

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

December 17, 2013

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the November 19, 2013 minutes. The minutes were approved as presented, 7-0.

OLD BUSINESS

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

Ms. O'Meara said the changes tonight are to request a paved private Road, 22 ft. wide, from Reef Road to the Ham's Driveway. Beyond the Ham's driveway, they are requesting an 18 ft. wide Private Accessway to the Boggs lot. They are requesting a waiver to construct the accessway 5 ft. off the center of the roadway.

John Mitchell said they had previously requested waivers to construct a road narrower than a private way. They are now proposing to build a private road, 22 ft. wide, for 73 ft. then the balance of the road will be a Private accessway of 18 ft. wide, with a 14 ft. travel way and 2 ft. wide gravel shoulders. Nothing else has changed except the 73 ft. of private road to just beyond the Ham's driveway and an 8 ft. tall fence to screen the Ham's rear yard.

He said they have complied with the points in the Town Engineer's letter.

Ms. Volent requested that the location map be moved to Sheet 2 of the plans.

Ms. Falender wants to require a sprinkler system as the fire Chief had requested. And she wants to be sure that there is a requirement to plow the entire 18 ft. of the accessway.

Ms. Volent said now that it is a Private Accessway, there is nothing in the standards that would require a sprinkler. It is a good thing, but is not a requirement.

Ms. Quinn said she thought that since they are asking for a waiver to move the road 5 ft. off center, they could use that as a way to add a sprinkler requirement. She is also concerned about the fairness to the Priors by moving the road 5 ft. closer to their property. She did not think the oak trees that are being saved were as good as the one that will have to be taken down.

Mr. Mitchell replied that the one to be taken down would have to come down anyway because of the cut they need to take to construct the road. It will kill that tree whichever way they go. He also requested that they not require a sprinkler.

Ms. Falender said we have the authority to require a sprinkler under the Subdivision Ordinance, so we do not need to tie it to offsetting the road. She wants to require it for safety reasons, as that is why they asked the Fire Chief to come. Otherwise there is no point to asking him to testify.

Mr. Steinberg said if they take down any trees it should be the ones on the right, not the one on the left.

Mr. Mitchell replied that the three oak trees on the right are nice, and they provide a screen for the Ham's property.

Mr. Chalot asked if the 22 ft. wide portion of the road is on the existing driveway.

Mr. Mitchell said that about half of it is.

Mr. Curry is concerned about whether we have the authority to require a sprinkler. Is it really necessary? And are we setting a precedent that every house with a long private driveway will have to be sprinklered.

Ms. Volent said she would like a consensus of the issues before the board. The first is: should they be allowed to build the roadway 5 ft. off center. She then polled the Board and after a small discussion, they were in favor of allowing the roadway to stay as proposed.

Ms. Volent then asked for a consensus of the Board on whether to require a sprinkler system. The majority of the Board was not in favor of such a requirement.

Ms. Volent then asked about the need to plow the entire 18 ft. of width, and the board was unanimous in choosing such a requirement. It will be part of the maintenance agreement.

Ms. Volent asked who will own and maintain the fence.

Mr. Mitchell said it will be the applicant.

Ms. Volent opened the public comment, and no one came forth, so it was closed.

Mr. Curry made the following motion:

Findings of Fact

1. Stephanie Boggs is proposing a private road and private accessway to be constructed within the paper street of Elizabeth Rd, located north of Reef Rd, to create access to a back lot located at the end of Elizabeth Rd, which requires review under Sec. 16-2-3 of the Subdivision Ordinance.
2. The Town Engineer has recommended adjustments to the plans.
3. Both the private road and private accessway will be privately maintained and a private maintenance agreement should be executed and recorded assigning obligations for private maintenance and rights of the town to maintain and recover costs.
4. Town regulations require that a performance guarantee be provided for construction of a road and that a private accessway must be constructed and inspected by an engineer.
5. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephanie Boggs to construct a private road and private accessway within the paper street of Elizabeth Rd (to be named Old Hayfield Ln) to create access to a back lot located at the end of Elizabeth Rd, be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated December 11, 2013;
2. That a road maintenance agreement be submitted in a form acceptable to the Town Attorney, executed and recorded in the Cumberland County Registry of Deed. The road maintenance agreement shall include a requirement that the full 18' width be plowed;

3. That a note be added to the plan that there shall be no road construction until a performance guarantee has been provided to the town in accordance with Sec. 16-2-6 of the Subdivision Ordinance; and
4. That the location map be shown on sheet #2.
5. That there be no alteration of the site, issuance of a building permit, or recording of the private accessway plan until the above conditions have been satisfied.

Ms. Jordan seconded the motion and it passed, 7-0.

OTHER BUSINESS

Normal High Water Line Zoning Amendment - The Town Council has referred to the Planning Board a request to review the normal high water line definition, Sec. 19-10-3, Zoning Ordinance Amendments.

Ms. O'Meara introduced this item by saying that it arose at the request of the Code Enforcement Officer. There are ongoing issues with the current ordinance, and the Code Officer wants a clear definition. The State has a definition, and the proposed definition uses much of the State definition, but uses the highest astronomical tide plus 3 ft.

Ms. Volent opened the public comment period.

Debra Murphy of 24 Pilot Point Road said the existing Shoreland Zone is still far more restrictive than the current proposal. She said other towns are looking at becoming more restrictive, and we are proposing to become less restrictive. She said the Town is now using the top of the bank and not the highest astronomical tide.

The current zoning map was a hand drawn map. You can use that map to plot GPS coordinates with great accuracy.

Mr. Curry asked her if the current definition is more restrictive across the board.

Ms. Murphy replied that it is. Highest astronomical tide is not good with steep slopes.

Mr. Chalat said the problem is that the Code Officer has to go out to the site for each determination. He would like to see what basis she is using, and who did the data set.

Ms. Volent asked her to provide her information before the next meeting.

Mr. Steinberg asked who is Judy Colby George.

She is the GIS consultant for the Town of Cape Elizabeth.

There was no one else to speak, so the public comment period was closed.

Ms. Quinn said she thought all properties had to be field verified.

Ms. O'Meara said the Town is able to be challenged on the normal high water mark. She used the example of the wetlands map to point out that for each lot on the wetlands map it needs to be verified on the site. You cannot superimpose the wetlands map on an individual lot and have it be accurate. Wetlands need to be field verified and mapped. The same is true with the high water mark. That definition still requires a site verification.

The Zoning map is based on digital data, but the line delineating the boundaries scales out to 50 ft. wide. The definition should be based on physical properties. Four people could come up with four different interpretations of the current definition. The professional who has to apply this definition says it is a problem.

Mr. Steinberg said there is no best possible way to define this. If it can be described, then you can say, the point is here. He wants to stay with the definition the Board has come up with.

Ms. Jordan was concerned about the abbreviation of Highest Astronomical Tide. She said it should be HAST, not HAT.

Ms. O'Meara said she would be sure to make the abbreviation clear.

Mr. Steinberg wanted to reopen the public comment because Ms. Murphy has come all the way from New Hampshire in a snowstorm to speak to the Board.

Ms. Jordan said the motion tonight is to move this to a public hearing. We are interested in her information and she can speak at the public hearing.

Ms. Volent said the current definition is restrictive when we use the top of the bank, but we never use it. We need to balance the need of the Code Officer, and strengthen the state definition. We do want additional information at the next public hearing.

Ms. Falender said there is a significant difference of understanding of what the Shoreland Zone map means. She suspects that they will receive interesting data based

on a use of the map that was not intended. She suggests that we be prepared to talk about what the Shoreland Zone map is or is not. We need to explain that to the public.

Mr. Curry noted that the board said they did not want to make the definition less restrictive, but more ascertainable.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on information presented, the Cape Elizabeth Planning Board tables the Normal High Water Line Zoning Amendments to the regular January 21, 2014 meeting, at which time a public hearing will be held.

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

The Board voted unanimously to adjourn at 8:10 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary