

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

May 22, 2014

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalat  
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 May 6, 2014 minutes. The Board approved the minutes as presented, 6-0.

CONSENT AGENDA

**Perham Highland Subdivision Amendment** - Rick and Janice Perham are requesting an amendment to the previously approved Highlands Subdivision to amend the building envelope for the lot located at 3 Heritage Court to accommodate an existing garage, Sec. 16-2-5, Amendment to Previously approved subdivisions.

Richard Perham said they had built a house 14 years ago in the Highlands subdivision. There are 3 lots on their road. The original site plan shows a building envelope that pretty much followed the setback from the wetlands, with no dimensions on it. They have now found that the garage is 7-8 ft. over the building envelope. They have redrawn the building envelope to encompass the garage and still stay 25 ft. from the wetlands.

The Board had no questions or comments, so the item remained on the consent agenda.

Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the request submitted and the facts presented, the application of Janice and Rick Perham for an amendment to the Highlands Subdivision to revise the building envelope for the lot located at 3 Heritage Court where the corner of the garage is not located in the building envelope be approved as a Consent Agenda item.

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

## OLD BUSINESS

**Jordan/Hews/Butterfield Jordan Subdivision Amendment** - Philip Jordan and Chelsea Hews, and Scott Butterfield are requesting an amendment to the previously approved Jordan Subdivision to change the length and slope of the proposed road and to eliminate the public water line, Sec. 16-2-5, Subdivision Amendment Public Hearing.

Ms. Jordan recused herself from this and the next item on the agenda.

Ms. O'Meara said the original application was for lots 2 and 3. Lot 1 has now been added because they had received approval to be on a public water line and in fact they are served by a well. All the improvements are proposed to be completed as part of this approval. There is a performance guarantee to be required.

Bob Metcalf of Mitchell and Associates made the presentation on behalf of the applicants. He addressed the changes that have been made since the last meeting. He said Phase 1 and Phase 2 notes have been removed and all the improvements will be made. The note about the turnaround for the fire trucks has been changed. They have added a note that the northerly end of Hockey Pond Road shall remain open at all times. No parking there and it must be kept plowed in the winter. The well setbacks have been added.

He addressed the drainage plans and the tree locations.

Ms. Quinn asked what was the rationale for the original Phase 2.

Mr. Metcalf said it was a cost factor.

Ms. Quinn said it seems like it is in the public interest to have public water for fire protection.

In response to a question from Ms. Quinn, Ms. O'Meara responded that almost 100% of the town is served by the Portland Water District. As a professional planner, she is a huge proponent of using existing utilities. In this instance, a family subdivision, they have chosen save money and use wells. The note regarding public water in the future relates to any future development of the large amount of adjoining land north of the pond.

Mr. Metcalf pointed out that there is a fire hydrant very close to the first lot.

Ms. Volent opened the public hearing. No one came forward to speak, so the public hearing was closed.

Ms. Quinn said she is concerned about the change away from public water when it was stipulated the first time around. She is concerned about possible future liability for the town. And she said on principle if the site plan said public water, it should have been installed. It is a code violation to have development that is not consistent with the site plan.

Ms. Volent said if this was mandatory in the ordinance, she would say they must put in public water, but she has nothing that says that it is mandatory.

Mr. Steinberg asked what the cost difference would be to put in public water.

Chelsea Hughes said they got a quote for the road as originally planned and the quote was \$140,000. As the plan is now, the quote for the road is \$12,000.

Phil Jordan said they would have to make a 7 ft. blast cut to bring in public water.

Mr. Curry said it sounds like the presence of ledge has increased the cost. Where we are looking at 3 parcels of land with no further development, it is not economic to bring in public water.

Ms. Volent said we have a requirement that the water be drinkable, and the well has been tested and passed. She sees no other requirement for water to be from the public water company.

Mr. Chalot asked if the town actually has any liability if the water supply does fail here.

Ms. O'Meara said there is not a liability, but there can be the sense that the town needs to help out families that are in a desperate situation.

Ms. Quinn asked if they could add language to the approval that if the water supply fails, the residents would have to pay to have the public water extended.

Mr. Curry agreed with that provision.

After further discussion, where Mr. Chalot said he did not support adding extraneous notes to a plan, the Board decided that they were not in favor of adding that condition on the plan.

Mr. Curry made the following motion:

Findings of Fact

1. Philip Jordan and Chelsea Hews, and Scott Butterfield (owner of lot 1), are requesting amendments to the previously approved Jordan Farm Subdivision to shorten the length and change the grade of Hockey Pond Rd and eliminate the public water line, which requires review under Sec. 16-2-5, Amendments to Previously Approved Subdivisions, in the Subdivision Ordinance.
2. The Town Engineer is recommending changes to the plans to clarify grading and pavement thickness.
3. The Subdivision Ordinance requires that a performance guarantee be provided to ensure that proposed improvements are constructed in accordance with the approved plans.
4. 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 Philip Jordan and Chelsea Hews, and Scott Butterfield (owner of lot 1), for amendments to the previously approved Jordan Farm Subdivision to shorten the length and change the grade of Hockey Pond Rd and eliminate the public water line, be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 6, 2014;
2. That a performance guarantee be posted in accordance with Sec. 16-2-7(c) prior to any alteration of the site and/or the issuance of a building permit for lots 2 or 3.
3. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

Mr. Chalot seconded and the motion was approved, 4-1.

**The Well 44 seat restaurant Site Plan** - Jason Williams is requesting Site Plan Review of the Well at Jordan Farms, a 44 seat restaurant located at 21 Wells Rd, and an amendment to the Site Plan for the Jordan Farm Stand, Sec. 19-9, Site Plan Review Public Hearing.

Ms. O'Meara said this is a 44 seat restaurant. Some of the parking and other facilities are being borrowed or shared with the Jordan Farm Stand, so their plan is also being

amended. Most of The Well improvements are in place, so the recommendation is that the rest of the improvements be in place before they open again this season.

Todd Gammon, of Blais Civil Engineers, reviewed the changes since the April 15 meeting. He addressed the parking areas, both the ones for the restaurant and the employee parking area. There will be one composting toilet with a sink. The Code Officer wants a note on the plan that this is a mobile restaurant on wheels. He said the wetlands have been flagged and there will be no wetlands disturbed. He clarified that there is no shared parking. They have a shared parking lot with 11 restaurant spaces and 5 for the farmstand. There will be a separate parking lot for the employees with 6 spaces.

Ms. Volent opened the public hearing. No one spoke, so the public hearing was closed.

Mr. Curry asked if there will be overflow parking across the street.

There is no plan to use that area.

Jason Williams said they have never had to use any overflow parking.

Ms. O'Meara said they are meeting the current parking requirement.

Mr. Steinberg made the following motion:

#### Findings of Fact

1. Jason Williams is proposing The Well, a 44-seat restaurant located at 21 Wells Rd, which requires review under Sec. 19-9, Site Plan Regulations. . Because The Well site plan anticipates sharing parking spaces with the Jordan Farm Stand parking area, an amendment to the Jordan Farm Stand Site Plan is also proposed.
2. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jason Williams for Site Plan Review of the Well, a 44-seat restaurant located at 21 Wells Rd and an amendment to the Jordan Farm Stand Site Plan to expand the parking area be approved, subject to the following condition:

1. That a note be added to the plans that the approval is based on a mobile restaurant. If the restaurant becomes immobile, based on a determination by the Code Enforcement Officer, then the Planning Board approval should be amended.

2. That all the improvements shown on the Planning Board approved plan be completed prior to the restaurant opening to customers for the 2014 season. A determination that all improvements have been completed shall be based on an inspection by the Code Enforcement Officer or a third party who shall submit an inspection report to the Code Enforcement Officer for approval.

Mr. Chalat seconded the motion and it was passed, 5-0.

**Harvest Lane Private Road Amendment** - Nick and Jim Tamaro are requesting an amendment to the previously approved Harvest Lane Private Road to provide access and frontage to a new lot located at the end and southerly of Harvest Lane, Sec. 19-7-9, Private Road Standards Public Hearing.

Ms. O'Meara said this is a proposal to add a second lot. They will upgrade the road to private road standards. The creation of the second lot will eliminate access to the adjacent Maxwell farm. The staff recommends a review of the legal documentation and a performance guarantee for the road improvements.

Todd Gammon of Blais Civil Engineers summarized the changes to the plans. The width of the road will be increased to 22 ft. The paved entrance will be widened and paved for the first 50 ft. with bituminous curbing. They have provided the draft maintenance agreement and a draft drainage easement for review.

Ms. Volent opened the public hearing.

Byron Castro owns 29 Valley Road said they are not against the plans to build a house behind them. He does not want the road to be extended further. He wants it to end here. There was to be only one house, so they didn't oppose that at the time. He wants them held accountable that there will not ever be any more after this one. They are totally against any type of paving or curbing. They want it to be as natural as possible. They would like to have a buffer. They are going to be bordered on three sides by streets.

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

Ms. Volent said the plans do not show any sidewalks or curbing.

Mr. Gammon said there is no intent to pave beyond the 50 ft.; otherwise it will be all gravel with no sidewalks or curbing. There is no plan for a third lot. Half of the new lot is RP-2 Wetlands. As for the buffer, the intent is to keep all the trees we can. It is heavily wooded now.

Ms. Volent noted that the Board cannot require buffering since this is not a subdivision, but are the applicants providing any buffering for the Castros?

Mr. Gammon said there are no plans to do so, but he would defer to the Tammaros. It is heavily wooded now and they do not want to take any trees if they don't need to.

In response to a question about further development, Ms. O'Meara said she cannot say nothing can happen (about a third lot) but there is no other land at the end of this road except what is owned by Nick and his father. The Maxwells have a lot of land and frontage on two other roads and are unlikely to need access over this road. The land owned by Nick and his father is larger than the minimum lot size, but not enough to further subdivide.

Ms. Quinn said that if this was a three lot subdivision, they would be able to order a buffer for the Castros. They would also not have a lot bordered on 3 sides by a road, but unfortunately we don't have that authority.

Ms. Jordan said she would like to thank the applicant and ask that when they start to take down the trees, if they see more of a clear cut than they anticipate, she would hope that they would work with the Castros to improve the buffering.

Ms. Volent would like notes to be added to the plan that the proposed lot will be served by public water, and that the emergency turnaround shall be kept clear.

Ms. Quinn made the following motion:

#### Findings of Fact

1. Nick Tammaro is requesting an amendment to the previously approved Harvest Lane Private Road to extend the road to provide adequate frontage for a second lot, which requires review under Sec. 16-2-3 of the Subdivision Ordinance.
2. The Town Engineer and Fire Chief have raised concerns with the requested waivers to the road construction standards.
3. The application includes a draft road maintenance agreement and drainage easement which the Town Attorney should review.
4. The applicant has substantially addressed the road 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 Nick Tammaro for an amendment to the

previously approved Harvest Lane Private Road to extend the road to provide adequate frontage for a second lot, be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 6, 2014;
2. That any changes to the existing turnaround be depicted on the plans so that the turnaround can accommodate a B40 class vehicle, and that the turnaround may remain a gravel surface;
3. That the plans be revised to show a building envelope with a minimum 25' setback from the RP2 wetland boundary, except that a smaller setback may be shown for the area near the driveway. A note should be added to the plans that "Activities outside the building envelope shall be limited to construction of a driveway and installation of utilities";
4. That a road maintenance agreement, drainage easement, and deeded access for lot 2 over Harvest Lane be submitted in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds;
5. That a note be added to the plan that "No changes to the RP2 wetland are proposed and any alteration of the wetland, including conducting agricultural activities in the RP2 wetland, must comply with the wetland regulations, including obtaining a Resource Protection Permit, when required by the Zoning Ordinance";
6. 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
7. That a note be added to the plan stating that Lot 2 will be served by public water;
8. That the emergency turnaround be kept clear of snow and vehicles at all times;
9. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the plan.

Mr. Curry seconded and it was approved, 6-0.



## NEW BUSINESS

**Jodie Jordan Farm Market Site Plan** - Jodie Jordan is requesting Site Plan Review of a proposed replacement 24' x 40' fish and farm market with prep kitchen to be located at 83 Old Ocean House Rd, Sec. 19-9, Site Plan Completeness and Public Hearing.

Ms. Jordan said she is a distant relative of Jodie Jordan and asked the Board if she should recuse herself. She feels that she can review the application impartially. The Board requested that she stay and participate.

Ms. O'Meara said this is a very large lot. She said there is a checklist for completeness, and the staff is not recommending any items are incomplete. There are requests for several waivers. This will go on an existing footprint, with very little additional impervious surface. This is a two phase project. Phase one will be to build the structure. Phase two will be to fit out the kitchen and connect to the water and existing septic system.

Caitlin Jordan, daughter of Jodie Jordan, made the presentation. They have an existing farm stand which they want to take down and replace with a slightly larger one. They want to get that farm stand up and running before they hook up to water and septic.

Ms. Volent opened the public comment period on completeness. No one spoke, so the public comment was closed.

The board had no comment, so Ms. Carol Anne Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jodie M. Jordan for site plan review to replace an existing building with a fish and farm market building, including a kitchen to produce value-added agricultural products, to be located at 83 Old Ocean House Rd. be deemed complete.

Mr. Chalot seconded the motion and it passed, 6-0.

Mr. Chalot asked where the light fixtures are going.

Ms. Caitlin Jordan replied that these fixtures are already in existence and will remain. There will be no additional light fixtures.

Ms. Volent asked if there will be curb stops for the parking.

Ms. Caitlin Jordan replied that there will just be lines to delineate the parking, no curb stops.

Mr. Curry asked if the condition in the approval takes care of the second phase.

Ms. O'Meara said she feels that makes it clear. Until phase two, the structure is dry.

Ms. Volent opened the public hearing. No one came forward to speak, so the public hearing was closed.

Mr. Curry made the following motion:

#### Findings of Fact

1. Jodie M. Jordan is requesting site plan review to replace an existing building with a fish and farm market building, including a kitchen to produce value-added agricultural products, to be located at 83 Old Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The applicant is proposing to construct the building and then in phase 2 to install the kitchen and connect to water and an existing septic system.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jodie M. Jordan for site plan review to replace an existing building with a fish and farm market building, including a kitchen to produce value-added agricultural products, to be located at 83 Old Ocean House Rd. be approved, subject to the following condition:

1. That the building connection to the public water line and to the existing septic system must be completed before the proposed kitchen is utilized.

Ms. Carol Anne Jordan seconded the motion and it was approved, 6-0.

#### OTHER BUSINESS

**BA District 100-seat restaurant Zoning Amendment** - The Town Council has asked the Planning Board to consider an amendment to the Business A District to increase the maximum number of seats in a restaurant from 80 to 100, Sec. 19-10-3, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara said the current ordinance in the BA District limits the number of seats in a restaurant to 80. So we are replacing the 80 with 100. The process is that after the Planning Board makes a recommendation to the Council, they will process it and hold a public hearing. If the recommendation is adopted, then any restaurant in the BA District that wants to increase their number of seats needs to come back to the Planning Board to amend their site plan approval.

Ms. Volent opened the public hearing.

Chris Straw of 597 Shore Road said he lives about a block away from the Shore Road BA District. He said he has two points: the process to amend a Zoning Ordinance, and applying the process. He is a former member of the Zoning Board of Appeals. He said there are purpose provisions in the various sections of the Zoning Ordinance. These are extremely important. They are derived from the Cape Elizabeth Master Plan, which was approved by all the citizens of the Town through a town-wide vote. When the Planning Board considers proposed revisions of the Ordinance, the board first and foremost must consider whether your decision furthers the purpose of the various districts and the Town's Master Plan. The goal of the BA District shall be designed to meet the needs of the adjacent neighborhoods.

He does not think that increasing the seating to 100 seats is in keeping with the purpose of the BA District. He wants to keep the limit in place for the Shore Road BA District.

Dan Bowen has lived on Hunts Point road for 22 years. He wants to speak on behalf of the Good Table. They are long time customers of the Good Table. He has never seen that the number of chairs they have has caused a problem for the neighborhood. He can't speak to the Shore Road area, but as a neighbor of the Rt 77 area, he does not see a problem. He is in favor of increasing the limit to 100 seats.

Mary Otulakowski is the former owner of Rudy's at 517 Ocean House Road and said she wrote a letter about this in June of 2013. This is nothing against the Good Table. When she purchased her property she was told that this is an RP-1 Wetland and she had to be 150 ft. from that wetland. She could not do anything to her restaurant. She could not mow the lawn, remove invasive vines, or anything. The site plan review cost her thousands of dollars. The neighbors did not want this wetland touched and they dragged her through months of reviews and meetings that cost her many thousands of dollars. Now we are talking about the same wetland, and none of those people are here. Last June she noticed that the cattails had been mowed down and the parking lot was increased at the Good Table. She asked how this can be let go. She does not understand how this wetland has been forgotten.

Kate Stewart said she wants to support the Good Table's request for more seating. It makes good business sense for the Town, for our tax base, for our guests and for

ourselves. Additional seating means less wait time. There is no change to the footprint. She thinks they deserve the opportunity to be as successful as possible.

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

Mr. Steinberg said the Good Table has been fairly successful, so it's easy to imagine a restaurant that wants to grow. He lives very close to there, and it does not make any significant change, and he does not see a problem. He said they are not considering the wetlands tonight.

Mr. Curry said the Board has thought a lot about the Shore Road district. We think the most important factor in restaurant size is parking, not the interior layout of the building. He thinks the Board is more focused on traffic flow, pedestrian flow, etc. He does not think it is possible to have a big restaurant in the Shore Road BA District.

Ms. Quinn responded to people's comments. To Mary, she said she is sensitive to her comments. She hears that the Ordinance has not been consistently applied. She thinks it is very important in this town that we actually enforce the ordinance.

She addressed Chris Straw and thanked him for his comments on process. She feels that it is important to what we do. She has gone back and read the Comprehensive Plan. She noted that the two districts are distinct. She wanted to treat them as one because of the appearance of spot zoning and changing the ordinance narrowly to favor one particular business. The Comprehensive Plan talks about small businesses, connected to the surrounding neighborhood with sidewalks. She thinks they are very vulnerable to allegations of spot zoning if we change this to 100 seats per the request of one applicant who violated the ordinance. She noted that another applicant just spent over a million dollars to build a new restaurant that meets the ordinance.

Ms. Jordan had a comment about process. The way this review began probably prejudiced people to think it is to serve one citizen, or group. What we are trying to do is rise above that and consider the Town as a whole. All restaurants in the BA District can come back and they can do what the Good Table will have to do, and come to the Planning Board. This will not automatically allow any restaurant to have 100 seats. It was the town council who sent us this request, not the Good Table.

Mr. Chalot said he agrees 100% with Ms. Jordan.

Ms. Volent said that as part of their discussions they did look at Rudy's to see if they had enough parking to bring it up to 100. And they do have adequate parking to bring it up to 100.

Ms. Quinn said it is correct that the Town Council came to us. The materials we have been given have said this was initiated by a particular party. She is not sure why we are considering this before all the changes that were recommended in the Comprehensive Plan were finished.

Mr. Curry said he does not consider the process to be extraordinary. The Code Enforcement Officer said the solution to a problem was to see about changing the ordinance. The process is intact.

Mr. Steinberg said there is nothing magical about the number 80. It is not a huge change.

Ms. Volent said the number 100 was reached by considering other businesses, and more specifically Rudy's. They are keeping a cap on the number of seats, and are not increasing it very much.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the proposed text and the information presented, the BA District 100-seat Zoning Amendment be recommended to the Town Council for consideration.

Mr. Chalot seconded the motion and it was passed, 5-1.

### **Public Comment**

Ms. Volent then opened the public comment on items not on the agenda.

Chris Straw would like the Board to review whether gas stations and repair garages should be outright permitted uses in the BA District.

Ms. O'Meara said it is the practice of the Planning Board not to initiate Zoning amendments. They wait for the Town Council to recommend that the Planning Board consider such an amendment.

Sylvia Kostopoulos said they did not fill in any wetlands. She takes full responsibility for what Mary claims we did next door. There were dead trees all over that land and dead vines. I just wanted them to make the property more attractive. We did not fill any wetlands. We simply cut down what dead trees were there and what dead vines were there, to beautify the whole area.

The board voted 6-0 to adjourn at 8:50 p.m.

Respectfully submitted,

Hiroshi Dolliver,  
Minutes secretary