

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

November 19, 2013

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalot  
Peter Curry  
Elaine Falender

Carol Anne Jordan  
Liza Quinn  
Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the September 17, 2013 minutes. The minutes were approved 6-0 (1 abstain). The minutes of the October 15, 2013 meeting were approved 5-0 (2 abstain).

CONSENT AGENDA

**C'S Market Site Plan Approval extension** - Mike Concannon is requesting an extension of the Site Plan approval granted November 20, 2012 for C's Gourmet Market, a new retail/28 seat restaurant/office building to be located at 349 Ocean House Rd, Sec. 19-9-4 Site Plan extension.

Mr. Chalot recused himself from consideration of this item.

No one moved to place this item on the regular agenda, therefore it remained as a consent agenda.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the request submitted and the facts presented, the request of Mike Concannon for C's Gourmet Market, located at 349 Ocean House Rd, for a one-year extension of the Planning Board approval granted November 20, 2012 be approved, with an extension to November 20, 2014.

Ms. Quinn seconded the motion and it passed 6-0.

OLD BUSINESS

**Old Hayfield Rd Private Road Review** - Stephanie Boggs is requesting approval of a Private Road under the Subdivision Ordinance proposed on a paper street known as Elizabeth Rd located north of Reef Rd, Sec. 19-7-9(B), Private Road Public Hearing.

Ms. O'Meara said the application is to build a private road in a paper street. The applicant has asked for some waivers of the private road standards. They are proposing to build an 18 ft. wide road, with 14 ft. of paved surface and 2 ft. wide gravel shoulders. They also want to build 5 ft. off center of the right of way, all in order to save four existing trees. The board had asked for a recommendation from the Town staff on the waivers. The Town staff does not approve the waiver of road standards. They are recommending an 18 ft. wide paved surface with 2 ft. wide gravel shoulders.

The applicant approached the Fire Chief with a compromise proposal. They proposed a road to serve a single house and that house would need to have a sprinkler system. The Fire Chief is here at the meeting.

John Mitchell, of Mitchell and Associates was representing Stephanie Boggs. He said he had one minor correction to Ms. O'Meara's presentation. They have proposed a 14 ft. wide paved surface and 2 ft. wide grass shoulders. It was clarified that a gravel base would be installed under the grass.

The changes to the plan are all outlined in the October 31, 2013 letter. He said that a total of 4 lots can be developed along Old Hayfield Road. The Ham lot on the east side of the road, two lots on the west side of the road and the Boggs lot in the rear.

The Hams want a fence, not plants, which are shown on the plans. They would like an 8 ft. high solid wood fence.

There were other technical revisions mentioned.

He then addressed the road width, and the reasons for the requested waivers. Aside from providing legal access, they want to minimize disturbance of the land. They want to retain the 4 mature oak trees that are in the right of way. The board has approved waivers for the same width in the past and the Board has talked about this at length in the workshop. It was our impression that the Board agreed with this approach, and gave us direction to minimize the amount of disturbance and minimize the amount of pavement. These oak trees are mature large trees. They will be preserved by shifting the right of way 5 ft. and by keeping the roadway a narrower width. If we build to the Town Standard they will die.

Ms. Volent opened the public hearing.

Matthew Ham of 6 Reef Road said Dr. Mette and Dr. Boggs have rights as landowners to develop their property. He and his wife are supportive of that. The way our house is situated on our lot, if the road is wider than 14 ft., it would have a detriment to our privacy and the value of our home. Dr. Boggs and Dr. Mette have been very

accommodating to us, and we are supportive of the 14 ft. wide road. We understand that they may never develop the road. We ask the Board to consider the 14 ft. Road.

No one else came forward, so the public hearing was closed.

Ms. Volent has a question about the map showing what lots exist around the proposed road. She is questioning the accuracy of the map.

Mr. Mitchell said it was hand drawn and is only to exhibit the number of potential lots.

Ms. Volent is not comfortable with the use of this map to conclude that the Hams would not have to come back to the Planning Board to use the road.

Mr. Mitchell assured that the Hams lot cannot be further subdivided. It is too small to be divided.

Ms. Quinn asked if the lot the Hams purchased from the Nichols is grandfathered.

Ms. O'Meara said the Nichols lot was a larger lot and they sold a portion to the Hams. This was not part of the subdivision, it is not a grandfathered subdivision lot, and it is not able to be divided because the lot is less than 160,000 sq. ft. in size and the minimum lot size is 80,000 sq. ft.

Ms. Falender is concerned by the language in note 9 on sheet 2 of the plan. It says no more than 4 lots can be served by the proposed private road without returning to the Planning Board. She is concerned that we are giving an opinion on rights, which we have no authority to do. She thinks they can say there is a maximum number of residences that can use this road for their primary access without returning to the Planning Board. She does not think that number is 4. She has questions for the Fire Chief. She does not think that unless we go to the 22 ft. width, we can say that 4 lots can use this road as their access without coming back. They may have a legal right to the road, but that is a different question than whether the road can be developed as a 14 ft. wide road, and 4 residences can be served by it.

The Fire Chief is not a fan of a 14 ft. road. He said he can live with one house with sprinklers being served by the 14 ft. road. If there were more than one house he wants the road widened to 22 ft. The hydrant is far away and so they would need to get two trucks in there side by side and there is not enough room with a 14 ft. road. They need 22 ft. to get two trucks in side by side. A sprinkler is designed to contain a fire, not necessarily put it out. A sprinkler will buy us some time to get set up.

Mr. Chalot asked about the existing house that is not sprinklered.

The Chief replied that it is readily accessible, and not a problem. It is in close proximity to the existing road.

The Chief also said that if they go with more than one house on this road he wants the 22 ft. wide road.

Ms. Quinn asked about paving the 14 ft. plus the 2 ft. on each side.

The Chief said if you have gravel on each side they are not going to get plowed. The wider the road the better, but we have 10 ft. wide trucks, so 14 or 18 ft. is not enough to pass two trucks.

Ms. Falender said she does not think three trees is sufficient reason to waive the road standard.

Mr. Chalot said he does not think that is the only reason to waive the standard. Every time you make a wide street, you get the sense that your neighborhood has a lot of paving in it.

Ms. Falender said we should amend the ordinance. We are amending our ordinance, lot by lot and she thinks that is inappropriate.

Mr. Steinberg asked where the nearest hydrant is located.

The Chief said there is one close, on Overlook Lane.

Ms. Quinn asked if another hydrant could be placed at the end of Hayfield Road.

The Chief said it would depend on what size water main serves the area. A 10 in. main is the best, and 8 in. is not as good. He does not know what is there.

Mr. Mitchell said it is an 8 in. main.

Ms. Volent asked if this was a private accessway, instead of a road, would the Chief still request sprinklers.

The Chief said he would still need to have an adequate turnaround and whether it is a private driveway or a road, he still has the same concerns.

Ms. Volent then asked if the Priors wanted to build on one of their lots, would the Chief want sprinklers on their property.

The Chief replied that any time there is a narrow road, he will have the same concerns about getting his equipment into the property. He said sprinklers give him time to get set up. If it is a small fire they may put it out, but with a larger fire it buys time.

Mr. Chalot said that it is his understanding of this issue is that it is OK to have one house with sprinklers on a narrow road, but any more than one house and a wider road is what is called for.

The Fire Chief said the more houses, the more traffic and the more opportunity for parked cars.

Mr. Chalot wants to consider a provision that if more than one house uses this roadway it would trigger a requirement to widen the road to 22 ft..

Mr. Curry asked if this controversy is over 4 trees.

A couple of Board members replied that it is.

Ms. Volent said she would like to expand on that. She then cited a couple of prior projects where the Board approved a narrow road to serve 3-4 houses, and the reasons were to preserve the neighborhood character and minimize environmental disturbance.

Ms. Falender said the more we approve those waivers we are amending a statute, but not the correct way. We need to amend the statute, not one by one as we are now routinely doing. She cannot imagine that there is a neighborhood that would not prefer a narrower road, nor an applicant who would rather pay for less paving, until there is a fire. This is not a unique situation, it is a universal one.

Mr. Steinberg was concerned about the distance to the back portion of the Boggs lot.

Mr. Mitchell said that there is not enough frontage on the Boggs lot to accommodate more than one lot.

Mr. Steinberg noted that there are no plans to build this right away.

Mr. Mitchell agreed and said he hopes there is a compromise here. He likes Mr. Chalot's proposal that if there is any more than one home built that they would be required to come back to the Planning Board, or that they be required to expand the road to 22 ft. wide.

Ms. O'Meara asked if they could have gravel shoulders rather than grass, and have the road maintenance agreement require that they plow the full 18 ft..

The Fire Chief said wider is better, but he would want to be sure that it is plowed to that width. He wants to be sure that the Board knows he is a big fan of the 22 ft. road.

Ms. Quinn asked if the Priors have been involved in this project. By moving the road 5 ft. off center, you are moving the road 5 ft. closer to their house. They also have two lots they may want to develop in the future.

Stephen Mette said he has spoken with George Prior. He also reminded the Board that the motivation for us has always been to preserve the buildability of the back lot. We are being deferential to the Priors to make this a roadway rather than an accessway because they have those grandfathered lots.

Ms. Quinn said they are proposing to build a roadway to accessway standards.

Mr. Mette agreed, and said that is to respect the Ham's property.

Ms. Falender asked if they needed a private roadway because the private accessway would also serve the Ham's property.

Ms. O'Meara said they can have a roadway to the Ham's property and then convert to a private accessway from there on. Ms. O'Meara said she had been the one to recommend that the applicant come with a road rather than an accessway because she was looking to the future. She was looking for the full potential for the accessway to be used. The other reason she recommended that approach was based on the past history of the Planning Board. You have multiple times waived the road standards. It was her expectation that you would continue on that path.

Ms. Falender said waivers are not supposed to be routine. We should amend the statute, not grant waivers.

Ms. O'Meara said the statute has been amended and it increased the road width from 20 ft. to 22 ft. and ever since then, the Board has been granting waivers to decrease that width. At 20 ft., the board never granted waivers. Now the Board has been granting many waivers.

Ms. Quinn and Mr. Mitchell discussed the size and health of the oak trees.

Ms. O'Meara read the waiver standard in the Subdivision Ordinance.

Mr. Curry has a problem with taking a paper street and making it a private driveway.

Mr. Chalot said his proposal was that the road would be widened if additional houses were built.

Ms. Volent said she wants to lay out all the options so the board can get down to one option.

One option is that the applicant propose that this be a private accessway to serve one lot. It would be 14 ft. wide with 2 ft. wide gravel shoulders.

Mr. Chalot asked if they could put a private accessway over a paper street.

Ms. O'Meara replied that as long as they are not abridging people's rights, it is permissible.

Ms. Volent noted the pros and cons of this option.

Option 2 is to build this to a private road standard, a 22 ft. paved road. She outlined the pros and cons of this option.

Option 3 is to put in the private roadway with a waiver to 14 ft. as long as it serves only one house before needing to be widened.

Ms. Quinn said she prefers to have it be a private accessway.

Ms. Falender said it would need to have a private road up to the Ham's driveway and then a private accessway from there to the Boggs lot.

Ms. Quinn said if this becomes a 22 ft. wide private road, that this road should be centered in the right of way.

Ms. Volent asked the board if they want to make this a private accessway, or do we want to entertain other options.

Ms. Jordan said if this were to be a private road it should be built to standard. In order to give them a private accessway, let's call it a private accessway.

The board was in agreement that they would like to call it a private accessway.

Ms. Jordan asked if they are not granting a waiver, do they have the authority to require a sprinkler.

Ms. O'Meara said since they are allowing the shift of 5 ft. off center, they can use that as a basis to require a sprinkler.

Ms. O'Meara read the standards for a private accessway.

Ms. Volent polled the board about whether to require sprinklers, and 4 Board members were in favor.

Stephan Mette is concerned about notification to the Priors who live out of state. He would like to discuss the changed proposal with them before making it final. He does not want to do anything detrimental to their interests. He wishes to have the proposal tabled.

Mr. Curry made a motion to table this item.

Ms. Falender seconded the motion.

The board decided to have a site walk on Saturday November 23, 2013 at 9:00 a.m.

The Board voted to pass the motion. 7-0.

There were no others present in the audience, so there was no public comment period.

The board voted 7-0 to adjourn at 8:45 p.m.

Respectfully submitted,

Hiroimi Dolliver  
Minutes Secretary