

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

July 19, 2016

7:00 p.m. Town Hall

Present: Peter Curry, Chair  
Josef Chalot  
Carol Anne Jordan  
Elaine Falender

Jonathan Sahrbeck  
Henry Steinberg

Absent: Victoria Volent

Mr. Curry opened the meeting and called for the approval of the minutes of the June 21, 2016 meeting. The minutes were approved as presented, 6-0.

OLD BUSINESS

**517 Ocean House Rd LLC v. Town of Cape Elizabeth** - The Superior Court has remanded to the Planning Board for further findings the 541 Ocean House Rd Site Plan approval granted May 19, 2015, Sec. 19-9, Site Plan Review.

Mr. Curry opened the public comment period.

Peggy McGehee of Perkins Thompson spoke on behalf of 517 Ocean House LLC. She has sent comments, and could read those. She said she would summarize her comments. She has 3 points she wants to express. She said the Court did not say to bring in new evidence. She is asking the Board not to use the proposed findings in the Planner's July 19, 2016 memo because they include evidence that is not in the record. The board made comments such as "the parking lot in the back was private and did not need lighting." There were other examples about the parking, lighting etc. These were not found anywhere in the record and should not be included in the findings.

There are statements that are just wrong. Ms. Mc Gehee quoted the part of the Engineer's letter that says additional information will result in additional comment. So he expected more information.

There is wrong evidence and there is new evidence. Some of the findings are just conclusions with no facts at all. We maintain that these are legally flawed and we ask you to start over.

No one else came forward to comment, so the public comment period was closed.

Ms. Jordan said we bring our recollections of why we came to these conclusions. As to the rear parking lot, we learned on the site walk that it is gated after hours; there is no other access. There was nothing I did separate research on or that I wrote down, I learned it verbally. It was an open public meeting.

Mr. Curry said we had used all the information we gathered from all the hearings, site walks etc.

Ms. Falender said the site walk was an open public meeting. It is not the practice of the Town to have any transcript or minutes of the site walk. We have never done that and did not do it for that one. The public was invited and it is within boundaries to use that information. In response to the court request, we are being more articulate about what we used to arrive at our original findings.

Mr. Sahrbeck said that part of the so-called record that counsel described only went to that May 15, 2015 meeting. The Board used workshops, site walks, all the applicant's plans that we have reviewed thoroughly, and the actual meeting itself. To characterize that the only record was that meeting itself, is flawed. When we got the remand from the Court, we reviewed all the materials we have looked at before. No new materials were provided. We have looked at the entire record, not just one portion.

Ms. Falender addressed the comments about the quote from the Town Engineer's letter. She said that is standard verbiage and is always in his letter. It means that if new information is submitted, he will review it and may then have different recommendations. The Planning Board has never interpreted that to mean that we need, or are expected, to provide more information.

Mr. Curry said this does not represent new research, or new evidence, but was based on a review of all of the record of this case.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted by the applicant, advice provided by staff including the town planner, town engineer, and code enforcement officer, and the site visit conducted on April 18, 2015, the Cape Elizabeth Planning Board makes the following findings in response to an Order from the Superior Court and remand in 517 Ocean House LLC, v. Town of Cape Elizabeth, et. al:

1. The site lighting is adequate for safety. The facts supporting this finding include the plans, which show 6 different locations where lighting exists.

The location of the fixtures on the plan, combined with the Planning Board's knowledge of the site gained from the site walk, indicated lighting was adequate. At the site walk, it was observed that the site is flat and there was existing lighting for illumination during the hours of darkness. Information was also obtained at the May 19, 2015 meeting from the applicant in response to questions from Planning Board members Sahrbeck and Volent. A Planning Board member asked Mr. Tamaro about lighting and he stated there was sufficient lighting. A light is not located in the back parking lot, but this lot is not open to the public. It is to be used by the employees of the landscaping business and the plans show 2 gates that limit the public's access to the back parking lot. The Planning Board also relies on comments from the Town Engineer. The Town Engineer did not raise any issues regarding lighting, which suggested that the lighting was adequate.

Ms. Falender seconded the motion and it was approved 6-0.

Ms. Falender made the following motion:

2. There will not be excessive illumination based on the fixtures shown in the application, fixtures observed during the site walk, the distance of fixtures from property lines, and the downward angling of fixtures closest to property lines. The facts supporting this finding include review of the plans submitted and observations from the site walk showing buffers, such as trees and shrubs, at the property lines. At the site walk, the Planning Board members looked carefully at the existing lighting and no new lighting was proposed. On the back property line there will be no lighting and no public parking. The Board asked and was informed that there had been no complaints made regarding excessive light from the existing fixtures. The Planning Board discussed a photometric study and decided to waive that submission requirement.

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

Mr. Steinberg made the following motion:

3. Lighting will be adequately shielded by existing buildings, existing and proposed fencing and existing and proposed plantings. The facts supporting this finding include review of the plans submitted and observations from the site walk showing buffers, such as trees and shrubs, at the property lines. The plans show the location of trees, fencing and buildings which provide shielding of existing lighting. The

Board asked and was informed that there had been no complaints made regarding excessive light from the existing fixtures.

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

Mr. Chalot made the following motion:

4. The landscaping around and within parking lots, including the lawn areas, maple trees, half barrels with ornamental grasses, and sign planters do soften the hard surface of parking areas. The facts supporting this finding include review of the plans submitted and observations at the site walk. Trees will be planted and granite boulders will also be placed. The combination of half barrels with plantings, 3 maple trees and perennials will soften the view. The replacement of asphalt with lawn area will also soften the view. Cars will be visible, but there will be enough buffer to soften the view of parking areas. The Planning Board noted you can see cars in all the parking lots in town, including the recently approved Rudy's project, which is in the same zoning district as this project and subject to the same requirements.

There was a brief discussion and Mr. Steinberg seconded and it was approved, 6-0.

Mr. Sahrbeck made the following motion:

5. A landscaped area is located between the road and the parking lot and includes plantings that sufficiently obscure the view of parked cars and parking lots. The facts supporting this finding include review of the plans submitted and observations at the site walk. The combination of half barrels with plantings, 3 maple trees and perennials, and replacement of asphalt with lawn area will soften the view. An esplanade planted with street trees along the frontage of the property, combined with plantings along the edge of the property, draws focus away from the parking lot and therefore obscures it. The most visible parking lot, which is stark, will be removed and replaced with grass. Cars will be visible, but there will be enough buffer to soften the view of parking areas. The Planning Board noted you can see cars in all the parking lots in town, including the recently approved Rudy's project, which is in the same zoning district as

this project and subject to the same requirements. The intent is not to hide the parking lot, but to soften it and blend it into the landscape and the proposed plan softens the starkness of the existing conditions.

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

Ms. Jordan made the following motion:

6. The Planning Board waives as provided for in Sec. 18-2-7, the filing of pre and post stormwater calculations and any other information not provided by the applicant. The facts supporting this finding include the letter from Northeast Civil Solutions submitted by the applicant, specifically page four which describes the reduction in impervious area and the existing stormwater flow. This letter demonstrates that a stormwater analysis was done by the applicant and that there is a reduction in impervious surface. Because of the decrease in impervious surface, the calculation of pre-development (existing conditions) and post-development (proposed plan) stormwater volume calculations for the 2 and 25 year storm would not provide relevant additional information. A large area of asphalt was removed and replaced with grass. Buildings were also removed. There was no existing stormwater problem identified. The Town Engineer supported the waiver request and the Planning Board finds there was sufficient basis to support the waiver.

There was a brief discussion of a change in the wording and was then seconded by Mr. Steinberg and then Mr. Sahrbeck and passed, 6-0.

Ms. Falender made the following motion:

7. The Planning Board finds that the basic site data provided is adequate to make a determination of compliance with Sec. 19-9-5 (D), Stormwater Management. The facts supporting this finding include the plans and the letter from Northeast Civil Solutions submitted by the applicant, specifically page four which describes the reduction in impervious area and the existing stormwater flow. This letter demonstrates that a stormwater analysis was done by the applicant and that there is a reduction in impervious surface. The Town Engineer's letter, specifically paragraph 4, agrees that adequate data was submitted and the Planning Board relies on the Town Engineer's expertise.

Ms. Jordan seconded and it was approved, 6-0.

Mr. Steinberg made the following motion:

8. The Planning Board reduces or waives any requirements of this Stormwater Ordinance for additional information or work because the basic site data furnished under Section 18-2-6 (a) demonstrates that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance. The facts supporting this finding include the applicant's proposal to remove asphalt and buildings and not increase the existing building footprint, decreasing the impervious surface and resulting in less stormwater discharge from the site. The Town Engineer's letter talks about the flow of water on the property, and changes to the piping, demonstrating that he had clearly has considered downstream impacts and he did not need or ask for any additional data to be provided in order to deal with offsite impacts. We have all the information we need as required by Site Plan Review, as supplemented by the Storm water Ordinance, along with the response of the Town Engineer Steve Harding and the response by Northeast Civil Solutions.

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

Mr. Chalot made the following motion:

9. Based on the information provided on the existing conditions of the site and the reduction in impervious surface, adequate provisions will be made for the collection and disposal of stormwater. The facts supporting this finding include the applicant's submitted plans, including details of stormwater structures to be added. The Planning Board also relies on the applicant's proposal to significantly reduce the impervious surface on the site and the Town Engineer's recommendations.

Ms. Jordan seconded and it was approved, 6-0.

Mr. Sahrbeck made the following motion:

10. The conversion of paved and other impervious areas to loamed and seeded lawn area will result in retaining stormwater using natural features. The facts supporting this finding include the plans and materials submitted by the applicant depicting existing conditions and proposed improvements that reduce the existing impervious surface and the Town Engineer's recommendations. The Planning Board specifically notes the additional front yard planting replacing an existing parking area.

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

Ms. Jordan made the following motion:

11. The reduction in impervious area will detain and retain water on the site at a rate below pre-development of the proposed site plan. The facts supporting this finding include the plans and materials depicting a significant decrease in impervious surface. Because there is less impervious surface, there will be less runoff from the site. The newly landscaped areas will capture and retain runoff that currently is leaving the site after hitting pavement. The Planning Board also relies on the recommendations of the Town Engineer.

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

Ms. Falender made the following motion:

12. On and off-site downstream channels will have sufficient capacity to carry flow without adverse effects. The facts supporting this finding include the plans and materials depicting a significant decrease in impervious surface. Because there is less impervious surface, there will be less runoff from the site. The newly landscaped areas will capture and retain runoff that currently is leaving the site after hitting pavement. The Planning Board also relies on the recommendations of the Town Engineer.

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

Mr. Steinberg made the following motion:

13. The closure of the existing drainage way adjacent to the new path is specifically approved. The facts supporting this finding include the plans submitted by the applicant and the proximity of the open channel to the road and the new path. The Town Engineer made specific recommendations regarding drainage in proximity to the new path, and supported closing the open channel once the pedestrian path is added.

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

Mr. Chalot made the following motion:

14. The stormwater design will not damage streets, adjacent properties, downstream properties, soils or vegetation. The facts supporting this finding include the plans and materials submitted by the applicant and the recommendations of the Town Engineer.

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

Mr. Sahrbeck made the following motion:

15. The stormwater design does not impede upstream stormwater flows. The facts supporting this finding include the plans and materials submitted by the applicant and the recommendations of the Town Engineer. The decrease in impervious surface will enhance percolation of stormwater on the property reducing the likelihood of any back up onto upstream properties.

After a brief discussion of amended language, Mr. Steinberg seconded and it was approved, 6-0.

Ms. Jordan made the following motion:

16. The biological and chemical properties of the receiving waters will be degraded by the stormwater runoff from the development site. The facts supporting this finding include the plans and materials submitted by the applicant that replace asphalt with lawn resulting in increased percolation and treatment by vegetation of water that does discharge from the site



No one seconded the motion and Ms. Jordan said she had made a mistake and wished to change her motion. An additional phrase was added and the final motion follows:

16. The biological and chemical properties of the receiving waters will not be degraded by the stormwater runoff from the development site. The facts supporting this finding include the plans and materials submitted by the applicant that replace asphalt with lawn and additional plantings, resulting in increased percolation and treatment by vegetation of water that does discharge from the site

Ms. Falender seconded the motion and it was approved, 6-0.

**Old Mill Road 4-lot subdivision** - Mark Jordy is requesting Minor Subdivision Review of a 4-lot subdivision located on Old Mill Rd (R02-16), Sec. 16-2-3, Minor Subdivision Public Hearing.

John Mitchell represented Mark Jordy. He said he would review the changes since the last meeting. He said they have addressed all the comments on Ms. O'Meara's memo of June 21, 2016. They have added two new notes to the plan. They have also addressed the comments from Steve Harding in his letter of June 15, 2016. They have added notes to the plan as recommended. They have also addressed the comments in Mr. Harding's latest letter, dated July 11, 2016.

He then said they have addressed Condition 3 In Ms. O'Meara's Memo of July 19, 2016. There are concerns about the meaning of the natural vegetation and the location of the vegetation line. They will hire a surveyor to locate and monument that line. This afternoon we received her copy of revised Condition 3. Mr. Jordy's attorney had requested some changes to that condition. In lieu of the proposed condition by Ms. O'Meara, the applicant requests that they be allowed to work out the changes with Ms. O'Meara and the attorney as conditions of approval.

Mr. Mitchell then outlined the changes requested. They wish to delete "in areas outside building envelopes", "after consultation with the code enforcement office", "without the need for replanting". They want to say stumps" are" removed and the area shall be "permitted" to naturally revegetate.

Mr. Curry said he feels that the Board cannot approve this condition to be finally worded by the applicant and Ms. O'Meara. Ms. O'Meara is not here this evening and this is not how the Board should structure a condition. He suggests that they table the application until this can be worked out.

Ms. Falender said the changes are substantive and contrary to the intent of what is here, so she would not support this. She said stumps should not be removed to keep the area as natural as possible. She said the approval of the Code Officer has been part of the Planning Board approval on a number of occasions. In her opinion, there is no meeting of the minds here.

Mr. Jordy said he accepts this and will be agreeable to tabling this matter tonight.

Mr. Sahrbeck said that it troubles him that it requires the involvement of the Code Officer to remove a tree. He would like to hear more from Ms. O'Meara about this. He would like more time before the decision.

Mr. Curry opened the public hearing.

Barbara Wickham of 20 Old Mill Road said she likes the waiver of the width of the road. She is concerned about water. They have had to install French drains and the water flowing towards her property is very important to her. If the water doesn't flow, it ends up in her wetlands.

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

Ms. Jordan had a question about the monumentation. Would it be granite or rebar.

Mr. Mitchell said there will be both, with pins on the lot corners, and granite to mark the 50' wide right-of-way where Old Mill Rd intersects Old Ocean House Rd.

Ms. Jordan also asked about the plans. She noted that the plan she was looking at did not entirely agree with the one Mr. Mitchell was quoting from earlier. Mr. Mitchell said there is a new plan with some different notes which were added or amended in response to the latest letter from Mr. Harding.

Ms. Falender noted that the reference to having the line surveyed and monumented has been removed. She would like to have that language be reinstated.

Mr. Sahrbeck said he was glad to hear that someone who lives in the neighborhood agrees with the waiver of the width of the road.

Mr. Jordy said that it has been his intent to maintain the meadow. He wants a practical application of the rules so he doesn't make a mistake. He wants to understand the why of the rules.

Mr. Curry said there have been other parcels that the Town wanted to have preserved and the language has come from that example.

Mr. Chalot asked if they had considered installing a path to delineate the no-mow line? Mr. Jordy said it would disturb the natural state of the meadow to do that.

Mr. Mitchell addressed the issue of drainage as it concerned Ms. Wickham. The gravel road will be upgraded and there will be a crossflow. It will direct the drainage to the southerly side of the road into a swale which will ultimately outlet into a stream.

There was a brief discussion of the waivers, specifically about the waste water disposal system locations. The road width waiver was also briefly discussed. Ms. Falender said it is clear that no waivers have yet been granted. She made it clear that she is not against those waivers.

Ms. Falender made the following motion:

The application of Mark Jordy for Minor Subdivision Review of a proposed 4-lot subdivision located at 41 Old Mill Rd be tabled until the August 16, 2015 meeting of the Planning Board.

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

Mr. Curry called for public comment on other matters. No one came forward so the comment period was closed.

The board voted unanimously to adjourn at 8:25 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary