

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

November 20, 2012

7:00 p.m. Town Hall

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

Absent: Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Ms. Falender opened the meeting and called for the approval of the minutes of the October 16, 2012 meeting. The minutes were approved without amendment 6-0.

OLD BUSINESS

**Fort Williams Park Site Improvements 2012** - The Town of Cape Elizabeth is requesting review of four areas of site improvements implementing the master plan, specifically expansion of Ship Cove Parking, upgrade of the Ship Cove Picnic Area Slab, Vehicular improvements at the intersection of Ocean Rd and Wheatly Rd, and Vehicular and Pedestrian improvements at the intersection of Powers Rd and Ship Cove Parking lot entrance drive and Ocean Rd, Sec. 19-9, Site Plan Review Public Hearing.

John Mitchell, of Mitchell and Associates, spoke about the changes since the last Planning Board meeting. He said they have addressed all the comments by AMEC (Town engineering consulting firm). He spoke specifically about the changes to allow access for emergency vehicles and the removal of an undersized parking space. There are now a total of 70 parking spaces. There will be a one way sign in the circle.

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

Mr. Steinberg made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting Site Plan review of proposed improvements to Fort Williams Park, specifically expansion and construction of a turnaround in the Ship Cove parking lot, upgrade of the Ship Cove picnic area

slab, vehicular improvements at the intersection of Ocean Rd and Wheatly Rd, and vehicular and pedestrian improvements at the intersection of Powers Rd and the Ship Cove parking lot entrance drive, which require review under Sec. 19-9, Site Plan Regulations.

2. Town staff has noted revisions to the Ship Cove parking lot design.
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 Town of Cape Elizabeth for Site Plan review of proposed improvements to Fort Williams Park, specifically expansion and construction of a turnaround in the Ship Cove parking lot, upgrade of the Ship Cove picnic area slab, vehicular improvements at the intersection of Ocean Rd and Wheatly Rd, and vehicular and pedestrian improvements at the intersection of Powers Rd and the Ship Cove parking lot entrance drive be approved, subject to the following conditions:

1. That the remnant existing asphalt located on the left (land) side of the Ship Cove parking lot, currently shown as an undersized parking space, be removed;
2. That the walkway access to Keyes Road from the Ship Cove parking lot be revised to provide turning radius and width to accommodate the ladder truck;
3. That the plans be revised to address the above conditions before construction of improvements is commenced.

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

**C's Gourmet Market Site Plan** - KMC Properties is requesting site plan review of a proposed mixed use, specialty market/28 seat restaurant/office building (4,140 sq. ft.) located at 349 Ocean House Rd, Sec. 19-9, Site Plan Public Hearing.

Mr. Chalot reminded the Board that he had recused himself from consideration of this item.

John Mitchell, of Mitchell and Associates, represented KMC, LLC. He mentioned that he had received the letter from Andrew and Rachel Blake, who abut the property. He would like to address their concerns as he goes along with his presentation. He said the applicants have been sensitive to the fact that there is a residence abutting this property. He also noted that they are in the Town Center Zone, and all of their abutters are in the Town Center Zone. The Town Center Zone encourages a mixture of retail and residential use.

The building is 3000 sq. ft. on the first floor with 1500 sq. ft. on the second floor. It is located in the northeast corner of the property with the service and commercial areas on the north side and a patio on the south side. The building has been located as close to the street as possible to give a strong street presence. There are a total of 5 entrances to the building.

The primary access is off Ocean House Road and has historically been the access to this property. They have shifted it 5 or 6 feet from the property line. There is a secondary entrance from the high school driveway. There will be a new concrete sidewalk in the front and another leading into the parking lot.

The site is serviced by existing utilities. There will be an underground propane tank. The lighting was addressed and it was noted that the lighting will be on a timer to be turned off at night, except for the security lighting. He said he has revised the light standards to meet the standard of .5 ft. candles at the edge of the property. They will have trees and shrubs and have preserved as many of the existing trees as possible.

He spoke about the buffering. They will replace the existing fence along the abutter's property with a new 6ft. high stockade fence. They will provide rhododendrons at the corner of the abutter's property. The patio will be at the same level as the floor of the building. That is the approximate level of the abutter's property. The patio will have a small circular stone wall around it and a lattice style fence along a portion of that wall. The lattice will have climbing hydrangeas.

Mr. Mitchell asked for a waiver of the .5 ft. candle standard at the entrances so the entry points would be well lit for safety reasons.

Ms. Falender asked if they had the authority to waive a standard.

Ms. O'Meara said the Board generally has no authority to waive a standard.

Mark Mueller, architect, said there have been no changes since the last presentation. He said they have tried to make this project in keeping with the neighbors. They have kept it low and simple in line. There will be an 8:12 roof pitch. There will be 2 different sizes of clapboards. The color will be white with green windows and white trim. The roof will be gray roof shingles. He passed around samples of the siding and roof shingles. Mr. Mitchell said they have addressed all the comments from AMEC. The easements are in the final stages.

Tom Gorrill, traffic engineer with Gorrill-Palmer traffic engineers, spoke about the traffic impact study. He gave an overview of how the study was conducted. He said they had come up with an A.M. peak of 46 trip ends and an afternoon peak of 54 trip

ends (either an in or an out). He said traffic does back up, but did not block the driveway.

Mr. Steinberg asked about exiting from the Ocean House driveway turning left. He wants that driveway to be right turn only.

Mr. Gorrill said it is okay to turn either way from that driveway.

Ms. Quinn said her main concern is impatient teen drivers racing through the parking lot in order to avoid the traffic light.

Mr. Gorrill said he feels that there are turns that need to be made that prevent a diagonal path. As for how to prevent shortcuts, he said signage can be used, and they have tried to make the route circuitous. He also said speed bumps can be added, but he does not recommend them. They present maintenance issues and drainage problems.

Ms. Quinn was still concerned about teens taking out their frustrations by speeding through the parking lot.

Mr. Gorrill noted that traffic lights are pretty smart these days and can be programmed to minimize the delay and backup.

Michael McGovern, Town Manager, said the traffic light there is programmable. He also said the Town Council had discussed the possibility of cut through traffic when they approved the easement to pass over the town driveway. They had felt it would be safer to use the street with the traffic light, and felt it would be used in preference to the parking lot.

Ms. Jordan noted that she believes it is illegal to cut through a parking lot to avoid a traffic light.

Mr. Steinberg wanted to know why they want to have 2 entrances.

Mr. Gorrill said it is easier to come out onto the driveway and use the traffic light if you want to turn left, than to turn left from an unsignalized driveway.

Ms. Falender also noted that the service entrance is closest to the high school driveway and away from the residence.

Mr. Curry said the issue for him is not the exiting, but the entering the parking lot from the high school driveway. He suggests making that into a one way only for egress.

Mr. Gorrill said they try to do interconnectivity so you can get into this property without going onto Ocean House Road.

Ms. Quinn likes that idea, but she was thinking of making it one way so you can go out only onto Route 77.

Mr. Gorrill addressed the issue of how to deal with cut through traffic if it becomes a problem. He said signage is a method and you can try some traffic calming measures. His view is the benefits of interconnectivity are more important to maintain.

Ms. Quinn asked why Mr. Mitchell wanted the standard about lighting at the edge of the property waived to better light the entrances. Could you use reflective materials?

Mr. Mitchell said they would like to have more light to better mark the entrances.

Ms. Falender opened the public hearing.

Rory Strunk of 6 Tides Edge Road thinks people will take a common sense approach and not cut through the parking lot.

Richard Blake of Ivie Road spoke on behalf of his son, Andrew Blake. He said he has a lot of concerns. The lighting is a concern if it shines over the fence on to Andrew's land. He would like it to be deflected away so it does not shine 360 degrees. He does not believe there is adequate buffering. The fence needs to be raised back to 6 ft. at the end. The primary concern is the buffering at the patio. If the elevation is the same as the house, any noise will carry straight across to the house. That will be above the 6 ft. fence. He wants more buffering at the patio, and to replace the deciduous trees with evergreens that are there year around. He hopes the sign lighting is on the same timer as the other lights. The dumpster trucks always come at 5:30 am. and are not considerate of the neighbors. He hopes they will restrict the hours of the emptying of the dumpster.

On traffic, he said the current visibility is hindered with fencing and he wants a one way entrance to the property from Ocean House Road and an exit only onto the high school driveway.

Kevin O'Donovan of 6 Chambers Road said we need this. It is a good feasible project. He is sorry for the abutters, but it is part of our Town Center plan. He would like to see more economic development in the town.

Jeremy Lombardo of 11 Leighton Farm Road wants to support the project. The town can use this project, not only for the residents but for the tax revenue it will provide for the town.

Laura McGrath of 4 Heritage Court supports this project. It will enhance the vibrancy of this town. She is a local shopper and feels it will add to the village feeling.

Mike Mahoney of 1 Autumn Tide Lane admires the work the Planning Board and the Town Council have done to enhance the quality of life for the residents. He feels this project is important to create a village feel. He feels the applicants are good quality.

Sarah Price of 53 Cross Hill Road wants to express her support for this project.

Since no one else came forward to speak, the public hearing was closed.

Ms. Falender asked Mr. Mitchell to come back to the podium to review the buffering and explain the photometric material he has presented.

Mr. Mitchell said all seven LED fixtures contain cut off shields that provide a reading of zero foot candles at the property lines. As for the buffering, there is a row of mature fir trees that is a very good buffer. They are also providing a new 6 ft. stockade fence and additional vegetation along a narrow strip of lawn. They are adding a row of flowering deciduous trees between the roadway and the patio. The patio will have a lattice style fence surrounding a portion of the circular wall on which they will grow climbing hydrangeas. The distance from the patio to the residence is approximately 130 ft. The patio will be 20ft. by 30ft., which is not an uncommon size for a residence. The hours of operation will be until about 7 or 7:30 at night. The patio will accommodate about 4 tables, and it will be operated on a seasonal basis.

The sign lighting will be with very small upright fixtures that will illuminate the sign. He feels they can monitor the hours of the dumpster loading.

In response to a couple of questions from Ms. Falender, Mr. Mitchell said they would make sure the dumpster is not serviced in the early morning hours.

There was a discussion among the Board about whether to require a restriction on the hours of allowance of service vehicles. The consensus was not to make such a restriction, but to rely on the owners to be good neighbors.

Ms. Falender asked about whether signage to restrict cut through traffic from the high school driveway would be effective.

Mr. Gorrill replied that you could put up a sign, and it would not necessarily prevent cutting through, but would put people on notice and cause them to think about it.

Ms. Quinn thinks a sign is not enough and that it will create a dangerous situation with people cutting through. She proposed a speed bump, or ingress from Rt. 77 only and have ingress and egress, with a wider curb cut, onto the school driveway.

Ms. Jordan said that she assumed you would narrow the driveway from Rt. 77 and that people who are going to cut through will ignore the one way and go in the out and out the in.

Mr. Steinberg wants to leave the flow as it is.

The Board supported the idea of signage at the high school driveway saying "no cut through", but no change to the traffic pattern.

Ms. Quinn was not satisfied and prompted further discussion, but there was no support from other Board members for adding a condition to the approval.

Ms. Quinn said she doesn't feel the applicant has met the buffering standard. She thinks there should be more buffering in the form of evergreens. She notes that the evergreens are on the abutter's side, but the onus is on the applicant to provide the buffering. The abutter agreed to have the rhododendrons planted on their land, but the applicant has not done enough on its land.

Mr. Steinberg noted that it is a commercial zone.

Ms. Quinn was concerned with keeping the abutter happy, and asked them what else they want.

After further discussion, Mr. Mitchell talked about the lattice that will surround the patio. He said that in the summer if you are sitting on the patio, you will not be able to see out through the vine that will be growing on the lattice. Then you will have deciduous trees, and then there will be plants in front of the fence and the fence and the trees.

Ms. Quinn advocated for evergreen trees in preference to the lattice fence. She read a portion of the approval standards for site plan review in 19-9-N. Board members did not support the planting of more evergreens.

The Board voted 3-2 to require detailing of the lattice in the conditions of approval.

Mr. Curry made the following motion:

Findings of Fact

1. KMC LLC is requesting Site Plan review of C's Gourmet Market, a new retail/28 seat restaurant/office building proposed to be located at 349 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer is recommending that the fence detail included in the plan materials be added to the plan set detail sheet. The tree preservation information should also be added to the plan set.
3. Placement of the sidewalk partially on the applicant's property necessitates the provision of a easement for public access.
4. The applicant has requested that lighting levels in excess of .5 footcandles be allowed at the project entrance driveway.
5. The application substantially complies with Sec. 19-9, Site Plan Regulations, subject to the submission of information referenced in #2 above.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of KMC LLC for Site Plan review of C's Gourmet Market, a new retail/28 seat restaurant/office building proposed to be located at 349 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised to add a detail of the wood fence and the tree preservation plan information and a 6 ft. lattice fence to be erected on the top of the semi-circular retaining wall around the patio;
2. That the applicant provide a signed public access easement for the sidewalk in a form acceptable to the Town Attorney;
3. That the lighting plan be revised to limit lighting levels at the property line to no more than 0.5 footcandles;
4. That a performance guarantee be provided in a form acceptable to the Town Attorney, an amount acceptable to the Town Engineer and all acceptable to the Town Manager; and
5. That there be no issuance of a building permit no alteration of the site until the plans are revised and the above conditions are met.

Ms. Jordan seconded the motion.

Ms. Quinn proposed an amendment to the findings of fact to be: the applicant represents that there will be no materially adverse safety or flow impact to automobile traffic.

There was no support for that amendment.

Ms. Falender proposed an amendment: That the applicant provide a copy of an easement from the Town of Cape Elizabeth for the installation of utilities and access to the high school driveway and that it be shown on the plans.

The amendment was accepted by Mr. Curry and Ms. Jordan. This becomes number 5 in the conditions and the prior number 5 becomes number 6.

The Board voted 5-0 to approve the motion.

#### OTHER BUSINESS

**Survey Zoning Amendment** - The Town Council has forwarded to the Planning Board a request to review an amendment to the Zoning Ordinance that would require a standard boundary survey for a structure within 5' of a setback line, Sec. 19-10-13, Zoning Ordinance Amendments Public Hearing.

Ms. O'Meara gave a brief summary of this amendment. There have been instances of people building too close to their property lines and causing legal problems for themselves and the Town. The Town Council requested an amendment to the Zoning Ordinance to cure this problem.

Ms. Falender opened the public hearing. There was no member of the public present, so the public hearing was closed without comment.

Mr. Steinberg wanted to know how much a boundary survey costs.

Ms. O'Meara replied that it can vary from 2 or 3 thousand dollars. She also replied that a mortgage inspection survey is not accurate enough for an investment of \$100,000 or more in an addition to a home.

There was further discussion of the relative costs of a survey and building too close to the property line.

Mr. Curry had a question about the language in part of the proposed ordinance.

After further discussion the Board amended the language in Section C paragraph 1. a. to read:

The Code Enforcement Officer concludes that there is doubt as to the location of a property line on the ground;

Ms. Quinn would like to require that the surveyor monument the corners of the property.

The Board did not agree to that amendment.

Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the draft amendment and the facts presented, the Planning Board recommends the Survey Zoning Amendments to the Cape Elizabeth Town Council for consideration.

He then read into the record the entire Ordinance as proposed and amended.

The motion passed 5-1(Quinn).

The Board voted to adjourn at 9:20 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary