

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

December 17, 2019

7:00 p.m. Town Hall

Present: Josef Chalot, Chair Peter Curry
 Daniel Bodenski Carol Anne Jordan
 James Huebener Jonathan Sahrbeck
 Andrew Gilbert

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Mr. Chalot called the meeting to order and asked for the approval of the minutes of November 19, 2019. The minutes were approved as presented 6-0 (one abstain).

OLD BUSINESS

Ocean House Common Site Plan Amendment and Subdivision - David Jacobson is requesting subdivision review to create a 4-lot subdivision located at 326 Ocean House Rd, plus amendments to the site plans for 326 Ocean House Rd and 320 Ocean House Rd (Town Hall lot) to connect to the parking lot, Sec. 16-2-3 Subdivision Public Hearing, Sec. 19-9 Site Plan Amendments Public Hearing.

John Mitchell of Mitchell and Associates and Steve Bradstreet and Amber Ferland of Ransom Consulting were there. Mr. Mitchell addressed all of Steve Harding's comments in his letter of November 14, 2019. He has also changed the plans to address the comments of December 11, 2019 and addressed the comments by Ms. O'Meara on December 17, 2019.

The project will require a DEP permit, and that is ready to be submitted. The Town Council has approved 3 documents, as follows: 1. is for parking in the rear of the town hall lot. 2. is a cross access easement, which allows access to and from the town lot. 3. is a drainage easement which allows the town onto this property for maintenance of the infiltration basins.

Amber Ferland of Ransom Consulting said she spoke with DEP staff and they have indicated support of the stormwater design and stormwater report.

Mr. Chalot opened the public hearing.

Suzanne McGinn of 1180 Shore Road said she is concerned about the vernal pool that was on the property. It is already destroyed. In spring of 2016 Lauren Stockwell determined that it was not a significant vernal pool. It was an unusually dry spring that year. In 2014 Al Frick said it was a significant vernal pool. He did that assessment for Mr. Haffenreffer. She then called IF&W and talked to a guy named Jason, who approved Ms. Stockwell's report. She then talked to a woman at DEP. She would like to prevent this from happening again. She thinks they should implement stricter guidelines to protect environmental quality.

Elyse Tarlow said she borders the back of this property. This project is impacting residential properties behind it. It is the backyards of families living there. She just wants them to be aware that it is residential back there.

Nate Vickers was there on behalf of an abutting property owner. He is wants to be sure that the easement zone providing a buffer should not be interrupted.

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

Mr. Mitchell said they have gone to great lengths to be sure the buffer is well marked. There are stakes along the entire length of the wooded buffer, and the contractor is well aware that area should not be cleared. At the property line, there are several existing iron pins and they have proposed iron pins where there are none.

Mr. Huebener asked if they had been given notice of the vernal pool.

Mr. Mitchell said they were the ones who hired Lauren Stockwell. That report was registered with IF&W.

Mr. Gilbert asked whose onus is it that they look at prior records.

Ms. O'Meara said there are 3 levels of rule that cover this. The local rules require that we protect vernal pools as wetland. We do not administer the state DEP rules. It doesn't really matter if it is a dry spring and just because you find fairy shrimp eggs doesn't mean it is a significant vernal pool. The state determines whether it is a significant vernal pool.

Mr. Sahrbeck said the application we have in front of us is for amending of the previously approved plan that came before us about 6 months ago. At that time it would have been the opportunity for the information about the vernal pool to come forward. We are not the board to change the ordinance, that would be the Town Council. We are supposed to look at the information before us an apply the ordinance that exists.

Mr. Curry and Ms. Ferland discussed the drainage and test pit results.

Ms. O'Meara noted that Mr. Harding's letter of December 11, 2019 did not say it was all good. They have been working since then and are now in compliance with the DEP and the Town.

Mr. Gilbert asked for clarification of the drainage.

Ms. Ferland showed a plan of the drainage areas, the direction of each of the drains and how the drainage is treated.

Mr. Chalot asked if a building on lots 3 or 4 were designed in such a way to upset this scheme.

Ms. O'Meara said that each new building on this plan will need to come before the Board for site plan review.

Mr. Sahrbeck said that when they went on the site walk, the buffer was clearly marked at that time. He said the concerns about buffering that were raised have already been addressed by the applicant.

Ms. O'Meara said she has provided a new condition of approval for Planning Board consideration due to a discovery of drainage lines this morning.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. David Jacobson is requesting subdivision review to create a 4-lot subdivision located at 326 Ocean House Rd, plus amendments to the site plans for 326 Ocean House Rd and 320 Ocean House Rd (Town Hall lot) to connect to the parking lot, which requires review under Sec. 16-2-3 of the Subdivision Ordinance, and Sec. 19-9, Site Plan Regulations.
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. The subdivision provides for road network connectivity while discouraging through traffic. Roads are laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. Roads are designed to meet town standards.
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, or public access to the 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 the 100-year floodplain.
14. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance.
15. The proposed subdivision will provide for adequate stormwater management.
16. The subdivision is not located within the watershed of a great pond.
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 as appropriate and screening as needed.
21. The subdivision will comply with the open space impact fee with the donation of 17,031 sq. ft. of land (village green 2) and payment of a fee in the amount of \$12,428.46.
22. The subdivision lots will be provided with access to utilities.
23. The subdivision plan does not include a phasing plan.
24. The 326 Ocean House Rd site plan and the Town Hall Site Plan have been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan Regulations, and the findings and decisions of those approvals which are not altered by the proposed amendments remain in effect.
25. The plan for the sites reflects the natural capabilities of the site to support development.
26. Access to the sites will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the sites will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
27. The sites will provide a vegetative buffer throughout and around the site as appropriate and screening as needed.
28. The applications have substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1 and Site Plan Regulations, Sec. 19-9.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of David Jacobson for subdivision review to create a 4-lot subdivision located at 326 Ocean House Road, plus amendments to the site plans for 326 Ocean House Rd and 320 Ocean House Rd (Town Hall lot) to connect to the parking 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 December 11, 2019;
2. That monumentation be added to the plan in coordination with the Public Works Director;
3. That lot 1 vehicular access be limited to Town Common Circle;

4. That an open space impact fee in the amount of \$12,428.46 be paid prior to the recording of the subdivision plan;
5. That the road maintenance agreement for Town Common Circle be recorded with the subdivision plan;
6. That any required DEP Stormwater or site permits be obtained prior to recording of the subdivision plan;
7. That a deed for the village green 2 lot be submitted in a form acceptable to the town attorney and the town manager; and
8. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.
9. That the applicant coordinate with the Town of Cape Elizabeth to pick up existing drainage lines extending from the town hall to the applicant's property with design and construction costs to be borne by the town.

Ms. Jordan seconded the motion and it was approved, 7-0.

NEW BUSINESS

Portland Head Light Pedestrian improvements Site Plan Amendment - The Town of Cape Elizabeth is requesting amendments to the previously approved subdivision to make improvements to accommodate heavy pedestrian traffic around Portland Head Light, located at Strout Circle in Fort Williams Park, Sec. 19-9, Site Plan Completeness and Public Hearing.

John Mitchell of Mitchell and Associates said the plan is to accommodate increased pedestrian traffic. He showed plans of the current plan and what they are proposing. There are viewing areas that were designed to be grass, but are now bare and eroding. They plan to remove the soil and pave the entire area with stone pavers. They will add a bench. They will use granite curbing to replace a piece of timber. Post and chain will be used to control pedestrian traffic and keep people off the grassy area. They will install plantings and relocate the horn to an enclosed area.

They are asking for three waivers, topography, traffic study and stormwater management. He said they have addressed all of Steve Harding's comments. There is no fencing for erosion control because they are paving right up to the fence. They will finish one area at a time.

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

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 Town of Cape Elizabeth for pedestrian improvements at Portland Head Light, located at Fort Williams Park, be deemed complete.

Ms. Jordan seconded and it passed, 7-0.

Mr. Sahrbeck said he is glad these improvements are being made.

Mr. Chalot opened the public hearing. No one came forward to comment, so the public hearing was closed.

The Board did not want a site walk.

Mr. Huebener made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting amendments to a previously approved site plan for Portland Head Light, located at Fort Williams Park, to add hard landscaping to high traffic pedestrian areas, which requires review for compliance with Sec. 19-9.
2. The Portland Head Light site plan has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan Regulations, and the findings and decisions of that approval which are not altered by the proposed amendments remain in effect.
3. The plan for the development reflects the natural capabilities of the site to support development.
4. The plan does provide for a system of pedestrian ways within the site.
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 development will not adversely affect the water quality or shoreline of any adjacent water body.
8. The development will provide a vegetative buffer throughout and around the site and screening as needed.
9. The applicant has demonstrated adequate technical and financial capability to complete the project.
10. The application substantially complies with the standards of Sec. 19-9, Site Plan Review.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for pedestrian improvements at Portland Head Light, located at Fort Williams Park, be approved subject to the following condition:

1. That the plans be revised to reflect the comments of the Town Engineer in his letter dated December 10, 2019.

Ms. Jordan seconded the motion and it was approved, 7-0.

Gardner building envelope revision - Adam Gardner is requesting amendments to the previously approved private accessway to revise the building envelope for the lot located at 12 Purpoodock Dr (U27-28-2), Sec. 19-7-9, Private Accessway Completeness and Public Hearing.

Adam Gardner of 12 Purpoodock Drive said he wants to adjust the building envelope to allow him to install a pool.

Mr. Chalot opened the public comment on completeness. No one spoke, so the public comment was closed.

Ms. Jordan made the following motion.

BE IT ORDERED that, based on the plans and materials submitted, the application of Adam Gardner for an amendment to the previously approved Private Accessway Permit for 12 Purpoodock Drive to expand the building envelope be deemed complete.

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

The Board did not need a site walk.

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

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Adam Gardner is requesting an amendment to the previously approved Private Accessway Permit for 12 Purpoodock Drive to expand the building envelop as part of a land swap with abutting property Purpoodock Golf Club, which requires review under Sec. 19-7-9, Private Accessway.
2. The Purpoodock Drive Private Accessway has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance and Site Plan Regulations, and the findings and decisions of those approvals which are not altered by the proposed amendments remain in effect.
3. A building envelope is depicted wherein the house and accessory buildings will be located on the lot demonstrating conformance with the setback requirements of the district in which it is located and any natural constraints and that the house site will be buffered from abutting residential properties.
4. The application substantially complies with Sec. 19-7-9, Private Accessways.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted, the application of Adam Gardner for an amendment to the previously approved Private Accessway Permit for 12 Purpoodock Drive to expand the building envelop be approved.

Ms. Jordan seconded the motion and it passed, 7-0.

Caydens Way Private Road amendment - Jay Cox is requesting an amendment to the private road approval granted for Caydens Way, in the vicinity of 51 Ocean House Rd, to adjust the lot line, Sec. 19-7-9 Completeness and Public Hearing.

Jay Cox spoke for Maxwell Cove, LLC. The plan for Caydens Way was approved and recorded in May 2019. Subsequent to the recording he noticed that they had failed to reduce the size of the front lot by the area of the private way, and that rendered this lot 1335 sq. ft. short of the minimum. They plan to move the line between the front lot and the next lot. This would result in the back lot of 26,219 sq. ft. and the front lot of 23,265 sq. ft. He showed a plan of the

area, and said the line which was a straight line will now have a jog. Nothing else will be changed.

Mr. Chalot opened the public comment period. No one was there to speak, so the public comment was closed.

The Board does not need a site walk.

Ms. Jordan made the following motion:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maxwell Cove LLC for amendments to the previously approved Caydens Way Private Rd located at 51 Ocean House Rd, be deemed complete.

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

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

Mr. Gilbert made the following motion:

Findings of Fact

1. Maxwell Cove LLC is requesting an amendment to the previously approved Caydens Way private road approval, located at 51 Ocean House Rd, to adjust a lot line, which requires review under Sec. 19-7-9 Private Road review.
2. The Caydens Way private road plans have been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Private Road requirements, Sec. 19-7-9, and the findings and decisions of that approval which are not altered by the proposed amendments remain in effect.
3. The application substantially complies with Sec. 19-7-9, Private Road standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maxwell Cove LLC for amendments to the previously approved Caydens Way Private Rd located at 51 Ocean House Rd, be approved.

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

1234 Shore Rd Subdivision/Site Plan Amendments - Seacoast Properties LLC is requesting amendments to the previously approved subdivision and site plan for the lot located at 1234 Shore Rd to change the use to village retail and related amendments, Sec. 16-2-5, Amendments to a previously approved subdivision completeness and public hearing, Sec. 19-9, Site Plan Amendments completeness and Public Hearing.

Bill Fletcher is here on behalf of Seacoast Properties. He said this site is at the corner of Shore Road and Ocean House Road. It is the former Key Bank site. This lot is part of a subdivision that was created in 1988. That subdivision plan had a note that said any future uses require Planning Board approval. One goal today is to allow any future uses to be governed by existing zoning. The second change relates to changing to category 3 use, which is for personal services and retail. His client is discussing use as a florist and retail shop.

When Key bank sold this facility, they placed a deed restriction that would not allow any banking related uses until 2024. His client would like to see this used for retail uses.

They have an addition to their prior plan. They want to add a dumpster in the rear of the lot, which would take up 2 parking spaces. They would still have adequate parking. They do not believe the proposed use would add any noise levels.

Mr. Chalot opened the public comment. No one was there to speak, so the public comment was closed.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Seacoast Properties LLC for an amendment to the previously approved Pond Cove Subdivision to remove a note and amendments to the previously approved 1234 Shore Rd Site Plan for 1,694 sq. ft. of village retail be deemed complete.

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

Mr. Chalot opened the public hearing. No one was there to speak, so the public hearing was closed.

Mr. Sahrbeck asked Ms. O'Meara what effect the Town Center Zoning will have on the change of use.

Ms. O'Meara gave an overview of the way changes of use were handled in the past, and that now there are categories of uses, and that makes minor changes

in use to not need Planning Board review. As for the parking, the applicant is not required to remove the existing parking in front of the building. It is considered grandfathered, but you are not allowed to add any new spaces there.

The board did not need a site walk.

Ms. Jordan asked about the 2 parallel parking spaces at the rear.

Mr. Fletcher said they are prospective parking spots if they are needed since the dumpster is taking two existing spaces.

Ms. O'Meara said those two parking spaces may be a problem. There may not be enough room for them and still preserve minimum aisle widths required in the Off-Street Parking section and under the ordinance they are not needed. There was consensus to remove them from the plan.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Seacoast Properties LLC is requesting an amendment to the previously approved Pond Cove Subdivision and amendments to the previously approved 1234 Shore Rd Site Plan that update approvals with current zoning requirements which requires review under Sec. 16-2-5, Amendments to a previously approved subdivision and Sec. 19-9, Site Plan Regulations.
2. The Pond Cove Subdivision and 1234 Shore Rd site plan have been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance and Site Plan Regulations, and the findings and decisions of those approvals which are not altered by the proposed amendments remain in effect.
3. The subdivision will provide for adequate solid waste disposal.
4. The subdivision does provide screening as needed.
5. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
6. The development will not substantially increase noise levels and cause human discomfort.

7. The application substantially complies with Sec. 16-2-5, Amendments to a previously approved subdivision and 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 Seacoast Properties LLC for an amendment to the previously approved Pond Cove Subdivision to remove a note and amendments to the previously approved 1234 Shore Rd Site Plan for 1,694 sq. ft. of village retail be approved, subject to the following condition:

1. That a dumpster may be installed at the southeast corner of the site and shall be screened on all sides with a wood stockade fence/gate.

Ms. Jordan seconded the motion and it passed, 7-0.

The board voted unanimously to adjourn at 8:35 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary.