

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

May 15, 2012

7:00 p.m. Town Hall

Present:	Elaine Falender, Chair	Liza Quinn
	Josef Chalot	Henry Steinberg
	Peter Curry	Victoria Volent
	Carol Ann Jordan	

Also present was Maureen O'Meara, Town Planner.

Ms. Falender opened the meeting, and the minutes of the April 23, 2012 were revised to add Ms. Quinn as present, and approved 7-0.

OLD BUSINESS

**Old Sea Point Rd Subdivision Amendment** - Elaine Zavodni-Sjoquist is requesting an amendment to the previously approved Old Sea Point Rd Subdivision to add a lot at the end of Old Sea Point Rd, Sec. 16-2-5, Subdivision Amendment Public Hearing.

Amy Bell Segal of Terrence J. De Wan Associates gave the presentation on behalf of the applicant. She said that at the last meeting they had proposed a lot for the current homestead of 2.32 acres. It would include the frontage on Old Ocean House Road and all of the right of way. The new lot would have access off Old Sea Point Road and would include the remaining land of approximately 6.47 acres.

Since the last meeting, they have made the requested note amendments to the plan, and made changes to the lot lines. They will add all of Old Sea Point Road into the lot as well as modifying the corner of the lot. They have added lot numbers and notes to the plan, and also will make further changes to the notes as requested.

They will take the 12 ft wide Old Sea Point Road and increase it to a 12 ft. wide travel way with 3 ft gravel shoulders on each side. They will rebuild the first 350 ft. to put a more adequate base under it. They will make improvements to the intersection of Old Ocean House Road and Old Sea Point Road. There will be a new turnaround to Town standards at the end of the road. A note has been added to the plan concerning access to Old Sea Point Road for the new lot.

Ms. Zavodni-Sjoquist addressed the Board about a memo she had written to them. She said she has been encouraged by her advisors to keep her options open, but she still feels that the most natural access to the new lot is off Old Ocean House Road. She has withdrawn her objection to access over Old Sea Point Road.

Ms. Bell Segal said the access and maintenance agreement has been supplied to Ms. O'Meara. The escrow account is ready to go.

Since there were no questions from the Board, Ms. Falender opened the public hearing. No one came forward to speak, so the public hearing was closed.

Ms. Volent asked about the note on the plan that is just below the signing block, and asked to have it included in the conditions of approval.

Ms. Quinn had a question about access to Old Sea Point Road, and whether an easement was required for lot 18-5.

Mr. Curry asked about the access across Old Sea Point Road becoming a town approved street in the future.

Ms. Bell Segal replied that Ms. Zavodni-Sjoquist has agreed that even though the new lot has frontage on Old Ocean House Road, she will agree to further access to future development over Old Sea Point Road.

Ms. Bell Segal had a question about condition 2 on the conditions of approval. If, in the future, lot 18-5 is combined with the abutting parcel, would this condition go away?

Ms. O'Meara said if they come forward with a future plan, then it would be possible to remove the note from this plan.

Ms. Volent made the following motion:

#### Findings of Fact

1. Elaine Zavodni-Sjoquist is requesting an amendment to the previously approved and amended Old Sea Point Rd subdivision to add a lot at the end of Old Sea Point Rd, which requires review under Sec. 16-2-3 of the Subdivision Ordinance.
2. The Planning Board finds that the full range of options for vehicular access to adjacent land should remain available to promote public safety.
3. Improvements to Old Sea Point Rd to upgrade it to town private road standards should be undertaken as soon as possible to promote public safety.
4. Payment of the Open Space Impact Fee will help preserve the community standard of open space.

5. 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 Elaine Zavodni-Sjoquist is requesting an amendment to the previously approved and amended Old Sea Point Rd subdivision to add a lot at the end of Old Sea Point Rd be approved, subject to the following conditions:

1. That a restriction be added to the lot 18-5 deed that prohibits vehicular access from Route 77;
2. That a note be added to the plans that no building permit be issued for lot 18-5 which allows the placement of a building that would not preserve a 50' wide right-of-way at the northerly frontage with Old Ocean House Rd that extends from Old Ocean House Rd to the rear a minimum distance of 525';
3. That note 2 be amended to eliminate the second sentence, and the note above the title block be removed;
4. That Note 1 be amended to revise "replaces note #8 on the 2007 plan" with "requires that all the street improvements included on the 2007 subdivision approval are added to this plan by reference, a summary of which is highlighted below;"
5. That an escrow account in an amount acceptable to the Town Engineer and a form and amount acceptable to the Town Manager be established for all the road improvements;
6. That the Open Space Impact Fee in the amount of \$6,729.00 be paid.
7. That the plans be revised and submitted to the Town Planner for review and all the above conditions satisfied prior to recording the subdivision plat.

Ms. Jordan seconded. The Board approved the motion, 7-0.

#### NEW BUSINESS

**Mojo Health Bar Site Plan Amendment** - Jacqueline McClure is requesting an amendment to a site plan approval granted for 299 Ocean House Rd (U21-7) in 1988 to change the use of 840 sq. ft. from office to a combination of personal service and restaurant, Sec. 19-9, Site Plan Regulations

Mr. Steinberg recused himself from the consideration of this application.

Jacqueline McClure of 67 Lydon Lane East spoke on behalf of her project. Current zoning is for a Category 3 use, which is offices. She would like to change to a Category 5 to allow her to have a juice and smoothie bar as well as two massage rooms. The premises is located at 299 Ocean House Road. She wants to use 840 sq. ft. on two levels. Mojo Health Bar is a two room massage practice with a small juice bar with 4 seats for her clients and the public. She uses all degradable products, therefore there is no trash. The only receptacles she needs are for recycling, and are shown on the plan. There are currently 12 parking spaces for this property and the one next door, and only 10 are required.

She has applied for a sign permit, and the one on the front of the building is approved, and she is removing the proposed sign at the back of the building. She wants to have a solar powered light for the sign on a post 3 ft. from the building.

Ms. Falender opened the public comment period on the issue of completeness. No one came forward, so the public comment period was closed.

The Board had no questions or comments on completeness.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jacqueline McClure for an amendment to the site plan approval granted in 1988 for 299 Ocean House Rd to change the approved use from office to 840 sq. ft. of combined personal service and restaurant be deemed complete.

Mr. Chalot seconded and the Board approved the motion 6-0.

Ms. Falender then opened the public comment period on the merits of the application. No one came forward, so the public comment period was closed.

Mr. Chalot asked whether the change to a Category 5 use would be permanent.

Ms. O'Meara replied that if you use the space for a less intensive use, you do not need to come before the Board, only for a more intensive category of use .

Mr. Chalot then asked about other uses that are in Category 5.

Ms. O'Meara replied that it could be a restaurant, ice cream parlor, deli or sit down restaurant. And the board is giving approval for just 4 seats, so any further expansion of that would need to come back to the Board.

Ms. Falender asked if the 4 seats includes the 2 outside or is it 2 inside and 2 outside?

Ms. McClure said there will be 2 seats for waiting massage clients and a maximum total of 4 seats ( 2 of which will be outside seasonally) for the juice bar.

Ms. Volent made the following motion:

#### Findings of Fact

1. Jacqueline McClure is requesting an amendment to the site plan approval granted in 1988 for 299 Ocean House Rd to change the approved use from office to 840 sq. ft. of combined personal service and restaurant, which requires review under Sec. 19-9, Site Plan Regulations.
2. 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 Jacqueline McClure for an amendment to the site plan approval granted in 1988 for 299 Ocean House Rd to change the approved use from office to 840 sq. ft. of combined personal service and restaurant be approved subject to the following conditions:

1. That the site plan be amended to delete the back sign on the existing house;
2. That a light be added to the plan on the side sign on the existing garage;
3. That a copy of the signed lease be provided to the Town Planner.

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

#### OTHER BUSINESS

**Short Term Rental Amendments** - The Town Council has forwarded to the Planning Board for review proposed amendments to the Zoning Ordinance to regulate short-term rentals, which is the rental for less than 30 days per tenant of a residential dwelling, Sec. 19-10-13, Zoning Ordinance Amendments.

Ms. Falender introduced the subject and noted that the Board started with the ordinance as it came from the Ordinance Committee. She said there have been several

workshops on this issue and there have been numerous letters from the public, with some arriving today. The role of the Planning Board is advisory only, with a recommendation to be made to the Town Council, which will then decide the issue.

She then gave a brief highlight of the ordinance as it is now proposed. It would permit short term rentals in all residential districts, in the BA District, and in the Town Center. It would require a rental of at least 3 days. It applies to all lots, regardless of the size of the lot or the residence location of the owner of the lot. There is an exemption from the ordinance for any rental of less than 14 days a year. The number of tenants is a factor of the number of bedrooms in the house and the sanitary waste capacity. Ten is the maximum number of tenants allowed and a maximum of ten guests allowed on the property at any time.

All short term rentals require registration with the Town, with a physical inspection by the Code Officer.

Ms. Falender opened the public comment period.

Tracy Ginn of 5 Sea Barn Road read from a letter she had received from a renter. The letter said that they had added to the local economy by purchasing from local merchants and restaurants. She focused on the larger economic benefits of rentals. She said her brother, David Ginn had formed the rental association in November 2011.

Steven Schmitt of 5 Sea Barn Road noted that having strict guidelines for their renters had lessened the impact of their rentals on their neighbors. They have parking restrictions, limits on the number of cars allowed, noise restrictions and use restrictions. They ask about the renters' plans and they have found that their neighbors also ask questions of the tenants. They have infra red cameras outside taking pictures 24/7 to see what is going on at all times. All of us that rent have ironclad rental agreements and a sizeable binder of rules for tenants. We are self-regulating to a higher standard than is required.

Ms. Quinn asked how the proposed ordinance would affect him.

Mr. Schmitt replied that the limit of 10 people would affect him since they have 6 bedrooms.

Mr. Steinberg asked about ingress and egress safety for the tenants.

Mr. Schmitt said there is a big binder that contains all that information.

Tom Dunham of 11 Becky's Cove Lane said they have owned their cottage since 1979 and made significant improvements to the property. They are not renting out their

cottage for profit, but as a way to offset their expenses. He feels that the word transients is a derogatory term for his guests. 12 Becky's Cove Lane is a family asset we would not risk by not voluntarily adhering to life safety codes. All our guests have been respectful of the neighbors and the property. Our association requests that they be given the summer to self-regulate.

Sandy Dunham of 11 Becky's Cove Lane rents their cottage at 12 Becky's Cove Lane. She said they rent it out in order to cover their expenses of owning the cottage. She said their renters have varying amounts of time they want to stay, and she has turned away many people who want to stay less than a week. It is a lot of work to accommodate people for less than a week. Our cottage is small, 3 bedrooms with 1 1/2 baths, and by your rules we could not accommodate a family with small children who bring the total occupants above 6. She related an exception she has approved for a return renter to temporarily allow more than 6 people at her rental. She feels there should be different rules for tightly packed neighborhoods than for properties with more acreage. Because of the issues that have been raised, we have formed an association of rental property owners. They want to be good neighbors and want a chance to prove that they can police themselves.

Ms. Quinn asked whether the new changes would allow her to rent for 4 days.

Ms. Dunham replied that she didn't think it would permit her to rent for a 4 day window between longer stays on the other sides of that tenancy.

The Board agreed that that was not their intent, and will change that provision.

Mr. Curry asked about the association, and if they have some forms they have developed.

She said they have been meeting through the winter and they are an evolving organization. They are working on the issues that have been causing problems.

Chris Grennon of 8 Sea Barn Road is a strong proponent of regulations on properties of 30,000 sq. ft. or less. They have had weddings of 50 people catered in the last two years. They have arrived on buses. We've had more than one wedding and a prep school two years in a row after promises that it would not happen again. They have parked the buses on the Land Trust property. I have had brides show up at my front door asking if they can keep the music going after 10 pm., when my kids are trying to get to sleep for school the next day. The lots on Sea Barn Road are very small. We think there needs to be some boundaries, and commercial use is not a boundary. He appreciates the efforts to screen better, but what has happened is nothing like what they have said. It's been broken promises, and no relief for the neighbors who live there. They have had 18

UVM students show up for a weekend with a keg of beer. What is really happening, and what is being portrayed as happening tonight, are two different things.

Mr. Steinberg noted that there is no record of complaints. No one seems to have complained, what have you done?

Mr. Grennon replied that they have called Bruce (Smith), but not the police because they have been trying to have a dialogue with their neighbors. The people who come here to rent have done nothing wrong.

Ms. Quinn asked if the limitations would afford him the necessary protection.

Mr. Grennon replied that the sheer numbers of 16-18 people on a small lot with septic is too much.

A discussion of the parking limits on Sea Barn Road ensued, with Ms. O'Meara saying that on that road, as long as there is a 10 ft. wide pathway left, there are no restrictions. She also noted that the proposed ordinance says that all parking for tenants should be on the site of the rental property.

Ms. Falender said that as she reads the ordinance it does not require that onsite parking be provided for guests, and maybe the Board needs to clarify their intent on that issue.

Sue Gabriel lives on Wells Road and has acquired her mother's home on Kettle Cove Road as well. In order to supplement her income she has chosen to rent her house on long weekends. She is not able to rent it out for longer periods of time. She has been careful to select her renters. Even though her home is on a 10 acre parcel, she has chosen not to rent it for events, nor does she allow more people than the home can accommodate. Last August, her mother passed away leaving her home on Kettle Cove Road. It is on a small lot and they rent it out for short terms seasonally in order to pay taxes and maintenance on the home. She does not feel that it is necessary to make rules over and above those she already makes on her own.

Nancy Ricker of 27 Surf Road abuts 2 Keyes Lane and has been extremely opposed to short term rentals because of some of the problems we have had with some of the renters. She has since been able to speak to one of the owners, and she has assured Ms. Ricker that she will make things better. She feels this is the way to handle things rather than have the Planning Board make unnecessary restrictions on people who want to rent. Consideration and communication would pretty much take care of everything.

Charlie Poole of 39 Old Mill Road(off of Old Ocean House Road) is a resident of Yarmouth. The property he is talking about has been in his family for over 100 years. They enjoy their property and host many people from the Beach to Beacon every



summer. We support the current ordinances about noise, safety etc. We understand there is a problem, but he has a hard time understanding why his lot, which is 1/2 mile from Old Ocean House Road, and contains 4 acres of land and is not in a neighborhood, has to have the same restrictions as a parcel on a small lot in a neighborhood. The only reason we rent is to help with a massive tax bill. We are selective about our tenants. He does not think another layer of regulation is needed. Everyone's safety should be the same whether they are a renter or owner. He thinks all we need is now already in place; it just needs to be enforced.

Jim Minot of Beech Ridge Road, Scarborough came to offer a renter's viewpoint. When we rented at Sea Barn Road, we brought some people from California who had not experienced Maine's coast. They loved Cape Elizabeth. There were clear expectations of what the rules and guidelines were. We did not park more than 4 cars at the premises, we parked the excess at Town Hall with permission from the Town Manager. We utilized the local businesses and restaurants. He thinks there are enough rules in place now, and he thinks no new regulations are needed. And his friends from California would love to come back again next year; they loved this town.

Jim Huebener of 13 Kettle Cove Road has a rental at 11 Kettle Cove Road. He said that as an owner he was embarrassed to hear about the complaints that were heard from a neighbor. He feels that is a case of poor tenant screening. It made him mad to hear about that and hopes the owner never lets it happen again. He feels this ordinance is unnecessary. You cannot legislate behavior. Laws don't keep people from OUI or other behavior. He doesn't think this ordinance will make the problems disappear. It is good tenant screening, clear expectations, good communications and respect for your neighbors. He feels the owners have learned from their mistakes and now there is an association to keep an eye on things. Enforcement will be a problem. You can't legislate behavior. He wants the Board to give the association the summer to police things and work things out.

Patty Grennon of 8 Sea Barn Road is an abutter to a rental. She is not against rentals, but she is against the idea of feeling a difference of energy. With a short term rental, they begin in May and don't end until September or October. They come in from Saturday to Saturday, and there are numbers of people and it doesn't feel reflective of a single family area. The amount of cars is a problem as well. She wants some rules on the books to cover these problems. This is not a residential use. It feels like a business to me.

Liz Huebener of 13 Kettle Cove Road gave a historical overview of seasonal visitors to Cape Elizabeth. She objects to the term transients as a description of renters. Many area communities share similar resources and welcome summer visitors. She is concerned that a strict ordinance would prohibit rental opportunities for people to

experience Cape Elizabeth. She feels it goes to common sense and good communication.

June Eiesland owns 117 Old Ocean House Road. She began renting it 8 years ago. She feels this ordinance has been expanded beyond its original intent. It has restrictions on numbers of tenants and guests with no provision for higher density neighborhoods, and has safety standards beyond what is required for a homeowner. It leaves the door wide open for people who rent casually for two weeks or less. I choose to rent my property short term and the income does not cover all the expenses of owning the property. Short term rental is a lot of work. How will the Town monitor the number of tenants or guests? It will create more conflict within neighborhoods, not less. We cannot control our tenants behavior, and should not be held accountable for it. There are laws on the books, and a new one is not needed at this point.

There were no other comments, so the public comment period was closed.

Ms. Falender said that a public hearing will still be required, and the Board needs to decide whether to schedule it now.

Mr. Steinberg said he tended to feel we didn't need to have this ordinance. He also thinks that there is a need for data about how many units are for rent, etc. He doesn't want a rule for one size of a lot and another for another. He wants one rule for everyone. He thinks in a year there will be more information and they can reevaluate the ordinance if they need to.

Ms. Jordan noted that several people objected to the use of the word transient, and the Board has removed that term. She feels this needs to go back to a workshop, but she would also like to schedule a public hearing and be ready for it in June.

Mr. Curry agrees with Ms. Jordan.

Ms. Volent also agreed.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the materials reviewed and the facts presented, the Planning Board tables the Short Term Rental Amendments to the June 19, 2012 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Quinn seconded the motion and it passed 7-0.

The Board voted 7-0 to adjourn at 8:55 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary