

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

May 17, 2016

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for approval of the minutes of the April 25, 2016 meeting. The minutes were approved 6-0.

OLD BUSINESS

Cape Chiropractic & Acupuncture 3-lot minor subdivision and 2 Mixed Use Buildings Site Plan - Two Penguin Properties LLC are requesting Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of 2 buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way (U22-74), Sec. 16-2-3, Minor Subdivision Review and Sec. 19-9, Site Plan Review.

Robert Frank, Professional Engineer with WBRC, introduced John Kenny, Professional Engineer, Diane Morabito, Professional Engineer and Traffic Consultant, and Will Polgar and Jocelyn Boothe, Architects with WBRC.

Mr. Frank said there are no changes to the land subdivision or the building footprint. He showed a plan of the plantings and noted that they plan to plant three Spruce trees for screening across from Rand Road. The lighting isometric has changed since the last submission.

Ms. Boothe said they have changed the elevation of the buildings. They have broken up the facade so there is less wall space and more and larger windows on the facade facing Hill Way. She also described the exterior materials as either a wood shingle or a composite shingle and provided samples to the Planning Board. Mr. Chalot noted that this is not a cheap material.

Mr. Frank also showed detail of the signage on Ocean House Road. He also said they have an updated planting plan.

Ms. Jordan asked about the lighting of the signs.

Mr. Kenny said the plan is to light the signs in both locations. He said the plan would be to meet the ordinance, but did not specify how the signs would be lighted. Ms. O'Meara explained that this project is subject to site plan review, so the lighting for the signs must also meet the site plan standard of no more than .5 footcandles at the property line, which is not a requirement in the Sign Ordinance.

Diane Morabito, Traffic Engineer, presented her study of the traffic impact of the project. She outlined the methodology of her study and said the project would not have a negative effect on the traffic in the area. Safety will not be jeopardized as there are no high crash locations. They did find that the intersection of Scott Dyer Road and Ocean House Road is close to meeting the high crash criteria. The sight distance on Hill Way from the driveways will exceed standards and they recommend a speed limit sign be installed at the beginning of Hill Way. They also recommend that the pedestrian crosswalk at Ocean House Road be made straight instead of angled. She also said it was always best to have the access on the side streets.

Mr. Curry opened the public hearing.

Steve Bates of 4 Rand Road said signage was not to be lighted. If they are going to light the signs, he would like it to be only on the Ocean House Road sign, and not on the Hill Way sign. He likes the three spruce trees, but does not consider them to be enough of a buffer. They will be too small.

Chris Newell of 9 Rand Road is concerned about the noise potential of the dumpster. He is worried about visual pollution of stuff on peoples' decks. He is concerned about the lighted sign causing light pollution along with all the lights on the building and parking lots.

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

The Board asked to see the new landscaping plan and it was passed to the Board.

Mr. Frank said the 3 spruce trees would be 6-7 ft. and burlapped. They will grow very quickly.

There was a brief conversation about various plantings and the entrance to the sidewalk on Ocean House Road.

Mr. Curry asked for the reasons for not having the entrance on Ocean House Road.

Ms. Morabito said it would slow the traffic flow on the main line, which is Route 77, and have possible points of conflict if the driveway was on the main road. The MDOT

has a standard that if you have a property with two frontages the entrance shall be from the minor side street.

Ms. Falender asked about the crosswalk at Ocean House Road and the speed limit sign at Hill Way.

Ms. Morabito said there is no speed limit sign at Hill Way and there needs to be one. The crosswalk is now angled and it is removed from Ocean House Road and they recommend that it be straight.

Ms. O'Meara said the Hill Way safety improvements are on the to-do list for the Town. Both the crosswalk and the speed limit sign will likely be part of that project.

Ms. Falender asked about the crosswalk on Scott Dyer Road.

Ms. Morabito said it is angled and not right at the corner of Hill Way, so it should be at the corner and perpendicular to the road.

Mr. Steinberg asked if they should have one entrance and one exit.

Ms. Morabito said she did not consider that. The driveways are far enough apart and Hill Way is not that busy a road to need to do that.

There was a brief discussion of siding and roofing materials.

Ms. Jordan is concerned about the sign lighting and thinks it will impact the neighborhood.

Ms. O'Meara recommended that the Board consider a lighting condition of approval. She described a range of 3 options, including no condition in which case any lighting of the signs would trigger a site plan amendment, just limiting the condition to .5 footcandles of light level or , a condition that lighting be ground mounted or top mounted with no more than .5 footcandles at the property line, but not an interior lighted sign. Interior lit signs have historically generated the most complaints from neighbors.

The Board then discussed the possibility of restrictions on what tenants can store or place on their porches.

It was agreed that the Planning Board has no standing to regulate this issue.

Ms. Jordan made the following motion: (and every Board member took part in proposing findings of fact)

Motion for Approval

Findings of Fact

1. Two Penguin Properties, LLC, owned by Dr. Zev and Amber Myerowitz, are requesting Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, which requires review for compliance with Sec. 16-2-3, Minor Subdivision Review, Sec. 19-9, Site Plan Review and Sec. 19-6-4, Town Center Design Standards.
2. The subdivision will not result in undue water pollution. The subdivision is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
3. The subdivision will have a sufficient quantity and quality of potable water.
4. The subdivision will not cause soil erosion, based on the erosion control plan provided.
5. The subdivision will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. All lots are provided with vehicular access.
6. The subdivision will provide for adequate sewage disposal.
7. The subdivision will provide for adequate solid waste disposal.
8. The subdivision will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, and is not adjacent to a public access shoreline.
9. The subdivision is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant has demonstrated adequate technical and financial capability to complete the project.
11. The subdivision will not adversely impact surface water quality.

12. The subdivision will not adversely impact the quality or quantity of ground water.
13. The subdivision is not located in a floodplain.
14. The land of the subdivision does not include wetlands.
15. The proposed subdivision will provide for adequate stormwater management.
16. The subdivision is not in the Great Pond watershed.
17. The subdivision is not located in more than one municipality.
18. The subdivision is not located on land where liquidation harvesting was conducted.
19. The subdivision does provide for access to direct sunlight.
20. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed.
21. The subdivision will comply with the open space impact fee with the payment of \$13,485.
22. The subdivision lots will be provided with access to utilities.
23. The subdivision will not be phased.
24. The plan for the development reflects the natural capabilities of the site to support development.
25. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
26. The plan does provide for a system of pedestrian ways within the development.
27. The development will not locate, store or discharge materials harmful to surface or ground waters.
28. The development will provide for adequate exterior lighting without excessive illumination.

29. The development will not substantially increase noise levels and cause human discomfort.
30. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
31. The Town Engineer has recommended revisions to the plans.
32. The Planning Board finds, in accordance with Sec. 16-3-2(A)(3), that no sidewalk is required on the Scott Dyer Rd frontage of lot 3.
33. Cross easements between lots 1, 2 and 3 will be needed.
34. Lighting on the site should be adequate to move safely around the site but also not exceed .5 footcandles at the property line to minimize impact on abutting and nearby properties.
35. The building footprints are compatible with the Town Center Design Standards.
36. The proposed buildings are compatible in scale with other structures in the Town Center District.
37. The roofs of the proposed buildings are compatible with the roofs of nearby buildings in the Town Center and to the design of the structure.
38. The primary orientation of the buildings is toward the street.
39. The building openings are compatible with the rhythm of openings in nearby structures and consistent with the style of the building. The first floor facade is constructed with an equal proportion of openings to wall space.
40. The buildings exterior materials are compatible with nearby buildings and the design of the buildings.
41. The site landscaping and buffering are compatible with the adjacent uses and the town center. The front yard is designed to be pedestrian-friendly in scale, access, lighting and security.
42. The application substantially complies with Sec. 16-2-3, Minor Subdivision Review, Sec. 19-9, Site Plan Review and Sec. 19-6-4, Town Center Design Standards.

Mr. Steinberg seconded the approval of the findings of fact and it was approved, 6-0.

Ms. Jordan then made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Penguin Properties, LLC for Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the town engineer in his letter dated May 11, 2016;
2. That deeds be prepared in a form acceptable to the Town attorney for sewer easements to benefit lot 1 and 2, a parking easement on lot 2 to benefit lot 1, and an access easement to benefit lot 2 over lot 1 to access the parking lot , and that the deeds be signed by the applicant and recorded with the subdivision plan;
3. That the applicant will pay an open space impact fee of \$13,458 prior to the issuance of a building permit for any lot in the subdivision;
4. That the lighting plan be revised so that no lighting exceeds .5 footcandles at the property line;
5. That any lighting on property signs be ground based or down lighting on the top of the sign and that the lighting level not exceed .5 footcandles at the property line.
6. That the plan be revised to show the location of any proposed generator and that information be submitted demonstrating that decibel levels will not exceed the site plan standards at the property line;
7. That the exterior material notes on the elevations delete the option of installing plywood as an exterior material.
8. That there be no recording of the subdivision plan, issuance of a building permit or alteration of the site until the plans have been revised to address the above conditions and submitted to the town planner.
9. That there shall be no issuance of a building permit nor alteration of the site until a performance guarantee has been provided to the town in an amount approved by the town engineer, a form approved by the town attorney and all approved by the town manager.

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

535 Shore Rd Site Plan - Michael Friedland is requesting Site Plan Review for 2,389 sq. ft. of retail space located in the existing building located at 535 Shore Rd, Sec. 19-9, Site Plan Completeness and Public Hearing.

Michael Friedland wants to change the use from retail to office. He is applying for retail because there is more flexibility in the ordinance. He plans no changes to the building. The Assessor's records give the first floor square footage of the house as 2389 sq. ft. According to the ordinance, 7.174 parking spaces would be required for the first floor space. That means 8 spaces. He plans to have 2 employees, so that brings it up to 10 spaces. The residence on the second floor is required to have 2 spaces, so we are required to have 12 spaces. It is an existing building and it has been retail for many years. From the ordinance, the Planning Board may reduce that number for an existing building by 30% bringing the total to 9 spaces. Shared use by the office and residence reduces the number of spaces to 7. He also proposes stacked parking (one in front of the other). He has tried to find parking in the neighborhood without success. He is planning to use one half of his two car garage for parking. He also has 2 on street parking spaces in the City of South Portland, approved by South Portland for that retail unit.

Ms. Falender asked where the garage is located and noted that the plan does not show a parking space in that garage. She also asked him to explain how stacked parking works.

Mr. Friedland said it is for people who share a unit and there is enough room to back up and turn around. It takes people to coordinate comings and goings.

Mr. Sahrbeck said stacked parking is for residential use.

Ms. Volent asked about the two spaces on the street in front of the building.

Mr. Curry said they had looked favorably in concept at the workshop that those parking spaces may be used in the count because this property is also in South Portland, and that city has approved those spaces to be counted as part of his parking.

Mr. Steinberg asked if those spaces are designated for his business.

Mr. Friedland said they are not designated.

Mr. Chalot asked if there is something written from South Portland about those two spaces.

Mr. Friedland said he went before the Board of Appeals in South Portland and they approved his plan including those two parking spaces.

Mr. Sahrbeck asked if Mr. Friedland needed to be before the Board at all because it is already a grandfathered retail use.

Ms. O'Meara said Mr. Friedland wants to change the use to an office and any non-residential change of use triggers site plan review. Mr. Friedland decided to apply for the category 3 retail use in the BA District. That keeps his options open so he can switch back to retail if he chooses to do.

She also said half the property is in South Portland, and that half of the property is in a residential district. Mr. Friedland went before the South Portland Zoning Board for a less intensive non conforming use and it was approved.

Ms. Volent asked if they are going to use South Portland's ordinances or Cape Elizabeth's. If the South Portland ZBA is relevant we should have it in front of us.

Ms. Jordan said the consensus at the workshop was that allowing the parking on the street was a common sense approach to dealing with a building that is over 100 years old and does not have the capacity to have enough onsite parking, but there is sufficient parking on the street.

Ms. Falender noted that the plan does not show the parking spaces by numbers. It does not meet our requirements.

Ms. Volent was concerned that the lighting schedule was confusing because the application includes 2 different lighting plans. She is concerned about the front porch light.

Mr. Friedland said that light is being removed.

Ms. Falender asked if the parking requirement for office use was for fewer spaces, then maybe we should be only approving that.

Ms. O'Meara said both the office and retail use end up to be about the same in terms of required spaces.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Michael Friedland for Site Plan review of a change of use

of 2,389 sq. ft. to village retail for the property located at 535 Shore Rd be deemed complete.

Mr. Chalot seconded and the motion passed, 6-1.

Mr. Curry opened the public hearing. There was no one to come forward, so the public hearing was closed.

Ms. Volent wants the first floor square footage on the plan by the surveyor. She wants lighting detail for light number 5 and detail on the fence. She wants to see that the parking in the garage is detailed on the plan.

Ms. Falender asked how you get around the non-residential stacked parking spaces.

Ms. O'Meara said you allow 1 stacked parking space and then have to assume 3 spaces on the street.

Ms. Volent wants it on the record that she is not in favor of the reduction in parking spaces by using shared spaces.

Mr. Chalot made the following motion:

Motion for Approval

1. Michael Friedland is requesting Site Plan review of the change of use to 2,389 sq. ft. of village retail located at 535 Shore Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The property is developed with a 2 story building and parking area and no exterior construction is proposed.
3. The Planning Board finds that a reduction of 30% in the required parking is appropriate because it will not create or aggravate parking in the neighborhood and the required minimum number of spaces cannot be reasonably accommodated on the lot.
4. The property at 535 Shore Road is partly in the Town of Cape Elizabeth and the City of South Portland.
5. 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 Michael Friedland for Site Plan review of a

change of use of 2,389 sq. ft to village retail for the property located at 535 Shore Rd be approved subject to the following conditions:

1. That the site plan be revised to label each parking space, including the space in the garage. There shall be only one stacked parking space. An area that can accommodate 3 on-street parking spaces in South Portland shall also be delineated and a note shall be added to the plan describing South Portland's on-street parking provisions:
2. That the area of the first floor building be shown on the plan:
3. The applicant shall submit stockade fence details:
4. The footcandles of light fixture number 5 shall be added to the plan.

Ms. Jordan seconded and the motion passed, 5-2.

NEW BUSINESS

Wentworth Lodge Special Event Facility Site Plan - The Sprague Corporation is requesting Site Plan Review of a proposed special event facility to be located at 10 Winters Lane (R8-1-2), Site Plan Completeness. Sec. 19-9.

John Greene, Property Manager for Sprague Corporation, said the plan is 4 contiguous lots comprising approximately 18 acres. He showed the site plan with the parking design, tent area, entry and egress, and porta potties. He said 76 parking spaces are required, and they will have 80. They plan 25 employees and 250 guests.

He went through the submission checklist item by item. They are planning no improvements to the site. Water supply will be bottled and solid waste will be removed by the caterer. There will be no landscaping or buffering added because there is existing vegetation that provides a buffer, and no storage of materials. There will be one sign at the intersection of Charles Jordan Road and Little Pond Lane.

He went through the approval standards one by one.

Mr. Curry opened the public comment. No one came forth, so the public comment was closed.

Mr. Steinberg asked if the music would be live or DJ?

Mr. Greene said it varies. Some weddings have a band and some a DJ. He does not know the decibel level. He does plan to meet the standard of 45-55 decibels at the property line.

Ms. Volent asked if they have more than one generator at a time.

Mr. Greene said they only have one and it is a trailer sized one that is very quiet.

Ms. Volent then questioned the survey and its depiction of the shoreland line. It is not in accordance with the new standard.

Mr. Greene said they will have that corrected.

There are a couple of other corrections that need to be made to the plan and its notes.

Ms. Volent is concerned about approving completeness with these corrections that need to be made.

Mr. Steinberg asked if a temporary structure needed to comply with the setbacks.

Ms. O'Meara said the Code Officer would need to make that call.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for site plan review of the Wentworth Lodge Special Event Facility located at 10 Winters Ln be deemed complete.

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

The Board scheduled a site walk for Tuesday May 24, 2016 at 5:30 pm.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for site plan review of the Wentworth Lodge Special Event Facility located at 10 Winters Ln be tabled to the June 2, 2016 meeting.

Mr. Steinberg seconded and the motion passed, 6-0.

Mr. Sahrbeck made a motion to suspend the rules to consider an item past 10 pm.

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

OTHER BUSINESS

Technical Amendments - The Town Council has authorized the Planning Board to assemble a package of Technical Amendments, which include amendments to the Subdivision, Conservation, Zoning and new Stormwater Ordinances, Sec. 16-3-6 and Sec. 19-1 Amendments, Table to Public Hearing.

Ms. O'Meara said there are three items to be decided prior to the next meeting.

The first is whether the Zoning Board shall consider an item as a de novo review or an appellate review. The recommendation from the Town Attorney is that it be a de novo review.

Ms. O'Meara said she has revised the submission requirement for the noise standard. She cited several places in the amendments that would be changed.

The third item is regarding public hearings on Planning Board issues. The concern with the current language is that it seems like there would be a dialogue between the public and the applicant. which is not the current process.

The Board had a brief discussion about the noise standard and decibel levels.

Ms. Jordan made the following motion:

To move the Technical Amendments to the June 21, 2016 meeting at which time a public hearing will be held.

Mr. Steinberg seconded and it passed, 6-0.

The Board voted unanimously to adjourn at 10:25 pm.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary