

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: February 23, 2015
SUBJECT: Land Use Zoning Amendments

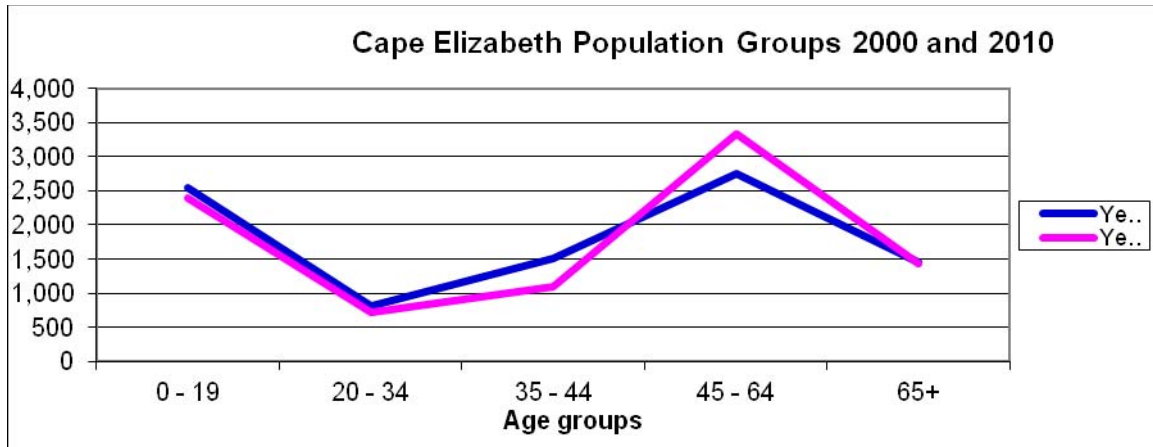
Introduction

At the February 11, 2013 meeting, the Town Council referred recommendations from the Future Open Space Preservation Committee (FOSP) and the last package of Comprehensive Plan recommendations, referred to as the "Land Use package" to the Planning Board for implementation. This memo contains the list of recommendations and a description of the proposed amendment.

Why adopt these amendments

• **Comprehensive Plan.** The bulk of the proposed amendments are explicitly recommended by the Comprehensive Plan. The plan was a 2 year effort by the town to plan through the year 2020. The plan was drafted by a 10 member committee representing a range of community perspectives and unanimously adopted by the Town Council in 2007. The plan was also found consistent with state goals by the State Planning Office. The comprehensive plan is not only the broad vision of land use, but also the legal underpinning for land use regulations. Town land use regulations must be consistent with the comprehensive plan. This amendments package represents the last set of high priority recommendations in the comprehensive plan.

• **Town demographics.** Like the entire state, Cape Elizabeth's average age is increasing as seniors become a larger percentage of the town's population. The comprehensive plan incorporated this demographic shift into its recommendations to focus on multi-family housing. The housing available for our seniors who want to transition out of single family homes is very limited and adding multi-family units could meet that need. More generally, diversifying the housing types can meet needs for more than seniors.



• **Public Benefit Goals.** The town vision strongly emphasizes preserving open space, agricultural lands, and sensitive environmental areas. These amendments include incentives for the private sector to advance these public goals.

Referrals and draft recommendations

Below is a list of the FOSP recommendations (#.), annotated with Comprehensive Plan recommendations(•).

1. **Land Use Chapter Recommendations.** The town council requests the planning board should restart its implementation of the Land Use Chapter recommendations in the 2007 Comprehensive Plan, with emphasis on the [above] recommendation (which follows).

FOSP recommended that the current regulations promoting clustering be retained. More work should be done to investigate the potential for increasing the amount of open space that is preserved while maintaining the density allowed that makes this a desirable option for property owners. More emphasis should also be put on preserving contiguous open space and connectors and less on open space as buffer strips.

Pg 12, Ln 16 **Implementation:** The cluster regulations are located in Sec. 19-7-2, Open Space Zoning, in the Zoning Ordinance. There is no proposal to delete or reduce the Open Space Zoning regulations. Subsection D (1) in the Open Space Zoning provisions establishes priorities for what land is preserved as open space. Amendments to this section are proposed that make contiguous open space a higher priority and do not specifically emphasize buffer strips. It should be noted that open space zoning developments must also comply with the Subdivision Ordinance, which includes a buffer provision.

Buffering is still required, but more emphasis is placed on contiguous open space.

- 9. Designate BB Districts as Sewer Service Areas.

Pg 1 **Implementation:** Sewer Service Areas are shown on the town sewer map. The attached map proposes to add the areas zoned Business B (BB) to the sewer service area. The town currently has 2 BB zones, one located at the Inn by the Sea and a newer one located immediately south of the Town Center Zone on the Murray Earthworks contractor facility on Fowler Rd.

- 14. Review the minimum lot size and setback requirements for multi-family and attached single family dwellings (condominiums) to determine if they are creating obstacles to developing a variety of housing types.

Pg 5, Ln 25 **Implementation:** The Planning Board compared dimensional requirements for subdivisions and multiplex development. The
Pg 6
Pg 7, Ln 24 table below shows that there are minimum lot size requirements
Pg 9 that are higher for multiplex development than for a single lot
Pg 10 subdivision. The amendments equalize the standards by reducing
Pg 11 the minimum lot size from 10 acres to 5 acres in the RA District and from 5 acres to 3 acres in the RC District. The setback differentiation is also eliminated.

Multi-unit dimensional standards comparison with single family development									
Zoning District	Use Permitted	Minimum Lot Area		Density (sq. ft.)		Maximum units/building	Setbacks (ft) ⁴		Height
		Single family	Multi-unit	Single family	Multi-unit		Single family	Multi-unit	
RA	Multiplex housing	none	10 acres	80,000	66,000	5	30/30/30	75	35'
Proposed			5 acres			n/a		30'	
RB ³	Multiplex housing	none	80,000 sq. ft.	60,000	60,000	5	30/30/30	75	35'
Proposed						n/a		30'	
RC	Multiplex housing	none	5 acres	20,000	15,000	5	20/20/20	75	35'
Proposed			3 acres			n/a		20'	
TC ²	Multifamily dwelling unit ¹	none	7,500 sq. ft.	80,000	3,000	none	25-35/15/15	25-35/15/15	35'
BA ⁵	Multifamily dwelling unit ¹	none	15,000 sq. ft.	80,000	7,500	none	10-25/5/5	10-25/5/5	35'

¹ Only allowed as accessory to a nonresidential use
² Design requirements also apply; side/rear setback is 50' abutting residential district
³ See Sec. 19-7-2, Open Space Zoning
⁴ Setbacks are shown as front/side/rear. Front setback is shown based on local street classification.
⁵ Design requirements also apply; side/rear setback is 20' abutting residential district

- 15. Evaluate establishing a density bonus for 55 and older restricted developments.

Implementation: The Planning Board is recommending that the existing eldercare housing provisions provide adequate density bonus. There are also proposed changes to multiplex development regulations that will promote housing for this demographic.

- 82. Increase the density of the RB District, which includes 7% of the acreage of the town, with Open Space zoning, where public sewer is available, from 30,000 sq. ft. to 20,000 sq. ft per lot, and increase the Open Space Zoning open space requirement from 40% to 45% in the RB District.

Pg 13, Ln 14 **Implementation:** In Sec. 19-7-2, Open Space Zoning, the maximum
Pg 14, Ln 10 density in the RB District has been increased to 1 unit per 20,000 sq. ft. for developments served by public sewer. In subsection C (4), the mandatory amount of open space to be preserved has been increased from 40% to 45% for developments served by public sewer.

- 83. Review the design of open space in the Open Space Zoning provisions to maximize the amount of open space in a single contiguous parcel and discourage narrow strips, except when strips are necessary for trail connections.

Pg 14, Ln 20 **Implementation:** The Open Space Design standards have been overhauled for clarity and to more clearly implement the open space priorities.

- 84. Make the Open Space Impact Fee not applicable when a subdivision is designed in compliance with the Open Space Zoning Regulations, which include a separate open space requirement.

Pg 2, Ln 14 **Implementation:** The amendment adds to the open space impact fee section in the Subdivision Ordinance compliance with the Open Space Zoning provisions in the Zoning Ordinance as a method to meet the open space impact fee requirement.

- 85. Eliminate the cap on the number of units per building allowed for multiplex developments located in the RC and RB Districts. Create design standards for buildings exceeding 5 units and a maximum

height limit that is greater than the current 35' height limit. This will be available only in conjunction with the Agricultural TDR (# 85), developments targeted to 55 and older (# 15) or an affordable housing overlay district (#19).

Pg 3, Ln 14 **Implementation:** Reference to units per building have been
Pg 18, Ln 25 deleted from the Multiplex Housing definition. The remaining
Pg 22, Ln 8 multiplex design standards in the definition have been replaced
Pg 7, Ln 16 with a new and expanded Multiplex Development Standards
Pg 7, Ln 24 section located in the Open Space Zoning Provisions. Amendments
Pg 12, Ln 1 in the RA, RB and RC Districts require that that any new multiplex
development must comply with the new standards. Another new
section in the Open Space Zoning provisions, creates density bonus
options for multiplex development when agricultural land,
affordable housing or more open space is preserved.

- 86. Reduce the minimum lot size required for multiplex housing in the RC District from 5 acres to 3 acres and eliminate the minimum lot size for multiplex housing in the RB District.

Implementation: Done, per Recommendation #14 above.

- 90. Designate the RB Districts as Sewer Service Areas.

Pg 1 **Implementation:** See map.

- 91. Require new subdivision development in the RB District to be served by public sewer.

Implementation: The Planning Board is concerned this will have an unreasonable economic impact on small development and is not recommending this change. The new Multiplex Development Standards requires public sewer connection, and provides a bonus when the public sewer connection is more than 1/4 mile away.

2. **TDR.** *FOSP recommended that the town retain the current TDR regulations. The Planning Board should be tasked with reviewing the TDR sending areas map to align it with Open Space criteria priorities.* The town council requests that the planning board include this recommendation in its comprehensive plan Land Use Chapter recommendations.

Pg 25, Ln 2 **Implementation:** Draft map has been prepared. After receiving
Pg 25, Ln 41 public comment at a public forum focusing on large property

Pg 27 owners. The TDR provisions have been revised to align TDR areas with priority open space. TDR provisions have been generally cleaned up. Finally, a new provision has been added to implement the agricultural land TDR bonus recommended in the Comprehensive Plan.

3. **Growth Areas.** *FOSP recommended that the review of growth areas be referred to the Planning Board as part of the resumption of the Planning Board's comprehensive plan implementation work. The Planning Board's comprehensive planning implementation work should include public outreach about the benefits of open space zoning. The Planning Board should also recommend ordinance amendments that make preservation of agricultural land a higher open space priority when preserving open space as part of new development.* The town council requests the planning board to do so.

Implementation: The Planning Board recommends that no change to growth areas is required at this time.

4. **New Subdivision Ordinance consistency.** When the new Subdivision Ordinance was adopted, general purpose sections such as public notice and public hearing procedures were changed. These sections are referenced in the Zoning Ordinance. These references in the Zoning Ordinance have been updated.

Pg 5, ln 1 **Implementation:** Proposed amendments to the Zoning Ordinance
Pg 27, Ln 45 to update references to public notice and performance guarantee
Pg 28 requirements have been added.
Pg 29

5. **Non-conforming lot frontage.** The Code Enforcement Officer has encountered some conflict with provisions regarding street frontage for non-conforming lots. He has asked the Planning Board to add language clarifying the current practice of requiring lots with insufficient frontage to comply with the Private Access provisions.

Pg 3, Ln 41 **Implementation:** Language has been added that clarifies a lot with insufficient street frontage can still be buildable, but must still comply with the Private Access provisions, which typically means a Private Accessway Permit from the Planning Board.



Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Private Accessways

1 message

Benjamin McDougal <benjamin.mcdougal@capeelizabeth.org>
 To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Tue, Nov 25, 2014 at 12:35 PM

Maureen,

We have discussed lots that lack the required road frontage and how they should be handled. An example would be a lot that has 50' of road frontage on a public road. Past precedent shows that lots like this went to the Planning Board for a Private Accessway permit. In my opinion, as the Zoning Ordinance currently reads, we are on shaky legal ground proceeding in this manner. Section 19-4-3.A seems to clearly state that I should issue building permits on such lots, with no regard to the private accessway provisions. See below. The remedy for this is to reference the private accessway requirements in 19-4-3.A. Seems like a relatively simple addition if we want to be on strong legal ground sending these to the board.

"A. Nonconforming Lots : The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, **minimum street frontage**, or similar requirement of the district within which they are located.

1. Vacant Nonconforming Lots

a. Vacant nonconforming lots may be built upon in conformance with the provisions of the district in which they are located **even though the lots do not meet the minimum lot area, net lot area per dwelling unit, street frontage**, or similar requirements as long as the requirements of the chart below are met. **(Effective August 11, 1999 and revised effective July 4, 2001)**

The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: (Effective August 11, 1999) "

Regards,
 Ben

Benjamin McDougal
 Code Enforcement Officer
 Town of Cape Elizabeth
 320 Ocean House Road
 P.O. Box 6260
 Cape Elizabeth, ME 04107
 (207) 799-1619