

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

June 18, 2013

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalot  
Peter Curry

Carol Anne Jordan  
Liza Quinn  
Henry Steinberg

Absent: Elaine Falender

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the minutes of April 22, 2013. Ms. Jordan asked for a correction to clarify a portion of the minutes and they were approved as amended, 5-0 (one abstained).

Town Planner's Report: Ms. O'Meara said the Town Council has been very busy working on projects the Planning Board has completed over the past several months. On June 10, the Council adopted the new Subdivision Ordinance, and it will take effect July 10. There were comments made that the Planning Board was a very impressive group. The Ordinance Committee was very impressed with the Presentation by the Planning Board Chair. The entire presentation was so thorough, and that helped the Council approve the Ordinance mostly unchanged.

The Council also approved the Day Care Amendment on the same night. That was changed by the Ordinance Committee to increase the number of children from 6 to 10. The Council increased it to 12 children. The town council increased the number of hours of operation from 4 to 6 hours.

The Conservation Commission is continuing to work on a Greenbelt Plan. They have held 2 forums and the next meeting to discuss the plan will be on July 9.

NEW BUSINESS

**10 Clinton Rd Private Accessway Permit** - Winslow Pillsbury is requesting a Private Accessway Permit to create a buildable lot located at 10 Clinton Rd, Sec. 19-7-9, Private Accessway Permit Amendment.

Ms. O'Meara gave an overview of the project. She said the Board had granted approval in March of this year with 10 conditions. The applicant has satisfied 9 of the conditions, but cannot satisfy the tenth one. That condition was to create a conservation easement

to be held enforceable by a third party. The Land Trust is unwilling to hold the easement, and the Town's attorney and the Applicant's attorney have come up with reciprocal agreements, to be part of the deeds, and a note on the plan to ensure no further development without Planning Board approval.

Win Pillsbury, the applicant, said Ms. O'Meara had covered all the points. He said they had gotten approval in March 2013 with 10 conditions. They have met 9 of the conditions, except for one of them. They could not find anyone to take the easement. He said that his attorney has talked to the Town and in order to be a conservation easement it has to have access for the people of the Town. The Land Trust will not take it because there is no connection to the Greenbelt. So they have come up with these reciprocal restrictive covenants.

Ms. Jordan said it seems like a good solution.

Mr. Chalot asked Ms. O'Meara why restriction 3a is not enough.

Ms. O'Meara said it is the intent to avoid a situation in the future when a Planning Board would be asked to approve a plan to utilize that back land. The Board had wanted the applicant to either come up with a master plan now that accommodates future development, or forever close that area to development.

Mr. Curry said he remembers that the Board was trying to restrict the use in perpetuity. They were concerned that the agreements could be negated by the two owners getting together to agree to develop the property.

Ms. Quinn made the following motion:

#### Findings of Fact

1. Win Pillsbury is requesting an amendment to the previously approved Private Accessway Permit for 10 Clinton Rd. The amendment would revise condition number 3 requiring a third party restriction on future development.
2. The applicant has made a good faith effort to comply with condition 3 and has satisfied all the other conditions.
3. The applicant has submitted an alternative condition that addresses the concerns resulting in the imposition of the original condition 3.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Win Pillsbury for an amendment to the

previously approved Private Accessway Permit Approval, Condition 3, for 10 Clinton Rd be approved with the following conditions:

3a. That a note be added to the plan as follows:

Lots A and B as shown on this plan are limited to one principal dwelling and associated accessory structures per lot. This restriction is agreed to by the owners of each property as a restriction imposed by the Planning Board in the approval of the private accessway. This restriction may not be amended or removed without approval of the Planning Board. No development is allowed in the conservation restriction easement area.

3b. That reciprocal restrictive covenants for lot A and B that limit development to 1 principal dwelling and accessory structures and be signed by the lot owners and recorded in the Cumberland County Registry of Deeds.

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

#### OTHER BUSINESS

**Building Permit Notification Zoning Amendment** - The Town Council has referred to the Planning Board a proposed amendment to the Zoning Ordinance that would require that a public notice be mailed when some building permits are issued, Sec. 19-10-3, Amendments to the Zoning Ordinance.

Ms. O'Meara said this has arisen in response to complaints by people who wished to appeal the approval of a building permit, but were not aware of the permit until the appeal time had expired. If a neighbor has not been aware of the permit until after the 30 day appeal time has expired, the Zoning Board is unable to consider the merits of the appeal. This provision would require notice if a permit is issued that is within 125 ft. of the normal high water line, or within 10ft. of a setback. Notice would be sent out to all abutters within 50 ft. of the property line where the building permit was issued.

Ms. Volent opened the public comment period, and no one came up to speak, so the public comment period was closed.

The Board agreed that the language in the proposal captured what they had agreed upon in workshop.

Ms. Jordan made the following motion:

BE IT ORDERED that the proposed Building Permit Notification Zoning Amendment be tabled to the July 16, 2013 meeting of the Planning Board, at which time a public hearing shall be held.

Mr. Chalot seconded and the Board approved the motion, 6-0.

**Normal High Water Line Definition Zoning Amendment** - The Town Council has referred to the Planning Board a proposed amendment to replace the current Normal High Water Line definition with the standards state definition, Sec. 19-10-3, Amendments to the Zoning Ordinance.

Ms. O'Meara said this is a follow-up to the workshop with the Code Enforcement Officer. The new Code Enforcement Officer is Ben McDougal, and he is concerned that the current definition of the high water mark is vague, and results in a case by case determination of the high water line. He would like something more predictable and would like to replace it with the normal high water line definition that the State uses for Shoreland Zoning. The proposal is to use the State definition of the high water line. The coastal wetland definition has been changed from the State definition to refer to all areas below the highest annual tide elevation.

Ms. Volent opened the public comment period. Since no one came forward, the public comment period was closed.

The Board agreed that Ms. O'Meara had captured their agreements from the workshop.

Mr. Curry made the following motion:

BE IT ORDERED that the proposed Normal High Water Line Definition Zoning Amendment be tabled to the July 16, 2013 meeting of the Planning Board, at which time a public hearing shall be held.

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

The board voted unanimously to adjourn at 7:25 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary