

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

August 15, 2017

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair  
Josef Chalat  
Peter Curry  
James Huebener  
Jonathan Sahrbeck  
Henry Steinberg  
Victoria Volent

Also present was Maureen O'Meara, Town Planner and John Wall, Town Attorney.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the July 18, 2017 meeting. Mr. Curry had a minor amendment to the minutes. The amended minutes were then approved 7-0.

OTHER BUSINESS

**517 Ocean House Rd LLC v. Town of Cape Elizabeth remand** - The Planning Board will discuss items remanded by the court in the above cited litigation.

The Superior Court has remanded back to the Cape Elizabeth Planning Board the appeal of 517 Ocean House Rd LLC v. Town of Cape Elizabeth for more findings. The Planning Board discussed additional findings in response to the remanded items at the July 18th meeting. The Board tabled the matter so that some of the discussion that occurred on July 18 could be reduced to writing to aid the Board in formulating a motion.

The Superior Court has remanded three items for further findings. The Planning Board discussed each item at the July 18th meeting, and referenced information in the applicant submission, the regular Planning Board meeting and the site walk.

Attorney John Wall said that since they had allowed public comment at the last meeting, there was no need to do so again. He said the Board needs to formulate whatever motions they feel are appropriate for additional findings or additional conditions as permitted by the Court on remand.

Mr. Wall suggested that in the matter of the obscuring of the view from the sidewalk to the parking lot, the Court had looked at the materials and did not find evidence of the obscuring. This is a matter where additional conditions might be better than additional findings.

Mr. Curry said he is in favor of adding conditions of approval to all three issues. He feels they will just add to what the Board has been finding all along.

Mr. Steinberg added that item 2 about the lights should note that none of the existing lights are high intensity nor are they focused beams.

Mr. Huebener asked if the potential condition of approval was too detailed.

Ms. O'Meara said the Board needs to be careful that they are not delegating their authority to the staff. A condition that leaves out the details may be too broad. The draft condition is based on a site plan approval granted by the Planning Board in the Town Center District.

Ms. Volent asked if the memo had been sent to Mr. Tammaro.

Ms. O'Meara said the entire memo was posted on the website and emailed to Ms. McGehee.

Mr. Chalot suggested that the first two items be issued as findings and the 3rd item be a condition.

Ms. Volent noted that the Board had looked at every light on the premises during the site walk. The lights were angled downward.

Ms. O'Meara said there were pictures of the buildings in the application and they showed the lights which were angled downwards.

Mr. Sahrbeck 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, dated April 27, 2017, in 517 Ocean House Rd LLC v. Town of Cape Elizabeth and to supplement the findings articulated in the Board at its meeting on July 19, 2016:

1. The parking area behind Building #3 will not be used during nighttime hours, and therefore lighting adequate to promote safety in the nighttime is not required. As shown on the plans, the back parking lot is proposed to be gated to prohibit use by the public and will be used only by the landscaping business, which according to the applicant has normal business hours dawn to dusk,

And subject to the following condition:

That there be no use by anyone of the parking area behind Building #3 in nighttime hours, which shall be defined as dusk to dawn.

2. The light fixtures on the buildings located at 541 Ocean House Rd are shielded or angled downward so that they do not unnecessarily light the night sky. During the site walk, Planning Board members observed that existing lighting was pointing down and the plans show that no new lighting is proposed. The materials submitted by the applicant include photos of the existing buildings with existing lighting pointing down. None of the existing lights are high intensity or focused beam and therefore would not unnecessarily light the night sky. (See picture included in application showing lighting pointing down)

And subject to the following condition:

That all the existing lighting, as shown on the site plan and shown on a picture of the east side of building #4 (included in the application) continue to be angled downward to eliminate any unnecessary illumination of the night sky.

3. The plantings between the sidewalk and the parking area will obscure the view of parked cars and parking areas from the sidewalk. The Planning Board applies the requirement to "obscure" to mean "make indistinct." The Planning Board noted that the expanse of parking and paved areas that need to be obscured is reduced by the amount of paving the applicant is removing and replacing with grass in front of building #4. The view of the parking areas will be obscured with half barrels planted with ornamental grasses, granite boulders, and a landscaped bed around the signage. All of these measures are sufficient, in the judgment of the Board, to soften the view of the parking areas from the sidewalk in order to meet the "obscuring" criterion,

And subject to the following condition:

That additional buffering be added to the plan to further obscure the parking areas from the sidewalk as follows: (1) a double staggered row of 24 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the east side of the 11 space parking lot; (2) a double staggered row of 16 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the east side of the 6 space parking lot; (3) a double staggered row of 8 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent

and along the south side of the 6 space parking lot; and (4) a double staggered row of 8 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the striped area adjacent to the 4 space parking area, for a total of 56 dwarf bottlebush.

Mr. Chalot seconded the motion. Mr. Steinberg offered an addition to the lights that they are not focused beam. His amendment was accepted by both Mr. Sahrbeck and Mr. Chalot.

Mr. Curry requested that they add conditions to the first two items. Mr. Sahrbeck and Mr. Chalot accepted the amendments.

The amended motion was approved, 7-0.

## NEW BUSINESS

**Hidden Court Subdivision Amendment** - Margaret Angell and Nathaniel Fick are requesting an amendment to the Hidden Court Subdivision, located in the area of Ocean House Rd, to adjust the common lot line of lots 1 and 3, Sec. 16-2-5, Amendment to Previously Approved Subdivision, Public Hearing.

Nathaniel Fick said thank you for the opportunity to answer any questions you have.

Spencer Thibodeau, representing the applicants, outlined the changes requested. He showed a copy of the plan with the changes outlined. There will be two conveyances. The first is a 241 sq. ft. parcel to the Stone House lot that will convey the part of the gate that is over the lot line. The next conveyance will be 9700 sq. ft. to the Garden House lot as a buffer. The view easement will remain in effect and will not be affected.

Ms. Jordan opened the public hearing. No one came up to speak, so the public hearing was closed.

The Board had no comments.

Mr. Sahrbeck made the following motion:

### Finding of Fact

1. Margaret Angell and Nathaniel Fick are requesting an amendment to the previously approved Hidden Court Subdivision, located off Ocean House Rd, to revise the common lot line between lot 3 (Garden house lot) and lot 1 (Stone house lot), which requires review under Sec. 16-2-5,

Amendments to previously approved subdivisions. Findings for standards of review that apply to the proposed amendment follow.

2. The subdivision will not cause soil erosion, based on the erosion control plan provided.
3. The subdivision is compatible with the Zoning Ordinance.
4. The subdivision does provide for access to direct sunlight.
5. The subdivision does provide a vegetative buffer and screening as needed with the proposed lot line changes.
6. The subdivision plan does not include a phasing plan.
7. 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 Margaret Angell and Nathaniel Fick for an amendment to the previously approved Hidden Court Subdivision, located off Ocean House Rd, to revise the common lot line between lot 3 (Garden house lot) and lot 1 (Stone house lot) be approved.

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

Ms. Jordan recused herself and Mr. Chalot took over as Chair.

**Strout Tower Consolidation Site Plan** - The Strout family is requesting Site Plan review of a proposed 180' tall telecommunications tower to be constructed at 14 Strout Rd, Sec. 19-9 Site Plan Completeness.

Justin Strout is representing Tower Specialists, Inc. They are proposing one new 180 ft. tower to replace their existing towers at 14 Strout Road. The existing towers are structurally overloaded. He showed pictures and plans of the site as it exists and as they are proposing. They want an area where they can put support facility structures without going to the Planning Board every time. They would like to only need a building permit for the addition of support structures and not Planning Board approval.

He spoke about the propane tank area and that it will be 25 ft. from the ignition sources. They are proposing a support equipment area, so they would only need a building permit for new equipment or concrete slabs in the future.

He showed pictures from all angles and noted that most of the trees will stay.

Mr. Chalats opened the subject of completeness to the Board for questions.

Mr. Curry wondered about the fact that the propane area is not fenced.

Mr. Strout said he had called the Fuel Board, and was told that if there are over 4,000 gallons on site it needs to be fenced and approved by the Fuel Board. They will have 1- 1000 gal. tank, 2- 500 gal. tanks and 1- 120 gal. tank. Those existing tanks will all be moved to one area.

Mr. Steinberg asked if there would be vegetation around the tanks.

Mr. Strout said there would be none because they will be between the guy wires, and those will be kept clear.

Mr. Chalats opened the public comment period. No one came to speak, so the public comment period was closed.

Ms. Volent asked if they had any comments on the Town Engineer's comments.

Robert Metcalf said they had no comments to add.

Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tower Specialists Inc. for Site Plan Review of the construction of a new 180' tall telecommunications tower located at 14 Strout Rd be deemed complete. The following submission information waivers are granted:

1. Survey information for the north and south property boundaries.
2. Soils information for the entire 25± acre site.
3. Traffic study
4. Photometric study

Mr. Sahrbeck seconded the motion and it was approved, 6-0.

A site walk was scheduled for Wednesday August 30, 2017 at 5:30 p.m.

Ms. Volent asked if there will be a sound blocking fence.

Mr. Strout said they would like that to be a condition of approval. The first generator would meet the standards, and only the second would need a sound panel.

Mr. Strout said the nearest residence is 350 ft. away.

Ms. Volent requested that the applicant bring in the specs for the potential generators and the sound barriers.

Mr. Huebener said he has never designed a cell phone tower, but based on other design experience, the steel member sizes and bolt sizes seem small to him. He and Mr. Strout then discussed the design.

Ms. Volent asked about Item 5 of the Engineer's letter which concerns the road.

Mr. Strout said it is just a gravel driveway.

Ms. O'Meara asked the Board if they want to look at the road. Do they want a maintenance agreement?

Mr. Strout said it is very well maintained because there is very expensive equipment up there.

Mr. Metcalf said they need to bring the grade up and they have provided a detail on the plan.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tower Specialists Inc. for Site Plan Review of the construction of a new 180' tall telecommunications tower located at 14 Strout Rd be tabled to the regular September 19, 2017 meeting of the Planning Board, at which time a public hearing will be held.

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

**27 Fowler Rd BB District Zoning Amendments** - The Cape Elizabeth Town Council has referred to the Planning Board a request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor, Sec. 19-10-3, Amendments [to the Zoning Ordinance and the Zoning Map].

Ms. Jordan returned as Chair.

Ms. O'Meara said the Board has looked at this through workshops, had an informational public hearing and now have moved it back to the formal Planning Board meetings. A site walk has been held. Ms. O'Meara hopes the Board will look at the draft and identify any changes they would like to see and then table it to next month's meeting for a public hearing.

Mr. Curry asked if there was a reason for two terms, landscape contractor and landscape contractor yard. He would like to consolidate the terms.

Mr. Huebener said he can understand why there are two terms.

Ms. O'Meara said if they are going to rewrite the ordinance, it should go back to a workshop.

The Board agreed to leave the language as it is.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the map and proposed text amendments, and the facts presented, the request of Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the BB District regulations to permit a landscaping contractor be tabled to the regular September 19, 2017 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Huebener seconded the motion and it was approved, 7-0.

Ms. Jordan asked for comments on items not on the agenda. No one had any comments, so the comment period was closed.

The board voted unanimously to adjourn at 8:25.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary



