

TOWN OF CAPE ELIZABETH
Revised MINUTES OF THE PLANNING BOARD

November 15, 2011

7:00 p.m. Town Hall

Present:	Elaine Falender, Chair	Liza Quinn
	Josef Chalot	Henry Steinberg
	Carol Anne Jordan	Victoria Volent
	Richard Olfene	

Also present was Maureen O'Meara, Town Planner.

Ms. Falender opened the meeting and noted that the Board is taking an item out of order tonight. She said that the applicant for the Powers Resource Protection Permit has requested that the item be tabled. She wanted to notify the public in case anyone wanted to speak about the item. She then called for a motion to table the item.

Mr. Chalot made the motion to table the Powers Resource Protection Permit.

Ms. Volent seconded the motion. Ms. Falender read the item for the record:

Powers Resource Protection Permit - Colin Powers and Eoin LLC are requesting a Resource Permit to fill 669 sq. ft. of wetland to accommodate construction of a single family home located at Sunrise Drive and Lighthouse Point Rd (U14-36G), Sec. 19-8-3, Resource Protection Permit Public Hearing.

The Board approved the motion 6-0 (1 absent).

The Board then approved the minutes of the October 18, 2011 meeting without change, 6-0.

OLD BUSINESS

Golden Ridge Subdivision Amendment (5th lot) Reconsideration - Golden Ridge Lane LLC is requesting a reconsideration of the Planning Board decision made at the October 18, 2011 meeting for the Golden Ridge Subdivision Amendment located at the end of Golden Ridge Lane, Planning Board Rules, Section 4(D).

Ms. Falender noted that this is an unusual request, so she outlined the procedure. In order to reconsider the prior decision, a member of the Planning Board who voted in the majority must make a motion to reconsider. If no motion is made, or the motion fails, no further action is required.

She then said the Applicant would be permitted to make a presentation to the Board. Then she would open the item to the public for any comment, and then she would ask if anyone on the Board wanted to make a motion.

Mr. Lee Lowry was there as a representative for Golden Ridge Lane LLC. He wanted to be sure that the Board had received his letters and the letter from the Town Attorney. He asked the Board to consider his request, and if the Board wants to reconsider any subjects other than the easement, that further consideration be tabled to the next meeting.

Ms. Falender opened the public comment period. No one came forward to speak, so the public comment period was closed.

Ms. Falender opened the item up to the Board for discussion or a motion. Since no member of the Board spoke or made a motion, the reconsideration was defeated.

Fox Run Farm Resource Protection Permit - Stephen and Patricia Bothel and Robert Bothel are requesting a Resource Protection Permit to alter 20,230 sq. ft. (which includes an existing grassed area) of RP1 Buffer for agriculture, located at 90 and 98 Ocean House Rd (U26-6-5), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Bob Metcalf of Mitchell and Associates spoke for the applicants to present the changes since the last meeting. They have modified the plan to show where the current blueberries are, and the grassy areas that provide sunlight to those blueberries. The removal of the trees will allow for sunlight to the proposed blueberries that will be planted. They have addressed Town Engineer's comments concerns about the grading and planting of grasses. They will remove the buffer area from the plan because those open spaces have prior restrictive covenants.

The public hearing was opened, and no one came forward so it was closed again.

Ms. Volent requests that some of the notes on the 2007 Subdivision plan be added to the current plan. She wants the notes about the open spaces to be added (Note 9) and Note 8 from the same survey, and she wants the open spaces to be labeled. She suggested adding the book and page of the 2007 plan (Bk. 204 pg. 33) to the current plan's Note 7.

Ms. Jordan made the following motion:

Findings of fact

1. Stephen and Patricia Bothel and Robert Bothel are requesting a Resource Protection Permit to alter 7,100 sq. ft. of RP1 Buffer to plant blueberries on land located at 90 Ocean House Rd, which requires review for compliance with Sec. 19-8-3, Resource Protection Regulations.
2. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephen and Patricia Bothel and Robert Bothel for a Resource Protection Permit to alter 7,100 sq. ft. of RP1 Buffer to plant blueberries on land located at 90 Ocean House Rd be approved, subject to the following condition:

1. That the notes referred to by Planning Board member Volent be added to the plans.

The motion was amended to include the condition and seconded by Ms. Quinn. It was approved, 7-0.

Inn by the Sea "600 Cottage" Site Plan Amendments - Inn by the Sea LLC is requesting amendments to the previously approved Site Plan for the Inn by the Sea, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 Cottage," Sec. 19-9, Site Plan Amendments Public Hearing.

Steve Bradstreet with Oak Engineers, Gary Guerette of the Olympia Companies and Dennis Morelli from TFH Architects were present on behalf of the applicant. Mr. Bradstreet made the first presentation. He showed the site plans and explained the changes from the 2010 approval. The stairwells were moved to be external, rather than internal. The State Fire Marshall's office had informed them that they needed an elevator to conform with ADA access requirements and two means of egress from all the units. The basement storage area is no longer part of the plans. The sidewalks have been changed to reflect the changes to the stairwells. Utilities have not been changed. The wedding tent and service tent are still there.

The landscaping has been changed. It has become more intensive with a large buffer area of the parking lot and the wedding tent area. They have tried to make it a private area for the guests in the cottage, not accessible to all the guests of the Inn. There are no exterior air conditioners.

Dennis Morelli of TFH Architects showed the architectural plans of the building. He said the major change was to have two means of egress and an elevator for handicap access. There will be open walkways to the stairways. On the ocean side there will be

porches on each unit with privacy screens between each unit. All the porches are covered, but are open on the side.

On the neighbor side, the gambrel roof is used to bring down the scale of the building.

Mr. Chalot asked about the calculation of the stair and porch areas in the volume and square footage.

Mr. Morelli replied that because the stairs and porches are open, they were not counted in the floor area. He said the Code Enforcement Officer has confirmed their calculations in an email today.

Mr. Steinberg is concerned because the egress is all on one side.

Mr. Morelli replied that the positions meet the fire code.

Ms. Falender opened the public hearing.

Ray Neveu of 32 Bowery Beach Road said he is the closest neighbor to the Inn. He thought it originally looked like a big shoe box, but it looks quite a bit better now. It doesn't look like a cottage to him, or like the other cottages that are next to it. He said that in his mind that means you will be getting plans very soon to change the others. He said they have line of sight issues with the building. He said they were told at the last meeting they would be losing some degrees from their line of sight. He has no legal recourse to that, and now he heard tonight that they are putting trees up here someplace, and that could further reduce our line of sight.

He wants the Board to look at the decibels of the huge cooler because he believes it exceeds the decibel requirement. He wants to hire someone professionally to look into that because he is told by the Inn that it does meet the requirements, but he does not accept that. He thinks the air conditioning units on top of the building will not be a problem. They do not want any more noise. They like the noise from the wedding tent because it is happy noise. He wishes them good luck. He reminded the board that he has two issues, and that the Inn will be back very soon with the other cottages.

Mr. Steinberg asked Mr. Neveu how much his line of sight will be reduced.

Mr. Neveu replied that it will be reduced by 3 degrees.

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

Ms. Quinn asked about the calculations of the area and volume of the building, walkways and stairways. She is also concerned that the building has gotten a lot bigger and is not in keeping with what is already there.

Ms. O'Meara said that according to Mr. Smith, the Code Officer, the building is in compliance with the ordinance.

Ms. Falender asked about the view corridor.

Mr. Bradstreet replied by showing the plan that illustrates that the building is actually being moved back from where it is now. The only obstruction of the view for Mr. Neveu is an open porch. No trees are being planted there, only low shrubs.

Mr. Steinberg was concerned that there would be a great temptation to put up a barrier on the walkways to keep snow off the walks.

Mr. Morelli noted that there are no plans to close the walkways off and the railings are open so he doesn't even see how it could easily be done.

Ms. Falender asked if there were any 2 story units.

Mr. Morelli replied that all the units are one story. He pointed out each one on the plans.

Ms. Quinn is concerned because there are no design standards, and that the Board has no recourse with the Code Officer. She is not sure the calculations are correct since there is a roof over the porches, which is not included in the area or volume of the building.

Mr. Bradstreet showed some of the plans to illustrate how the building meets the setbacks.

Ms. Falender said that if the Board is concerned about the issue, they could entertain a motion to table and present a question to the Code Enforcement Officer.

Ms. Quinn made a motion to table the matter of Inn By the Sea Cottage expansion to a later date so we can ask the Code Enforcement Officer some questions.

Mr. Steinberg seconded the motion.

Gary Guerrette of the Olympia Company, the applicant, said they have met many times with the Board and Mr. Smith. He said they have met all the conditions of approval. They are asking for approval so they can start the building process.

The motion failed by a vote of 3 in favor, 4 opposed.

Ms. Jordan made the following motion:

Findings of Fact

1. The Inn by the Sea is requesting Site Plan Review to rebuild the "600 Cottage" building located at 40 Bowery Beach Rd, which requires review for compliance with Sec. 19-9, Site Plan Regulations.
2. The building is restricted by its status as a legal nonconforming structure located in the Shoreland Zone and Resource Protection 1 Buffer.
3. 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 the Inn by the Sea LLC, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 cottage" be approved, subject to the following conditions:

1. That the applicant receive approval from the Code Enforcement Officer that the proposed building is in compliance with the nonconforming provisions of the Shoreland Zoning and the Resource Protection 1 Buffer Districts; and
2. That there be no issuance of a building permit, nor alteration of the site until the above condition has been met.

Mr. Olfene seconded the motion and it passed 5-0, 2 abstained.

NEW BUSINESS

Rudy's Site Plan/Resource Protection Permit - 517 Ocean House Rd LLC is requesting Site Plan Review and a Resource Protection Permit for two buildings constructed for an 80-seat restaurant and office/storage space (Phase 1) and 1,250 sq. ft. of retail space (Phase 2) located at 517 Ocean House Rd, Sec. 19-9, Site Plan Completeness and Sec. 19-8-3, Resource Protection Permit Completeness.

Pat Carroll of Carroll Associates and Phil Kaplan architect and Ellie Welch represented 517 Ocean House LLC. Mr. Carroll showed an aerial photograph of the property to show the existing conditions. He noted that there is a continuous curb cut across 2/3 of the front of the property.

He then showed the plan of what they are proposing. They are proposing two phases. The first phase would be the restaurant and the second would be the small retail building. There would be one curb cut for the project. One access point would be two way. The restaurant would have 80 seats. He outlined the parking, 40 spaces to accommodate the restaurant and staff for both buildings. He said 31 spaces are required, and they are proposing 40.

The services will be in the back of the building. They will need to re-route the sewer line, which would require a new easement. The propane will need to be at least 75 ft. from the property line. They will have a sidewalk from Davis Point Lane to the property line with a row of street trees. They also propose a rain garden to handle the runoff. They propose trees and shrubs between the property and Davis Point Lane for a buffer.

Phil Kaplan, architect then spoke to the Board. He showed the plans of how the restaurant will be configured with 52 seats indoors and 28 seats on a seasonal screen porch. The roof will be a 12/12 pitch to match a typical New England pitch and to bring down the scale of the building. He talked about the siding materials and the proposal to include metal siding. He said it is not prohibited to use metal on the siding. This is not a cheap material, and it is a green material. He showed photographs of a couple of buildings in New England using the material being proposed. He said it looks like board and batten, but is much more durable.

Ms. Volent asked if the buildings are connected.

Mr. Kaplan said they are not connected.

Mr. Chalat asked about the criteria for compatibility and would like to see photos of the nearby buildings.

Ms. Volent asked about a lack of a sidewalk between the buildings and also about how much room there is between the dumpster and the phase 2 building.

Mr. Carroll said they were going to move the door in the building, and there will be about 5 ft. of clearance by the dumpster.

Mr. Chalat asked about the addition of a catch basin.

Mr. Carroll said the basin was added after a meeting with Mr. Malley, the Public Works Director. It is to collect the drainage that comes across the road.

Mr. Steinberg feels it is dangerous to have only one entrance in and out and right on the peak of the curve. He would prefer two access points.

Mr. Carroll said the traffic engineers have recommended this configuration.

Ms. Quinn wonders if you could flare out the entrance a bit more.

Ms. Falender opened the public comment period on the issue of completeness.

Morris Kreitz of 524 Ocean House Road is concerned that Phase 2 is a vague concept at this time. It's an unknown, but any use that is allowed in the BA Zone would be permitted, including light industrial. He urged the Board not to consider Phase 2 now, but wait until the developer has a specific use. He said that even though the parking meets the code, he does not think people will park in that lot to go to the Phase 2 building. He urges the Board to exclude Phase 2 from their approval at this time.

Gail Schmader of 511 Ocean House Road said she agrees with Mr. Kreitz. She also wants more information about what will be in the building of Phase 2 and what needs to happen before they build it. How will the buffering be provided for the neighborhood? She is concerned about the placement of the dumpster and she believes that anything to do with the restaurant needs to be at least 100 ft. from the abutting neighborhood. She is not sure that is the case here.

No one else spoke and the public comment period was closed.

Mr. Steinberg asked about the timing of the phases.

Mr. Carroll replied that it depends if there is a tenant for the second building. The phasing is to allow some flexibility on the timing. All the perimeter plantings will go in under Phase 1. He also noted that the dumpster is within the 100 ft. setback and it will be moved.

Mr. Steinberg asked about the signage.

Mr. Carroll said they will have more detail next meeting.

Ms. Jordan asked how much detail is needed on the second building.

Ms. O'Meara said you can grant approval for the building as 1260 sq. ft. for retail space. Any other use would need to come back to the Board. She outlined in more detail how change of use triggers a Board approval.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 517 Ocean House LLC for an 80-seat restaurant and second 1,240 sq. ft. building and 2,738 sq. ft. of wetland alteration to construct a sidewalk to be located at 517 Ocean House Rd be deemed complete.

Mr. Chalot seconded and the Board voted 7-0 to approve.

A site walk was scheduled for 7:30 am. Friday November 18, 2011.

At the urging of Ms. O'Meara, Mr. Carroll said the applicant is willing to grant a pedestrian easement to tie into the subdivision in back of this property. (Golden Ridge)

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 517 Ocean House LLC for an 80-seat restaurant and second 1,240 sq. ft. building and 2,738 sq. ft. of wetland alteration to construct a sidewalk to be located at 517 Ocean House Rd be tabled to the next regularly scheduled Planning Board meeting at which time a public hearing will be held.

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

The board voted 7-0 to adjourn at 9:30 pm.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary