

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

October 15, 2013

7:00 p.m. Town Hall

Present: Victoria Volent, Chair
Josef Chalot
Peter Curry

Elaine Falender
Liza Quinn

Absent: Carol Anne Jordan, Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the minutes of the September 17, 2013 meeting. Ms. Falender said she has a number of proposed changes. She wishes to clarify her comments on the matter of the Old Hayfield Road. She proposed to table the September 17, 2013 minutes to the November Planning Board meeting. Mr. Chalot seconded the motion and it was approved, 5-0.

OLD BUSINESS

Old Hayfield Rd Private Road Review - Stephanie Boggs is requesting approval of a Private Road under the Subdivision Ordinance proposed on a paper street known as Elizabeth Rd located north of Reef Rd, Sec. 19-7-9(B), Private Road Standards completeness.

Ms. O'Meara said the proposed lot has no frontage on a town accepted road. In order to be able to build on the lot, there needs to be frontage or access of some kind. A private accessway is limited to one lot, so the applicant is proposing a private road. One of the things that came up at the last meeting was whether this lot has rights to use the paper street. This lot is shown on the subdivision plan, but is not a numbered lot on that plan. She is reversing her prior opinion and now believes this lot is part of the original subdivision.

Bob Metcalf, of Mitchell and Associates, spoke on behalf of the applicant. He will be speaking about the changes since the last meeting and the Town Engineer's letter. He addressed the Town Engineer's comments in his letter of October 2, 2013. All the issues have been addressed and satisfied.

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

Connie Pacillo of 3 Reef Road is concerned about the right and standing. She wants to be sure they have the right to use the road.

Matthew Ham of 6 Reef Road is an abutter to the proposal. They would like to have a privacy fence or shrubbery be part of the plan. The applicant is agreeable, and he would like to see this be part of the plans.

Mr. Curry asked where this privacy fence is located on the plan.

Mr. Ham replied that there is nothing on the current plan, and he would like to have it included going forward.

Ms. Volent asked if they could hold further comments on this matter to a discussion on the merits of the plan. This is only to completeness. There were no other comments, so the public comment period was closed.

Ms. Falender said she would respectfully disagree with Ms. O'Meara that this lot is a part of the subdivision. But she would agree that it is depicted on the subdivision plan. We have a legal opinion from the applicant's attorney. She thanked the applicant for going to the time and expense to get that opinion. As a Planning Board, we do not determine easement rights or any other title rights, but the applicant is required to make a showing that those rights exist. The applicant has made that showing, so that is sufficient for completeness.

Ms. Quinn asked if there should be a road maintenance agreement.

Ms. O'Meara said there is one in the packet.

Ms. Quinn asked if the Town Attorney should be asked for an opinion on the rights.

Ms. O'Meara said she had not asked for a legal opinion because the language in the deed says they have rights. She can submit it if the Board requests.

Ms. Volent said she had traced the deed back and although she has no legal expertise, it does go back to 1911 to the original Shore Acres plan.

Ms. Falender said she does not want it sent to the Town Attorney. It is not up to the Town to render a legal opinion.

The rest of the Board agreed.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephanie Boggs for a private road to be constructed

within the paper street of Elizabeth Road, located off Reef Rd, to create access to a back lot located at the end of Elizabeth Rd, be deemed complete.

Ms. Quinn seconded and the motion passed, 5-0.

Ms. Volent then opened the public comment period on the merits of the application.

Stephen Mette said he and Mr. Ham have spoken about the privacy fence or screen. We will gladly accommodate that request.

Ms. O'Meara said that Mr. Ham has requested that the screening be shown on the plan.

Mr. Mette said he agrees with that request.

No one else had comment, so the public comment period was closed.

Ms. Falender said it is her understanding that this is a private road and that to make it a public road, it would have to be widened. Although there are no current plans for the Boggs lot, we should limit this approval for the road to serve only 2 residences. One would be the Boggs lot and the other being the Ham lot.

Ms. Quinn said it is not fair to limit access for the lot on the opposite side of the road from the Ham lot. That lot can be divided, and we would be limiting their rights.

Ms. Falender said we are being asked to approve a narrow road on the understanding that it will be serving two houses. She thinks if this road is starting to serve more than two residences, we would need to take a look if this narrow a road is appropriate.

Ms. Quinn thinks it is unfair to put in a road and then exclude an abutter to the road from its use.

Ms. O'Meara said if you looked at the original subdivision plan, the Prior lot (on the left had side of the road) is actually three lots. It is shown as one lot on the assessor's map, but they might be able to resurrect those early lots. We have asked the applicant to do something more than just a driveway to that back lot (the Boggs lot) in order to accommodate the possibility of further development. So they have suggested a private road be built. If it is built to specifications, it can serve several lots. The board has approved just the same dimensions in previous cases.

Mr. Chalat asked how many lots can be served by the road.

Ms. O'Meara said there is no limit in the ordinance on how many lots can be served by a private road, and you have private roads that serve multiple lots.

Ms. Falender said she counts 8 lots looking at the old subdivision plan. The information we have talks about the road serving 2 residences. Have we asked the Town Engineer if this road is sufficient to serve 8 residences.

Ms. Stephanie Boggs asked which are the 8 lots.

Mr. Stephan Mette said Reef Road cuts through 3 of those lots on the original plan.

Ms. O'Meara said Reef Road has been realigned to the north from where it was on the original plan.

Ms. Falender said we are only approving part of Elizabeth Road, and we need to note that we are only approving a portion of it.

Mr. Metcalf said there is an amended plan that shows the change in Reef Road. The documentation provided to the Board was to clarify that this parcel has access via the original subdivision over Elizabeth Road.

Mr. Curry said any rights end with the road as depicted on this plan. This road starts at Reef Road as it now exists and dead ends at the Boggs lot. So if the Boggs lot gets subdivided you have to come back in order to extend the road. He does not understand the concern about a proliferation of lots that could be served.

Ms. Falender said her concern is that we are not saying this is an adequate road to serve more lots than are currently shown here. If they put a new subdivision in, they do have to come back for approval, but they may have to widen the road and no one wants to widen an existing road.

Mr. Metcalf asked if the Prior lot is taxed as one lot.

Ms. O'Meara said it is taxed as one, but could be broken out into those lots of record at any time.

Mr. Metcalf noted that because of the Boggs lot's proximity to RP-1 and RP-2 wetlands it probably could not meet requirements to have two 80,000 sq. ft. lots. He said the road is being built to meet Town Standards and is designed to meet the criteria to support at least 3-4 houses. If we are looking at 8-16 houses back there we would definitely need a wider road, but that is not feasible back there.

Ms. Volent asked if they could ask the Town Engineer, because you are building a private road that is being built to private accessway standards.

Mr. Metcalf said in terms of the width, but in terms of the support and the engineering structure of the road, it's being built as if it is meeting the Town Road Standards.

Ms. Volent proposed asking the Town Engineer to give an opinion on the road, and if additional language would be needed.

Ms. Falender said the Town Engineer would have no idea of how many lots could be created, so we would be giving him a very hypothetical question. She thinks it is a simple thing to say we are approving it for a single residence on the Boggs lot, and if there are new lots created, or additional residences built, she wants it abundantly clear that we have not addressed that question. We are only approving two access points, one to the Boggs lot and one to the Ham lot. She wants the approval to say that.

Mr. Chalot said it seems unnecessary to exclude access to the Prior lots.

Ms. O'Meara made the point that when you approve a road you give frontage on that road to existing lots. The Boggs lot does not have enough frontage to make more than one lot.

There was further discussion about the lots on the road and whether they would have frontage, and the need to see and reference the amended plan of the original subdivision.

The Board agreed that they did not need a site walk.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephanie Boggs for a private road to be constructed within the paper street of Elizabeth Road, located off Reef Rd, to create access to a back lot located at the end of Elizabeth Rd, be tabled to the regular November 19, 2013 meeting, at which time a public hearing shall be held.

Mr. Chalot seconded the motion and it was passed 5-0.

NEW BUSINESS

303 Ocean House Rd Site Plan Amendment - Jennifer DeSena would like to request an amendment to the previously approved site plan for 303 Ocean House Rd to raise the roofline of an existing connection between the office space and the house, Sec. 19-9, Site Plan Amendment and Sec. 19-6-4, Town Center Design Standards.

Ms. O'Meara said this site received Planning Board approval in 1988 and was amended in 2004, to change the use to a retail use. This applicant is requesting a change to the exterior structure. She is going to elevate the roof of a connector to the garage so it matches the roofline of the garage. There will be no change to the footprint.

Jennifer DeSena of 4 Ivie Road is here to request an amendment to the site plan of 1988 to the office space at 303 Ocean House Road. The amendment would allow me to raise the roof of the connector approximately 8 ft. This would provide more interior space. It requires changes to two existing windows. Two windows would be added and she will replace the siding with materials similar to what is there now. She will re roof the entire roof so it does not look like a patch job. She would like approval tonight because she has a contractor ready to begin.

Ms. Volent opened the public comment, and there was no one in the audience, so the public comment was closed.

There was a consensus of the board that the application was complete.

The Board did not choose to have a site walk or public hearing.

Ms. Quinn made the following motion:

Findings of Fact

1. Jennifer DeSena is requesting an amendment to the site plan approved in August, 1988 for office space located at 303 Ocean House Rd to raise the roofline of an existing connector between the office and house, which requires review under Sec. 19-9, Site Plan Regulations.
2. The 1988 Site Plan Approval includes plans showing a second floor addition to the garage which was not constructed.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-6-4, Town Center Design Standards, 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 Jennifer DeSena for an amendment to the site plan approved in August, 1988 for office space located at 303 Ocean House Rd to raise the roofline of an existing connector between the office and house be approved subject to the following condition:

1. That the elevations submitted as part of this amendment replace the elevations in the 1998 site plan approval, specifically eliminating the second floor addition to the office building which was depicted on the 1988 elevations but not constructed.

Mr. Chalat seconded the motion and it was approved, 5-0.

Since there was no one in the audience for public comment, the board voted 5-0 to adjourn at 8:25 p.m..

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary