

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

September 19, 2017

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the August 15, 2017 meeting. Mr. Huebener had a minor amendment to the minutes. The amended minutes were then approved 7-0.

OLD BUSINESS

Strout Tower Consolidation Site Plan - Tower Specialists Inc. is requesting Site Plan review of a proposed 180' tall telecommunications tower to be constructed at 14 Strout Rd, Sec. 19-9 Site Plan Public Hearing.

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

Justin Strout represented Tower Specialists, Inc. and Strout Trust. He said they have 5 towers to be removed, and one will remain. He showed aerial views of the towers and the site and the surrounding areas. The project will be done over a period of one and a half years. At the end of the project there will be two towers. The project will be done in two phases. He showed pictures of the trees and the buffer along with the site plans and the propane tank area.

Mr. Chalot opened the public hearing. No one came to speak, so the public hearing was closed, and the discussion was opened to the Board.

Ms. Volent asked about the snow clearing.

Mr. Strout replied that the snow is cleared 365 days per year.

Mr. Chalot asked about the 14 ft. road width.

Mr. Strout said he needs clarification on that, but does not think it is a problem.

Ms. O'Meara said that a 14 ft. wide roadway includes an 18 in. deep gravel base.

Mr. Strout said there is a lot of ledge at the paved portion of the road.

A brief discussion about the road and its base resulted in added wording to the conditions of approval.

The Board then discussed the sound baffling measures with Mr. Strout. He talked about sound baffling panels attached to the fence and the possibility of a berm.

Ms. O'Meara said a berm is not a part of this application and they would need a new approval if they made a berm. A berm could change drainage or require removal of vegetation, so would need a new plan. Mr. Strout agreed that no berm would be used for sound buffering.

Mr. Steinberg made the following motion:

Findings of Fact

1. Tower Specialists Inc. are proposing to construct a new 180' tall telecommunications tower located at 14 Strout Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The plan for the development is consistent with the natural capabilities of the site to support development.
3. 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. Adequate provision for parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
4. The telecommunication infrastructure and operations on the site are incompatible with pedestrian access, therefore, no facilities for pedestrians are provided.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.
7. The telecommunications infrastructure and operations on the site do not require access to potable water.
8. The telecommunications infrastructure and operations on the site do not require sewage disposal.

9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The telecommunications infrastructure and operations on the site do not require disposal of solid wastes.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.
15. The development will provide a vegetative buffer throughout and around the site and screening as needed.
16. The development will not substantially increase noise levels and cause human discomfort.
17. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
18. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-12, Tower and Antenna Performance Standards.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Tower Specialists Inc. to construct a new 180' tall telecommunications tower located at 14 Strout Rd. and remove of a 180' tall tower and 4 shorter towers be approved, subject to the following conditions:

1. That the plans be revised as recommended in the Town Engineer's letter dated September 13, 2017.
2. That the entire length of the driveway have a minimum traveled way of 14' wide and be constructed with sufficient gravel base or other material satisfactory to the Town Engineer, to support town emergency vehicles.

3. That a road maintenance agreement be provided in a form acceptable to the Town Attorney, Town Fire Chief and Town Manager and signed by the applicant that requires a turnaround be maintained of adequate size and radius to accommodate town emergency vehicles and include a provision for snow plowing.
4. That the applicant must provide, after the installation of 1 generator, projected dba levels (not to exceed 45 dba) at the property line with each additional generator for the total dba level at the property line for all generators associated with the proposed 180' tower. Sound blocking fencing, staggered scheduling for "exercising" generators, and other methods shall be employed to limit dba levels at the property line to no more than 45 dba.
5. That there be no alteration of the site nor issuance of a building permit until a performance guarantee has been submitted in an amount acceptable to the Town Engineer, in a form acceptable to the Town Attorney and all acceptable to the Town Manager.
6. That there be no alteration of the site nor issuance of a building permit until the above conditions have been satisfied by submission of plans and materials to the town planner and notification by the town planner that all conditions have been met.

Mr. Sahrbeck seconded the motion. And Ms. Volent added an addition to Condition 3 (included above) and that was approved by Mr. Steinberg and Mr. Sahrbeck. The motion was approved, 7-0.

Ms. Jordan returns as Chair.

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] Public Hearing.

Ms. O'Meara said there was a request from Brad Pearson to rezone 27 Fowler Road from Residence A to Business B to accommodate a landscape business on the property. She displayed a map showing the proposed Zoning Map change. This also requires text amendments. The landscape contractor definition has a 40,000 sq.ft. minimum lot size, no more than 50% of the lot shall be used for exterior storage and no onsite sales. There is also a restriction on the size of the vehicles, to be no larger than 14,000 lbs.

Ms. Jordan opened the public hearing.

Nancy Castle of 9 Great Pond Terrace is concerned about the amount of congestion these large trucks are causing on Fowler Road. People are walking, walking dogs, biking on Fowler Road. She would like to see a walkway for pedestrian safety and a crosswalk.

Nell Hanig of 2 Great Pond Terrace said Fowler Road is a narrow road and people walk there. It is not safe. She does not want more trucks. If you change the zoning, you are setting a precedent and there will be no way to deny the next request. It will no longer be a residential area.

Greg Salerno of 25 Manter Street said he supports this venture. He said there are landscape trucks on every street in Cape Elizabeth. We hear about young people being chased out of the state, and here is a young man who grew up here in the Cape who wants to have a business here. He hates to see these people chased away from the town.

Michelle Boyer of 333 Fowler Road is opposed because of traffic concerns. If the town wants to accommodate a young man's business, they should put more resources into enforcing the speed limit and limiting the increase in traffic.

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

Mr. Huebener said he cannot support this change because of unintended consequences of changing this one parcel. If you look at other abutting parcels, those owners might decide in the future to become landscaping contractors. It can snowball.

Mr. Curry noted that the parcel would still need site plan approval. He said the site walk had made him skeptical of approving this matter. The property owner has erected a large and unsightly berm at the back of his property which is not acceptable.

Mr. Sahrbeck said he supports this change. He thinks it is a unique property that is surrounded on two sides by the gravel pit. He said we are not at the point that a site plan is discussed. He wants to keep businesses in town and the restrictions in the ordinance are specific and strict.

Ms. Volent said there is an outstanding code violation about a new dwelling unit above the garage on the property since 2015. She noted that multifamily dwellings are not allowed in the BB District. She also cited a letter from an abutter that the berm is encroaching on the abutter's property. She said the applicant has never demonstrated that the only place he can have his business

is 27 Fowler Road. She cited the unintended consequences of a larger commercial area in the neighborhood. She will not support this issue.

Mr. Chalot said he is not going to support the request. He sees nothing objective in the Zoning Ordinance about rezoning. He doesn't see any advantage to the town in this change.

Mr. Steinberg sees traffic problems, and can't support it.

Ms. Jordan said it's already in the midst of a gravel pit, but she has concerns about the berm. She is also concerned about the fact that there has been a code violation on the property and nothing has been done to rectify that. She would like to support someone having a business in town, but this has been very difficult for her. She cannot support this change.

Mr. Curry 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 not be recommended to the Town Council.

Mr. Huebener seconded the motion and it was approved, 6-1.

NEW BUSINESS

Maxwell Woods Residential development - Maxwell Woods LLC is requesting Major Subdivision Final Plan Review, Amendments to the previously approved Spurwink Woods Subdivision, a Resource Protection Permit and Site Plan Review of 38 condominium units and 2 4-unit apartment buildings located at 112-114 Spurwink Ave, Sec. 16-2-4, Major Subdivision Review Completeness, Sec. 19-8-3, Resource Protection Completeness, and Sec. 19-9, Site Plan Review Completeness.

Owens McCullough of Sebago Technics is here on behalf of Maxwell Woods, LLC. He enumerated all the meetings that have been held about this project to date. He talked about the checklist for the final plan review and how they have met those criteria. They have submitted the proposed deeds, updated the plans with easements and metes and bounds, drawn up the homeowner's association documents, and submitted the cost estimate.

They have spoken to the DEP and hope to have that final plan approval in a couple of weeks.

He showed a plan of the project showing the 38 condo units and the 2-4plex apartment units and the open space and trails. He showed landscaping around the transformer pads. They have included a table with the counts of the landscaping plants. He said they would like flexibility about which units will be the affordable ones.

Ms. O'Meara said they are supposed to find that the units are geographically dispersed throughout the project. Moving the units around after approval could be done as a de minimus change if needed.

The lighting for the apartment buildings is planned to be low wattage LED lights only at the entry points. The dba levels will be estimated.

Ms. O'Meara said they need to have a number in order to get Planning Board approval.

The public comment period on completeness was opened.

Peter Dixon of 29 Westminster Terrace is concerned about this 2 acre farmland piece. The Subdivision Ordinance Chapter 16, page 10 defines farmland as 5 acres. He thinks something funny is happening. This land is not being farmed.

Jeanette Baum of 85 Spurwink Road is not supportive. She wants the traffic to be considered. Adding 80 potential people and cars on Spurwink Road can be a hazard to people walking and riding bikes. She mentioned the landscaping around the pond and was told that that was not part of this project. She said she will see the lights of the cars coming and going at night and is also concerned about construction noise and dust.

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

Ms. Volent said a traffic study has been done.

Mr. Sahrbeck said the traffic study included the Cottage Brook subdivision.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joel FitzPatrick, doing business as Maxwell Woods LLC, for Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominium units and 8 apartments in 2 buildings, and amendments to the previously approved Spurwink Woods Subdivision related to the road extension be deemed complete.

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

The Board scheduled a site walk for 5:30 Thursday September 28.

Ms. Volent had some questions about the notes and the status of the State approvals. She also said that the affordable units should not be in a cluster.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joel FitzPatrick, doing business as Maxwell Woods LLC, for Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominium units and 8 apartments in 2 buildings, and amendments to the previously approved Spurwink Woods Subdivision related to the road extension be tabled to the regular October 17, 2017 meeting of the Planning Board, at which time a public hearing will be held.

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

Comfy Cape Expansion Site Plan Amendment - Kimberly Sholl is requesting an amendment to the previously approved site plan to expand the Comfy Cape Day Care from 19 to 40 children, located on 111 Scott Dyer Rd, Sec. 19-9 Site Plan Completeness.

Kimberly Sholl of Comfy Cape Child Care said there is a great need for child care. They have always had a wait list with people often waiting 6-12 months for a place. She showed pictures of the property. The day care is on the first floor of the building and there are tenants living on the second floor. She showed pictures of the existing playground and the proposed area for the additional play yard in a large grassy field.

Ms. Sholl said she will provide a larger copy of the photometric plan and the evidence of how she is Kimberly Sunshine Properties, LLC. She will provide the anticipated decibel levels at the property line. She also has discussed the staggered play times outside.

She addressed the items in Mr. Harding's letter. She will provide the contours for the topography. She has used Atlantic Resource Consultants who can provide data on the erosion control, the engineer's stamp and the graphic scale. Gawron Turgeon will provide detail about the handicap parking space.

Ms. Sholl addressed the rest of Mr. Harding's items and then talked about the new play yard. It will only have a fence around a grassy area, no structures, no

woodchips. Her plan is to match the picket fence that is on the existing playground.

Ms. Jordan opened the public comment on completeness.

Blake Strack of 19 Patricia Drive said the traffic assessment was done on August 8, which is not when school is in session. It provides numbers for the pm. only, not the am. when the daycare's drop off happens. There is a school bus stop in front of Cape Memory Care that would not have been reflected in any summer assessment. There is a large volume of traffic on Scott Dyer Road of parents driving their kids to school. He would like the Board to require a new traffic study done during the school year in both the am. and pm. This expansion plan would change the very nature of our neighborhood. His opinion is that the Planning Board is only interested in checking off boxes that are prerequisites to approval of the expansion plan. If the application eventually meets the Zoning requirements, this will be inevitably be approved, as the last one was in 2009.

Dr. Michelle Schwab of 6 Patricia Drive bought her house for the quiet dead end street and feeling of neighborhood. She now works from home more often than from her office. She hears the kids playing at the daycare and her work, as a psychologist and disability consultant, stops until the playground time is over. The idea of increasing that by 100% is appalling to her. It is interfering greatly to her quality of life. She is concerned about the impact of commercial property on the value of her house.

Michael Bowdler owns the property abutting the daycare. He is vehemently opposed to the proposal. He said the 2008 approval to expand was over the objections of the neighbors. He thinks if they want to further expand it should seek another site not so overpowering to the neighbors. We should be able to enjoy peaceful enjoyment of our home. What else is zoning for?

Jim Mooney of 3 Patricia Drive has lived here 40 years. This has always been a peaceful, quiet neighborhood and then the daycare came. It started out with 11 children. It changed the neighborhood, but not drastically. Then it expanded to 19 and it became much more noisy. Now they want to go up to 40 kids. This is a residential neighborhood. The home daycare became an LLC. based in Scarborough and the owner lives out of state. He hopes the Board will realize what this will do to the neighborhood. It would change it drastically.

Chip Brewer of 11 Patricia Drive has concerns about the traffic study. He said it does not represent when people are going to work and the busses are going by. He feels the application is not complete. Too many things will be provided, but are not here yet. He has grave concerns that we will have a 50 person business at the end of his street.

Becky Brosnan of 7 Patricia Drive has been there for 3 years and has never had any complaints with the daycare. She is concerned about the stormwater component. Our neighborhood has wetlands and flooding during heavy rainstorms. An increase in the impervious surface could be a big issue. She is concerned about the stormwater impacts on the natural areas around the neighborhood. She is not supportive of the change.

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

Mr. Chalot asked Ms. Sholl if the State Fire Marshall has been consulted about the plans.

Ms. Sholl said she has met with the State Fire Marshall.

Mr. Sahrbeck said he has concerns about the traffic study. It needs to be done during school months. Since it was done in August, that is not representative of how much traffic is on that road during school.

Mr. Curry said he has the same concerns about the traffic study. He sees that a number of the neighbors are bothered by the noise. Maybe there is a way for the applicant to baffle the noise made by the kids. He would be looking for a more robust study of the noise factor.

Mr. Steinberg was concerned about the fire exits.

Ms. Sholl said it will be up to the Fire Marshall's office to give requirements, and she has consulted them. She will provide that information.

Mr. Sahrbeck noted that Ms. Sholl has said they will stagger the times the kids will be out. He wants to know how they are proposing to do that.

Ms. Volent said she is ready to go forward with this, with the caveat that the information will be provided.

Ms. Jordan is not ready to go forward with this. She has concerns about the traffic study and that an erosion control plan is not included. July and August are not representative for the traffic study.

Ms. Jordan polled the Board and the majority will find it incomplete. The items that guide this finding are; the traffic study, the noise issues, erosion control and possible safety issues. Ms. O'Meara noted that the safety issues are the job of the Code Officer, not the Board.

Mr. Curry made the following motion:

BE IT ORDERED that, based on the plans and the materials submitted and the facts presented, the application of Kimberly Sholl for an amendment to the previously approved site plan for 111 Scott Dyer Road to expand the existing day care from 19 to 40 children be deemed incomplete.

Mr. Huebener seconded the motion and it was passed, 6-1.

Two items on the agenda have withdrawn their applications from this meeting. They are 75 Ocean House Road, and 287 Ocean House Road.

1226 Shore Rd office/retail/apartment building Site Plan Amendment-

1226 Shore Rd LLC is requesting an amendment to the previously approved site plan to expand the existing building to accommodate office, retail and 8 apartments, Sec. 19-9, Site Plan Completeness.

Mr. Chalot asked the Board for direction about a possible conflict of interest, and was told that they did not see a conflict.

Ms. Volent recused herself.

Steve Bushey of Stantec and Katherine Dettmer of Archetype Architects represented 1226 Shore Rd LLC. Mr. Bushey said they were proposing 8 units of housing and ground level retail and office space. He showed a site plan and an updated survey plan of the 1.3 acre parcel. There is a right of way for the Town. They are proposing 34 parking spaces, 8 of them being covered, on a new porous pavement parking lot.

The proposal in the landscaping plan is for 88 plants and a 50 ft. buffer area along the east side. They are planning to do some tree trimming in the buffer area, but will not clear out the area.

Mr. Bushey showed their plans for drainage and erosion control. They also showed a photometric plan.

Ms. Dettmer talked about the lights and then showed floor plans of the proposed building. There will be retail space on the first floor along with 2 office spaces. Upstairs there will be 4 apartments on each of the upper 2 floors.

They need 36 parking spaces. There are 26 spaces on the parking lot and 8 covered spaces. They are requesting 2 shared spaces. She addressed the signage. They want to keep wooden signage out front. They do not have the

final plan, but will stay within the requirements. There are other areas where signs might be placed.

She showed the elevations of the building and showed samples of the proposed materials to be used.

Ms. Jordan opened the public comment period, and no one was in the audience, so the public comment was closed.

There was a brief discussion about the rules for shared parking spaces.

The Board had no other questions, so Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 1226 Shore Rd LLC for Site Plan review of a mixed use office/retail/8 apartments building expansion located a 1226 Shore Rd be deemed complete with the following waiver of information:

1. Depiction of trees 8" or larger in diameter on the plans.

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

The Board agreed to schedule a site walk for 6:00 on October 3.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 1226 Shore Rd LLC for Site Plan review of a mixed use office/retail/8 apartments building expansion located a 1226 Shore Rd be tabled to the regular October 17, 2017 meeting of the Planning Board, at which time a public hearing will be held.

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

Since there was no one in the audience, the public comment was closed.

The Board voted unanimously to adjourn at 10:20 pm.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary

