

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

August 19, 2014

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the July 15, 2014 minutes. The minutes were approved as presented, 6-0 (1 abstain).

TOWN PLANNERS REPORT

Ms. O'Meara reported that the Town Council had held a public hearing on the normal high water line amendment, and adopted what the Planning Board had recommended.

She also reported that the Town Center Planning Committee has completed its report. The town has received a grant to implement the recommended storm water management plan.

CONSENT AGENDA

Harvest Lane Private Road extension/Resource Protection Permit - Nick Tammaro is requesting a 90 day extension of the approval granted May 22, 2014 to complete easements required as a condition to the approval, Sec. 19-7-9 (B), New Private Road Standards.

Since no Board member moved to remove this item from the consent agenda, Mr. Chalal made the following motion:

BE IT ORDERED that, based on the request submitted and the approval granted May 22, 2014, the request of Nick Tammaro to extend the approval of the Harvest Lane Private Road Extension/Resource Protection Permit for 90 days be approved.

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

OLD BUSINESS

Cardinal Lane Private Road Extension/Resource Protection Permit - Suzanne Gabriel is requesting an extension of Cardinal Lane, located off Cross Hill Rd, to provide access to a new lot, and also a Resource Protection Permit to alter 4,220 sq. ft. of RP2 wetland to construct the extension, Sec. 19-7-9, Private Rd Public Hearing, and Sec. 19-8-3, Resource Protection Regulations Public Hearing.

Ms. O'Meara spoke about the plans, and that the Code Enforcement Officer wants clear notes on the plans about what is permissible within the building envelope, and what is not permissible outside the building envelope. There is also a proposal by the applicant to create two additional utility stubs for a future lot 5.

John Mitchell, of Mitchell and Associates, made the presentation on behalf of Suzanne Gabriel. He summarized the changes made since July. He spoke about storm water calculations and responses to AMEC's letter.

He also listed the problems that would be present if they chose an alternative route for the road to come from Wells Road, instead of its proposed location.

He then addressed the Conservation Commission's recommendation of a 50 ft. buffer along the wetland over what would be lot 5. He feels this would significantly impact the future lot 5. It would remove 39,450 sq. ft. of upland area on that lot. They feel 50 ft. is excessive, and would feel that 25 ft. would be more appropriate. That wetland has not been delineated.

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

Ms. Jordan asked about the gaps in the buffer where it looks like someone has mowed between the lots. She wants to know if more buffer needs to be planted in those areas.

The Board discussed that issue and it was decided that the buffering was adequate and no more was needed.

Ms. Quinn wanted to discuss the wetlands that exist on the land, but were not delineated on the master plan.

Ms. Volent then opened the discussion of the Conservation Commission's recommendation of a 50 ft. buffer on the future lot 5.

Ms. O'Meara outlined the Conservation Commission's reasoning around their proposal of that 50 ft. buffer.

The Board had an extensive discussion of the wetlands. They discussed what wetlands had been mapped and whether there are wetlands on the remaining land that have not been mapped. The Board came to a consensus that 50 ft. seemed like too much of a buffer.

There was a lengthy discussion of how large a buffer would be required, and whether or not there were more wetlands on the parcel in question. The Board was concerned about the fact that they do not have any information about wetlands that may or may not exist on the remainder of lot 1.

The Board agreed that a buffer was needed on both the drainage channel and the wetlands.

Ms. Gabriel spoke about the history of how this development has evolved over the years. A master plan was drawn up early on, but the wetlands were not delineated on that plan. She feels the 50 ft. buffer is excessive, and will reduce the value of the lot.

Ms. Falender said she is troubled by the implication that this was not done in accordance with the law. This is not a penalty, nor should it be.

The Board had a lengthy discussion of how large a buffer to require. The decision was to have 10 ft. immediately west of the proposed right of way, to accommodate utility stubs for a future lot 5, a 25 ft. buffer on the RP2 wetland delineated west of the proposed right of way, and then a 10' buffer along the drainage channel from that wetland to the west property boundary of lot 1.

Ms. Quinn made the following motion:

Findings of Fact

1. Suzanne Gabriel is requesting an extension of the existing Cardinal Lane Private Road and a Resource Protection Permit to create road access to a new lot, which requires review under Sec. 16-2-3 of the Subdivision Ordinance and Sec. 19-8-3, Resource Protection Permit.
2. The Town Engineer has recommended that additional information regarding the sewer extension be added to the plans.
3. The Conservation Commission is recommending that a buffer be established to protect the remaining wetland.
4. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1, and Sec 19-8-3, Resource Protection Permit Standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Suzanne Gabriel for an extension of the existing Cardinal Lane Private Road and a Resource Protection Permit to alter 4,220 sq. ft. of RP2 wetland be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated August 13, 2014;
2. That the building envelope be labeled. A note should be added to the plans restricting activities outside the building envelope to installation of a driveway and installation of utilities. The total area to be altered for the driveway and for the utilities shall be shown on the plan. Outside of these areas, no vegetation shall be removed outside the building envelope.
3. That the plans be revised to add a 10' wide buffer around the RP2 wetland within 25' of the western side of the proposed right of way area, a 25' wide buffer around the wetland, and a 10' wide buffer around the drainage channel located west of the proposed road and extend to the west property boundary. No removal of vegetation shall be permitted in the buffer.
4. That a note be added to the plan that there shall be no road construction until a performance guarantee has been provided to the town in accordance with Sec. 16-2-6 of the Subdivision Ordinance;
5. That a road maintenance agreement be provided in a form acceptable to the town attorney and the town manager, signed by the applicant, and recorded in the Cumberland County Registry of Deeds. The deed for lot 4 should also include deeded access and utility rights to Cardinal Lane, and the road maintenance agreement shall include the reservation of the buffer as described in Condition 3.
6. That the plans be revised to address the above conditions and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

Mr. Chalot seconded the motion and it was passed, 6-0 (one abstain).

OLD BUSINESS

C salt Market Site Plan Amendments - Mike Concannon is requesting amendments to the previously approved Csalt Market site plan, located at 349 Ocean House Rd, to revise the handicapped ramp, bike rack location, fencing and patio rock wall, Sec 19-9 Site Plan Amendments.

Ms. O'Meara said this is a site plan amendment for a project in the Town Center District which is under construction and nearing completion.

John Mitchell represented Mike Concannon, and outlined the amendments proposed.

They are asking to preserve an existing tree that was originally identified to be removed. The property line fence is to be increased from 6ft. to 7 ft. high, with the addition of 1 ft. of lattice at the top. The handicap ramp will be changed, including replacing a stone wall with granite curbing. They propose to increase the plantings in the handicap ramp area.

They are also proposing a Phase 2, with the stone wall surrounding the patio, concrete pavers and lattice around the patio to be completed next year. They would also like to have a 5 ft. opening in that stone wall so people can circulate out to and from the sidewalk from the patio.

Ms. Volent opened the public comment on completeness. No one spoke, so the public comment period was closed.

The board had no comment on completeness.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Mike Concannon of KMC Properties LLC for amendments to the previously approved site plan for the Csalt Market, located at 349 Ocean House Rd, be deemed complete.

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

Ms. Volent opened the public comment period.

Andrew Blake of 351 Ocean House Road has concerns about the buffer with the lattice at the top. He feels that headlights will sweep his house. He would like a combination of fence and trees.

Jim Clark of 350 Ocean House Road is concerned about the light at the rear of the parking lot. He is concerned that it will shine right into his house. He would like it adjusted. He is also concerned about litter, hours of operation and attempts to control noise. He felt the dirt from the construction was allowed to flow across the street and hopes it will end with the construction. He wonders why the fence goes from 4 ft. to 7 ft. instead of starting at 7 ft.

No one else came up to speak, so the public comment period was closed.

Mr. Steinberg reported that he had walked down the site and had a difficult time seeing the adjacent home from the parking lot. He had to maneuver to see the house and did not think much illumination from the site would illuminate the residence next door. If the traffic in the parking lot is routed correctly, there would not be a problem with headlight sweep. In response to noise comments, he noted that this is the center of town.

Mr. Curry noted the applicant is asking for minor variations. Are we being asked to reopen the initial approval?

Ms. Volent said that you can reopen anything.

Mr. Curry asked if the Mr. Concannon had not returned to the Board, wouldn't the fencing be what was already approved. Staff responded yes. Mr. Curry suggested that the headlights may only be sweeping the rear of the adjacent property.

Ms. Volent said she also visited the property and the grading on the site is higher than the adjacent property. The low spot is where the fence sits. She asked if the fence would be in the dirt or elevated a bit. Mr. Mitchell said the fence would be raised a few inches. There have been no adjustments in grade from the original approval. He believes that the grade out there was not anticipated by the abutter. The applicant is proposing to add a 1' lattice cap to the approved fence to bring up the total height to 7'.

Ms. Volent asked for clarification on the 4' -7' fence section. Mr. Mitchell said it was a transition piece done for aesthetics.

Mr. Curry wanted to clarify at what point on the fence line is there sensitivity, or is it the whole fence. Mr. Mitchell said the applicant will also consider more landscaping buffering once he is open.

Ms. Volent asked about the clusters of shrubs at two points along the fence and if there was an opportunity to substitute something that grows higher than 7'.

Mr. Steinberg wants to impose some traffic control on how cars circulate in the parking lot.

Ms. Quinn would prefer to see more buffering. She continues to believe the buffering is not adequate and quoted the town center buffering standard in the zoning ordinance on page 91. She thinks adding 1' to the fence is a start and would like more plantings added next to the fence.

Mr. Curry does not think you need to change the traffic flow. He does not agree that there is an incompatibility issue between the applicant and the abutter in the Town Center district. The Planning Board has had a healthy discussion on this. He believes that where cars turn in the parking lot is an area of sensitivity for buffering.

Mr. Chalot asked how big the tree in the corner of the site is and that tree is existing.

Mr. Mitchell then offered to substitute the four shrubs at the southwestern corner of the site with 3 arborvitae. He also noted that the original approval included information from the applicant that the site lighting does not exceed .5 footcandles at the property line. The light fixture angles can be adjusted. Mr. Concannon said his plan is roughly to be open from 6:00 a.m. to 8:00 p.m., with an adjustment for Sunday. In response to a query from Ms. Volent, Mr. Concannon said he did intend to put site lighting on timers so that it could be turned off about 1 hour after closing. Ms. O'Meara noted that there is no limit on hours of operation in the town center.

Ms. Volent noted that she was sure the applicant would control litter and since construction was almost done, there would be no topsoil migration.

Ms. Falender referenced the phasing, the delay in building the stone wall, and that the wall was to be a partial noise barrier for the outdoor seating. Should there be a restriction on outdoor seating on the patio until phase 2 is constructed? Mr. Mitchell said the applicant would prefer some seating, on benches and hold off on tables until Phase 2 is constructed.

Mr. Chalot confirmed that the benches would be under the porch roof, and then expressed no further concern with bench seating under the porch.

Mr. Curry said he can see a concern with food service on a formal patio, but had no concerns with sitting on a bench eating a sandwich. Ms. Quinn agreed.

Mr. Steinberg confirmed what seating would be available and noted that with winter coming on, he did not anticipate a lot of people eating outside and would not restrict that.

Ms. Falender proposed no table seating in Phase 1, but to allow benches. The board generally agreed with this.

Ms. Quinn made the following motion:

Findings of Fact

1. Mike Concannon of KMC Properties LLC is requesting amendments to the previously approved site plan for the Csalt Market, located at 349 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer has recommended that additional detail information be added to the plans
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 Mike Concannon of KMC Properties LLC for amendments to the previously approved site plan for the Csalt Market, located at 349 Ocean House Rd, be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated August 13, 2014;
2. That the plans be revised to replace the four deciduous shrubs in the southwest corner of the property with 3 evergreen arborvitae of minimum height at time of planting of 6';
3. That a note be added to the plan restricting outdoor table seating to the completion of phase 2; and
4. That there be no certificate of occupancy issued until the plans have been revised to address the conditions of approval and submitted to the town planner for review.

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

The Board voted unanimously to adjourn at 9:25 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary