

June 19, 2012

7:00 p.m. Town Hall

Present: Elaine Falender, Chair
Josef Chalat
Peter Curry
Carol Ann Jordan
Liza Quinn
Henry Steinberg
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Ms. Falender opened the meeting and called for the approval of the May 15, 2012 minutes. Ms. Jordan asked for a rewording of a portion of the second paragraph on page one, and the Board then unanimously approved the minutes as revised.

NEW BUSINESS

Golden Ridge Subdivision Amendment - Golden Ridge LLC is requesting an amendment to the subdivision approval granted October 18, 2011 for the Golden Ridge Subdivision, located on Golden Ridge Lane, to replace the donation of an open space easement with the payment of an open space fee, Sec. 16-2-5, Amendment to a previously approved subdivision.

Lee Lowry, attorney of Jensen and Baird was representing the applicant. He was there because when the subdivision was approved, the applicant offered to pay an open space impact fee, rather than to grant an easement. The board required an easement, and the applicant requested a reconsideration and was refused. The only recourse at that point was an appeal in Superior Court. The Town's attorney reached out to the applicant and asked if they would be willing to resolve the matter upon payment of the impact fee in lieu of the granting of the easements. They are before the Board today to have final approval of the plan as it was approved, without the easements and with the open space impact fee noted.

Ms. Falender opened the public comment period, and no one came forward. The public comment period was closed.

Ms. Falender then opened the matter to comments from the Board.

Mr. Curry asked about a question surrounding ownership of the plan. He asked if the matter of fees etc, has been resolved.

Mr. Lowry replied that while he is not representing the applicant in this dispute, it is a dispute over the amount of fees owed, not ownership of the plans. He said it is okay , and the Town's attorney said it is okay, to use the plan as it was approved because it is part of the public record. He also said his client fully understands he needs to produce a mylar of this plan sealed and stamped by an appropriate civil engineer or licensed surveyor.

Ms. Falender said she is not comfortable because the Town is on notice that the plan cannot be reproduced or used in any way without the consent of Mitchell and Associates. And Mitchell and Associates have said they have not given any permission to use it. The Board has to add another condition of approval to the plan. She is not comfortable putting her signature on the plan, since they have notice of this dispute. She also questioned the financial capacity of the applicant in light of this outstanding debt.

Mr. Lowry said his client has already paid a substantial portion of the bill in dispute, and further demonstrated his client's financial capacity. As for the use of the plan, he was not sure the dispute over the fee was appropriate to be before the Board. He also noted that this is exactly the plan that was approved last fall. He understands that they need to produce the same plan certified and sealed by appropriate professionals. At this point all they are asking the Board to address is the condition of approval.

Ms. Falender said she could see proceeding with the condition, but not with the mylar of the plan in light of the fact that they do not have permission to use the plan before them.

Mr. Lowry assured her that they were not going to reproduce the plan and present it to them without signature and seal for approval.

Mr. Curry said the claim of Mitchell and Associates challenges the applicant's right to any use of the plan.

My. Lowry said they can use the plan now because it is a part of the public record, and he has no opinion on the right of Mitchell and Associates to block the use of the plan. He cited the view of the Town's attorney that it was acceptable to use the plan because it was part of the public record.

Ms. Quinn said she has no problem adding a condition requiring the signature of Mitchell and Associates in consent to the plan. She wondered about adding language about a substitute plan.

Mr. Lowry said his client has told him that if the dispute is not resolved he is prepared to hire a civil engineer, or whomever is required, to reproduce, not copy, the work to create a plan suitable for approval and signature.

Ms. Falender said that in that case the Board would have to see and review the plan produced.

Mr. Lowry noted that he understands that they would have to either produce a plan with Mitchell and Associates signature, or return to the Board with a new plan signed and sealed by another company.

Mr. Steinberg asked how they can act on anything to do with this plan after being on notice that they cannot in any way use this plan.

Ms. Falender said she is comfortable with the idea that this is in our own public record, so it is a document we can look at.

Mr. Steinberg said he doesn't think it is appropriate at this time.

Mr. Lowry noted that all the Board is doing is amending the condition of approval as voted on by this Board on September 2011.

It was pointed out that the dispute arose after that approval, so the use of the plan was legitimate at that time.

Ms. O'Meara advised the Board that if they approve a condition that the applicant resolve their dispute, they are opening themselves up to a potential lawsuit on that condition.

Mr. Lowry said Ms. Quinn had suggested that there either be a plan signed by Mitchell and Associates and Northeast Civil Solutions, or the applicant hire another civil engineer to produce its own work and present it back to the Board.

Mr. Curry recused himself.

Ms. Quinn made the following motion:

The following motion has been drafted to include the conditions originally placed on the October 18, 2011 approval.

FINDINGS OF FACT

1. Golden Ridge LLC is requesting an amendment to the previously approved Golden Ridge Subdivision, located on Golden Ridge Lane to pay an open space fee instead of providing a pedestrian easement, which requires review for compliance with Sec. 16-2-5, Amendments to Previously Approved Subdivisions.
2. Sec. 16-3-1 (q) establishes an Open Space Impact Fee as a standard of subdivision review. The standard requires that open space be provided for each new lot in a subdivision.
3. The applicant is adding 2 new lots based on the most recently recorded subdivision plan.
4. Sec. 16-2-4(c) requires that a performance guarantee be provided prior to construction or sale of lots.
5. Golden Ridge Lane is proposed to be private and must be maintained as approved in order to provide adequate access for town emergency vehicles.
- 5.5 The Planning Board wishes to avoid any accidental violation of copyright or other proprietary laws and rights.
6. The subdivision amendment 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 Golden Ridge LLC to amend the previously approved Golden Ridge Subdivision and add a fifth lot at the end of Golden Ridge Lane be approved, subject to the following conditions:

1. That the applicant pay an open space impact fee of 8,640.00 dollars.
2. That the applicant provide a performance guarantee to the town in an amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager.
3. That a road maintenance agreement be provided in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
4. That there be no alteration of the site nor issuance of a building permit until the above conditions have been met and the subdivision plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

5. Mitchell and Associates consents to the use of the Golden Ridge subdivision plan by the applicant and by the Town in writing.

Ms. Jordan seconded the motion.

Mr. Steinberg added number 5.5 to the finding of facts, and it was accepted by both Ms. Quinn and Ms. Jordan.

A lengthy discussion followed with Mr. Lowry being concerned that there is no provision in the approval for an alternate set of plans drawn by a different civil engineer.

The resolution of that discussion was a formal request that the minutes reflect that anything that is not Mitchell and Associates would have to come back to the Board as an amendment to the subdivision.

Ms. Falender submitted the following as a substitute for condition number 5: That the final subdivision plan submitted for signature to the Board include an original signature and seal by Mitchell and Associates and any other design professional participating in the creation of this plan, which signatures shall be dated subsequent to the date of this approval.

It was agreed that this is acceptable to Ms. Quinn and Ms. Jordan and that it will be condition number 4. The final motion is as follows:

The following motion has been drafted to include the conditions originally placed on the October 18, 2011 approval.

FINDINGS OF FACT

1. Golden Ridge LLC is requesting an amendment to the previously approved Golden Ridge Subdivision, located on Golden Ridge Lane to pay an open space fee instead of providing a pedestrian easement, which requires review for compliance with Sec. 16-2-5, Amendments to Previously Approved Subdivisions.
2. Sec. 16-3-1 (q) establishes an Open Space Impact Fee as a standard of subdivision review. The standard requires that open space be provided for each new lot in a subdivision.
3. The applicant is adding 2 new lots based on the most recently recorded subdivision plan.

4. Sec. 16-2-4(c) requires that a performance guarantee be provided prior to construction or sale of lots.
5. Golden Ridge Lane is proposed to be private and must be maintained as approved in order to provide adequate access for town emergency vehicles.
- 5.5 The Planning Board wishes to avoid any accidental violation of copyright or other proprietary laws and rights.
6. The subdivision amendment 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 Golden Ridge LLC to amend the previously approved Golden Ridge Subdivision and add a fifth lot at the end of Golden Ridge Lane be approved, subject to the following conditions:

1. That the applicant pay an open space impact fee of 8,640.00 dollars.
2. That the applicant provide a performance guarantee to the town in an amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager.
3. That a road maintenance agreement be provided in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
4. That the final subdivision plan submitted for signature to the Board include an original signature and seal by Mitchell and Associates and any other design professional participating in the creation of this plan, which signatures shall be dated subsequent to the date of this approval
5. That there be no alteration of the site nor issuance of a building permit until the above conditions have been met and the subdivision plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

The board voted to approve the motion, 5-0 (one abstained and one recused)

OTHER BUSINESS

Short Term Rental Amendments - The Town Council has forwarded to the Planning Board for review proposed amendments to the Zoning Ordinance to regulate short-

term rentals, which is the rental for less than 30 days per tenant of a residential dwelling, Sec. 19-10-13, Zoning Ordinance Amendments Public Hearing

Ms. Falender introduced the topic with an explanation of the process. This has come from the Town Council for review, and recommendation. Tonight will be a public hearing and the Board will be making a recommendation back to the Council, which has the final decision making authority. There have been very few changes from the last month's meeting.

Ms. Falender said the Board has added safety requirements. There is also an estimate of the costs of installing the safety equipment. She also said that this Ordinance applies to all residence zones, the BA District, the Town Center Zone, and all lots regardless of size. It requires a minimum of a three day rental and exempts an owner who rents for no more than 14 days in one calendar year.

Ms. Falender opened the public hearing.

Joagnes Pasquarella of 12 Peabbles Point Lane said she lives in Peabbles Cove, where there are 24 cottages, or homes. Of the 24, 6 are active rentals. There are 3-4 more that are occasional rentals. She also talked of several other properties in the neighborhood that are rentals. She said she is both a resident and an owner of rental property, so she sees both sides of this issue. She is concerned that there are not different rules for tightly packed neighborhoods such as hers. She would like the Board to consider different rules for such dense neighborhoods. They have been subjected to unbelievable problems because of rental properties. They have had large fireworks shot off very close to her home. The abutting property has had renters with dogs that barked continuously all day until someone came home to them. The Town's response was that the dogs were in the house so there was nothing they could do. We have had people coming and going at all hours, arguing loudly, sexual encounters outside our back windows and our driveway being continually blocked. It is difficult to feel safe in your own home with strangers right outside at all hours. Homeowners suffer the consequences of these misbehaving renters. There should be no Motel 6s in our neighborhood. By allowing short term rentals, the Town is approving high density and multi-family usage in neighborhoods zoned for single family homes.

Peter Clifford of 36 Lawson Road has had a similar experience even in the last week or so. He agrees that the decision to get rid of the 30,000 sq. ft. line is a mistake. If you have houses close to each other, the impact of short term renters, especially people partying can be disastrous. There was a bachelor party in the house next door to us over the past weekend. There were fireworks. There was a stripper. I have a third grader, and it was offensive. It was offensive to everyone who lives in our neighborhood. We were assured before this by the person who rents out the property

that this would never happen. The person doing the rentals is not the owner, but someone who sublets the property.

He has some suggestions. He wants the ordinance to define what a nuisance is. There are fireworks, sex, nakedness etc in the neighborhood. He would like to see fines for drunkenness etc., and the license to be revoked for such offenses. When an owner rents out his property for 30 days or so, that is still a residential use, but when an owner subleases to a person for profit and that person goes on "home away" and maximizes his revenue, that is the functional equivalent of a B & B. He wants the renters to be the owners, not a sublease, so they will be accountable to the neighbors. He is also concerned about density. The property next to him can legally have 20 people. That's not a residence, that's a party. He would like the maximum number to be 10. He would also like to have a week minimum stay, not 3 days. He would like the 30,000 sq. ft. regulation to be standard.

Mr. Steinberg asked if Mr. Clifford had called the police.

Mr. Clifford replied that he did not call them, but someone did call. He did not know what the police action was, but things quieted down.

Jennifer Aronson of 27 Lawson Road also talked about the bachelor party. She said 10 men came from Massachusetts in separate cars. There were fireworks, loud music and Frisbee and alcohol in the yard. She is concerned that these rentals are a business in a residential neighborhood, and require very strict regulation. She'd like a short term rental to be more than 30 days. She'd like small lot delineation added back to the ordinance. She then showed pictures of what her neighborhood looked like at the time of the bachelor party.

Betty Crane from 9 Starboard Drive said she loves this town, and is appalled at what is happening here. She said this is going to spread all over the Town. She feels you have taken the teeth out of the ordinance. It needs more teeth, not less. Think of what is happening to the Town.

Mallory Marshall of 340 Ocean House Road feels there are problems where you have density. She feels that the Town deals with nuisance very well. The police log reflects that they deal with nuisance issues well. They have used our house on 53 acres for many events, both charitable and private. We have never had any problems or complaints. She cited some people in Florida who have had to rent out their home in order to manage financially in these hard times. She wants the council to be very careful about over legislating a homeowner out of being able to afford their home. She feels the police should be called if people are routinely rowdy and they should be fined.

Mary Giftos of 6 Point Road bought her property to retire on, and has put a considerable investment into it. Cape Elizabeth has a unique residential character and history. It is changing. It is now a business community in my neighborhood particularly. She has had the experience in the last week of people within 50 ft. in front of my cottage all hours of the day and night. I bought a residence in a residential area, and now it is a business. She asks the Town to be very clear what is business and what is residential, so that newcomers know what they are doing.

David Volin of 17 Lawson Road said their goal is reducing the nuisance factor. He talked about his long experience of living in the neighborhood, and how it has changed. The renters who are showing up the past few years are literally changing the character of this neighborhood. The house at 31 Lawson Road is now short term rentals, and more properties are being sold to become rentals. He doesn't understand how you can have a business such as this in a residential neighborhood. He wants the owners to be required to screen the tenants themselves. He said if they call the police every time they have a problem, then they would be calling every week as new renters come in each time.

Tilly Kelley of 96 Breakwater Farm Road came to represent the Sprague Corporation. She said they are concerned about the proposed ordinance since they work very hard to preserve their property in a largely undeveloped rural state. The Sprague Corporation has been renting properties on a short term basis for 50 years and they need the revenue to maintain their property. This is an unnecessary and unwarranted intrusion for them. She wants the Town to address the areas where there are problems and leave out those who have never caused a problem.

Edward Perry of 6 Tucker Lane in Peabbles Cove, feels that what needs to be addressed is the noise and nuisance, not the number of people. He said they do their best to screen renters. He can't believe that someone would rent to a group of young people planning to have a party. He will keep the security deposit if he finds people are just there to party. He feels the way to address this is through the noise and nuisance end of things. As far as the financial end of things, we are not getting rich. There is only an 8 week time period to rent it out and make enough money to cover expenses.

Julie Armstrong of 32 Lawson Road thinks the large lots should be separated out of this. The problem is in small neighborhoods. She also thinks that someone who doesn't own the property should not be allowed to be the renter. There is no accountability to the neighbors. She feels the 3 day period is way too short. She was the person who called the police because cars were blocking the street too closely for a fire truck to come in. The police had the renters move their vehicles all over the lawn.

Jim Huebener of 13 Kettle Cove Road said he has a rental next door at 11 Kettle Cove Road. He feels the goal of the ordinance is to preserve the character of Cape Elizabeth's

neighborhoods. Only one part of the ordinance addresses that, and it is in the number of people that can stay there. To him all the rest is unnecessary and adds paperwork and work for us. If he had pictures of his renters, it would be of them sitting on the front porch reading a book.

Mary Volin of 17 Lawson Road talked about how nice her neighborhood used to be. She feels the current ordinance does not meet the goals of retaining residential character and balance. Without lot size differential it does too little for small lot neighborhoods and too much for large family compounds with no problems. Transient high volume businesses do not fit the character of dense neighborhoods with small lots. Too many cars parked everywhere give the feel of a Wal Mart parking lot. How will abutters get fair market value for their homes if they need to sell? Why is this not a taking of my property rights? My only right is the added task of supervising behavior and calling the police.

Anthony Armstrong of 32 Lawson Road agrees that there needs to be more done about the nuisance aspect of this issue. You need to focus in on this sublet situation. It is not a residential use, it is a business. He feels that lot size is important, and the 30,000 sq. ft. would be a good line to exclude people who have larger lots. He spoke about the safety issue of having a lot of cars coming and going. He said it will affect the property values of those who live across the street. He mentioned the Comprehensive Plan and how this was not anticipated, not planned for and not wanted.

Patty Grennon of 8 Sea Barn Road lives in the Lawson Road neighborhood. She said there are 22 homes on 6.8 acres in that area. The average lot size is .31 acres. In the past 10 years, 5 homes have rented long term year round with only a few weeks here and there for a shorter term. About 4 years ago this changed and there are now 3 short term rentals in the neighborhood. Realtors who are marketing the homes that are now for sale have been encouraging people to consider becoming a short term rental property. My house is flanked by 2 short term rentals. They have rented to as little as 8 people and as many as 24, with many guests. These two properties over the course of the last two years have had over 1,000 people come through our back yard. This is a huge change to our neighborhood over the 4-6 people who used to live there. She is suggesting balance. She feels the limit on the number of people is relevant. 20 people is too much, and she thinks 6-8 is a more reasonable number. She wants to bring back the 30,000 Sq. ft. delineation. Large properties should be excluded.

Sandy Dunham of 11 Becky's Cove Lane said she rents out a cottage at 12 Becky's Cove Lane. She said most of their renters are returning. She screens people as well as she can. She has installed safety equipment to protect her guests. She is concerned about the rules that treat all properties the same when they are clearly not. Some are in dense neighborhoods, some are on large lots with no neighbors. She is not sure it is fair to limit occupancy to 2 per bedroom, especially when there are children. It's not fair to

limit someone who has 6 bedrooms to 10 guests. She does not think Cape Elizabeth needs this ordinance. There are already ordinances in place to cover noise and disorderly conduct.

Hans Croft of 10 Lawson Road said he has been living on Lawson Road his whole life of 13 years. He has noticed the increase of unfamiliar faces going down his road. He said there are always kids and dogs and bikes using the road and his neighbors know to go slow. He was amazed to find out that there are 47 rental homes in Cape Elizabeth and 4 or 5 of them are on Lawson Road.

Tom Dunham of 11 Becky's Cove Lane outlined the improvements he has made to the cottage they own at 12 Becky's Cove Lane. Many people think we are profiting by renting out our property, but it is a family asset and we need to maintain it. His goal is to manage it for family use. As for the safety requirements, he feels it should be required for every home. He suggests an overlay district for the neighborhoods that are at issue. It's a nuisance issue in intensely developed neighborhoods with small lots.

June Eiesland of 117 Old Ocean House Road said she is concerned about the safety of the people who rent her property. She screens her guests, and thinks a bachelor party is not ok. She is concerned about not letting her property being abused by guests. She limits her renters to 6 people, but does not agree with the limit of 10 guests. Just her family would take it over that limit.

Since no one else came forward to speak, the public hearing was closed and the discussion was opened up to the Board.

Ms. Falender opened the discussion by proposing that they go through the ordinance sequentially.

Pages 1 through 10, were not changed. Page 11 has the parking requirements.

Mr. Curry asked about parking on the lawns in residential neighborhoods.

Ms. O'Meara replied that there is nothing that prohibits parking on the lawns. The Planning Board has approved overflow parking on a portion of lawn at the Inn by the Sea. She said that it is easier to regulate the use that generates the need for parking, than the parking itself.

Ms. Quinn said it is frustrating that we cannot regulate the side effects. She doesn't think we should have short term rentals in this town. We can't regulate the side effects, and we should provide regulatory certainty to investors.

Ms. Falender suggested that they should take an informal consensus of the Board as these differences of opinion arise. She feels that if there is not a majority they should move ahead. She then asked if there was anyone else who would call for an outright prohibition on short term rentals.

Ms. Volent said she has had that opinion all along, but she feels they should continue with the process they have worked on so long and hard. No one else was ready to consider an outright ban on rentals of shorter than 30 days.

Mr. Curry would like to consider restoring the 30,000 sq. ft exemption.

Several Board members discussed whether to draw that line in the sand, but no clear consensus emerged.

Ms. Volent asked if the board has the authority to deal with nuisance.

Ms. O'Meara replied that it is not within the Planning Board's authority to regulate nuisance. You can make a recommendation to the Town Council to take a look at the ordinance, but it is not in your purview. She also pointed out to the Board that there are no complaints on the police records about these issues.

Ms. Jordan said that the things people are complaining about are already covered by laws that are already on the books. It's up to the police to take care of these things, and up to the neighborhood to complain frequently enough that the police do not let it slide. We, as a Board have no control over this, but we do need to do our part through the zoning ordinance. She also is concerned about the sub lessee doing the renting out of the property.

Mr. Steinberg suggested a restriction on subleasing to be included in the rental agreement. He also suggests a substantial deposit be taken to insure that your tenants behave well.

Mr. Curry does not feel the Town should get into the agreements between the landlord and the tenants. We are talking about use, not behavior. Maybe we should prohibit rentals of less than 7 days. The really short term rentals seem to be the problem. We could also restrict intensity by limiting parking or number of people in the building.

Mr. Steinberg was of the opinion that you could rent it out for 3 days and call it a weekly rental.

Ms. Jordan noted that then you wouldn't be able to rent at all for the remaining 4 days. In fact you could no longer advertise it as a daily rental. It would be a weekly rental.

5 Board members agreed to change the rental minimum from 3 days to 7 days.

Ms. Falender said she might be inclined to go along with that if they also deal with the issue of proximity. Maybe the 30,000 sq. ft. limit needs to be in place. She also wants to consider the parking requirements. She suggests 1 parking space for every 2 tenants, with a minimum of 2 spaces, and that there be a requirement to provide parking for guests too. After a brief discussion the parking recommendation was 1 space per every 2 tenants and 1 for each 2 guests during the short term rental.

The Board agreed to that provision by consensus.

On page 12 line 7, Ms. Volent proposed raising the minimum rental period to 7 days. Four Board members agreed, so that was changed from 3 days to 7.

On page 13 Mr. Steinberg would like to add a provision to require a security deposit, but no one else on the Board was in favor.

There was a discussion about whether to prohibit subletting. Only two Board members were in favor of such a provision.

On Page 14, provision 6. a discussion ensued about whether to limit it to lots of less of 30,000 sq. ft. The discussion covered how to regulate by proximity rather than lot size. In the end, lot size was deemed to be the simplest way to regulate and determine density.

Mr. Curry would like to consider applying the 7 day rental minimum to lot size as well.

Ms. Jordan said the question is do we want to use the 30,000 sq. ft. and what do we want to apply to it. Maximum number of tenants, 7 day rental minimum, or any other restrictions?

A consensus of the Board was to restrict according to lot size. A consensus of the Board was to make the limit at 30,000 sq. ft.

The debate then moved to what to allow on lots over 30,000 sq. ft. The board decided to limit the number of tenants to those allowed by prior standards, and the number of guests to no more than 15.

For lots of 30,000 sq. ft. or less, a limit of 8 tenants and 8 guests will apply.

The Board wanted to leave the 7 day minimum rental period to apply to all size properties.

The Planning board also recommends that the Council review the nuisance ordinance.

Ms. Falender wants the Council to know that this document reflects many compromises. The Planning board was divided on many of the issues in the draft.

And Mr. Steinberg wanted to reflect the fact that they have heard from many people and he has changed his opinion on some of the items as a result of that input.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the materials and the facts presented, the Planning Board recommends the short term rental amendments to the Town Council for consideration.

Mr. Chalot seconded and the Board voted 7-0 in favor.

Ms. O'Meara noted that the expectation is for this to go on the Town Council agenda for the July 9, 2012 meeting. She further expects the Town Council to refer it to their Ordinance Committee, who will be meeting on July 31, 2012 at 8 am.

The board voted unanimously to adjourn at 10:45 pm.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary