

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: September 15, 2015  
SUBJECT: Village Green Zoning Amendment

### Introduction

The Town Council referred to the Planning Board the Village Green Zoning Amendment at the May 11, 2015 meeting. The Planning Board has held 3 workshops on the amendment. A public hearing has been scheduled for this evening.

### Procedure

- The Board may want to have the planner summarize the amendment.
- The Board should open the public hearing.
- At the close of the public hearing, the Board may begin discussion of the amendment.
- At the close of discussion, the Board may vote to recommend or not recommend the amendment (as may be further revised at the meeting) to the Town Council or may table the amendment to a workshop for further review.

### Summary of Amendment

The Village Green Zoning Amendment dated 9-15-2015 is the text the Planning Board reviewed at the August 4th workshop with minor revisions. The conditional municipal approval provision (Pg 5/Ln 12) has been slightly reworded as directed at the workshop. On page 4, the word "continuous" has been added after reflecting on a concern expressed about a building placed in front of a village green.

An Alternative Village Green Zoning Amendment has also been prepared to address the comments of town attorney John Wall (his comments are attached). In the alternative amendment, the village green definition (pg 1/Ln 6) has been revised to avoid a circular reference. The standards of a village green are referenced.

Mr. Wall noted that the proposed requirement for conditional municipal approval "would effectively amount to contract zoning." On page 4, line 31, the phrase "with legal public access and offered in fee" has been added to require that a village green include public access regardless of ownership. In addition, the village green must be offered to the town, but the requirement that the town must indicate a willingness to accept it has been deleted. The requirement for conditional municipal approval on page 5 has also been deleted.

Motions for the Board to Consider

**A. Motion for Town Council**

BE IT ORDERED that, based on the materials prepared and the information presented, the Planning Board (recommends/ does not recommend) the Village Green Amendment to the Town Council for consideration.

**B. Motion to Table**

BE IT ORDERED that, based on the materials prepared and the information presented, the Planning Board tables to the October 6, 2015 workshop the Village Green Amendment for further review.



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

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## Proposed Village Green amendment to zoning ordinance

1 message

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John Wall <JWall@monaghanleahy.com>

Wed, Sep 9, 2015 at 9:19 AM

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

Maureen,

Thank you for consulting me concerning the draft amendment to the TC district portion of the zoning ordinance. I have reviewed the draft and my comments are as follows:

1. With regard to the proposed definition of "village green development," you may wish to revise it to refer to characteristics of the village green in order to reduce any apparent circularity engendered by the reference to the design standards. If you stick with the definition you have, I think you could improve its clarity by adding "the Planning Board" after "from" in the third line and by adding "has been" after the "and" in the same line.
2. I am concerned that the "conditional" approval by the Council contemplated by the draft would effectively amount to contract zoning. In a zoning scheme that does not provide for contract zoning, applicants should be able to look at the ordinance and discern whether they can (or at least believe they can) meet the criteria for their proposed use of their property. If they can meet the criteria, they should be allowed to proceed. By leaving compliance with the ordinance at the absolute discretion of the Council (the legislative arm of the Town), the proposed provision would, in my view, remove the process from typical zoning and fall within the rubric of contract zoning. As you and I have discussed, I think the amendment could be drafted to require that the applicant offer to convey the fee to the "green" area of the development to the Town, but I do not think the right to proceed with the development could be contingent upon the Council accepting that offer. Rather, if the Council was not interested in the fee, there could be a provision for the applicant to protect that portion of the property through an easement or restrictive covenant.

If you would like further explication of these thoughts, please let me know.

Regards, John

John J. Wall, III

Monaghan Leahy, LLP

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Portland, ME 04112-7046

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e-mail: [jwall@monaghanleahy.com](mailto:jwall@monaghanleahy.com)

This e-mail may contain information and attachments that are privileged and confidential. If you suspect that you were not intended to receive this e-mail, please delete it and notify us as soon as possible. Treasury Regulations require us to notify you that any tax advice in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties. Thank you. Monaghan Leahy, LLP

Village Green Zoning Ordinance Amendment

SEC. 19-1-3. DEFINITIONS

Village Green Development: The development or redevelopment of a lot or lots located in the Town Center District which has received Site Plan approval (Sec. 19-9, Site Plan Review) from and found in compliance with Sec. 19-6-4(D)(3)(g)(4) (Town Center Design Standards, Village Green) by the Planning Board.

SEC. 19-6-4. TOWN CENTER DISTRICT (TC)

A. Purpose

The purpose of this district is to encourage an identifiable Town Center that includes a village feeling, mixed retail and residential uses to serve residents, an environment inviting to pedestrians, a common meeting place, visual cohesiveness and enrichment and linkages to the Town's open space and nearby school campus. The Town Center District boundaries reflect the prevalence of public buildings and commercial uses and the historic compactness of development. The Town Center District requirements are tailored to the unique characteristics of the Cape Elizabeth Town Center.

D. Standards

1. Performance Standards

f. No parking for uses other than school uses shall be allowed in the front yard setback.

2. The following Space and Bulk Standards shall apply:

Table with 2 columns: Use Type and Setback Requirements. Rows include School uses (Side yard, Rear yard, Front yard) and Municipal uses (Side yard).

	The side yard setback shall be increased to 50 ft. where it abuts a residential district.
(b) Rear yard setback	15 ft. The rear yard setback shall be increased to 50 ft. where it abuts a residential district.
(c) Front yard setback	
Building with up to 5,000 sq. ft. of floor area	Minimum of 25 ft.-Maximum of 35 ft.
Building with more than 5,000 sq. ft. of floor area	50 ft.

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2 (5) Village Green Development  
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4 (a) Side yard setback 15 ft.  
5 The side yard setback for new  
6 construction shall be increased to 50  
7 ft. where it abuts a residential district  
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9 (b) Rear yard setback 15 ft.  
10 The rear yard setback for new  
11 construction shall be increased to 50  
12 ft. where it abuts a residential district  
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14 (c) Front yard setback 25 ft.  
15 The front yard setback for parking  
16 shall be 35 ft.  
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18 (6) All other uses  
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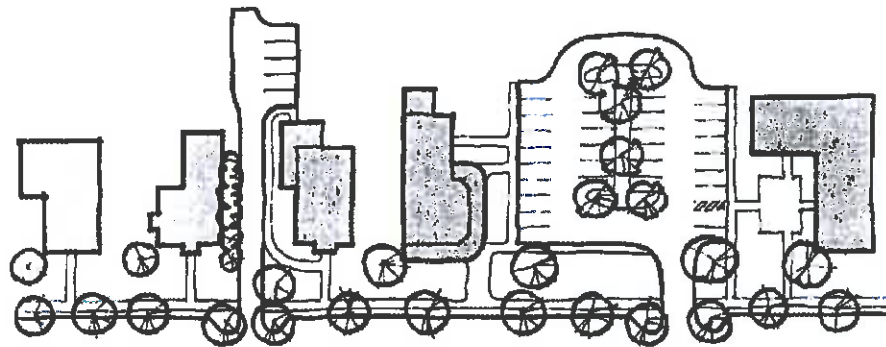
20 (a) Side yard setback 15 ft.  
21 The side yard setback for new  
22 construction shall be increased to 50  
23 ft. where it abuts a residential district  
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25 (b) Rear yard setback 15 ft.  
26 The rear yard setback for new  
27 construction shall be increased to 50  
28 ft. where it abuts a residential  
29 district.  
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31 (c) Front yard setback Minimum 25 ft.  
32 Maximum 35 ft.  
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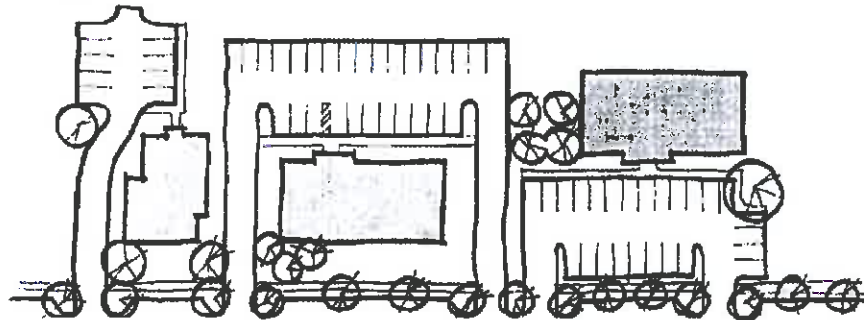
1 **3. Design Requirements**

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3 d. Building and Parking Orientation. The first impression of a building is from the  
4 side which faces the street. The front facade of the structure shall face the street.  
5 The structure shall be designed with a primary orientation to the street, although  
6 the primary entrance may be located on other than the front façade. The front  
7 facade shall include a distinctive entrance. A sidewalk shall be constructed  
8 parallel to the front facade. The side yard visible to the public should be designed  
9 to present a pleasing appearance to the pedestrian.  
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**Compatible**

Front and front/side entries are compatible with village character. Small parking areas (2-7 cars) work well behind a building. Larger parking areas (8-40 cars) work better to the side of a building.

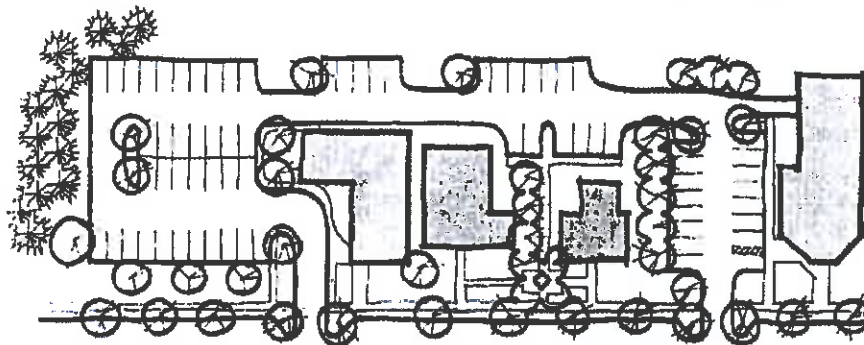


**Incompatible**

Rear entries incompatible with village character.

No public entry from sidewalk.

Parking in front setback not permitted and not compatible with village character.



**Compatible**

Shared parking and shared driveways are encouraged. Cross connection with rear parking is encouraged if walkway and building layout orients people to street side front entries.

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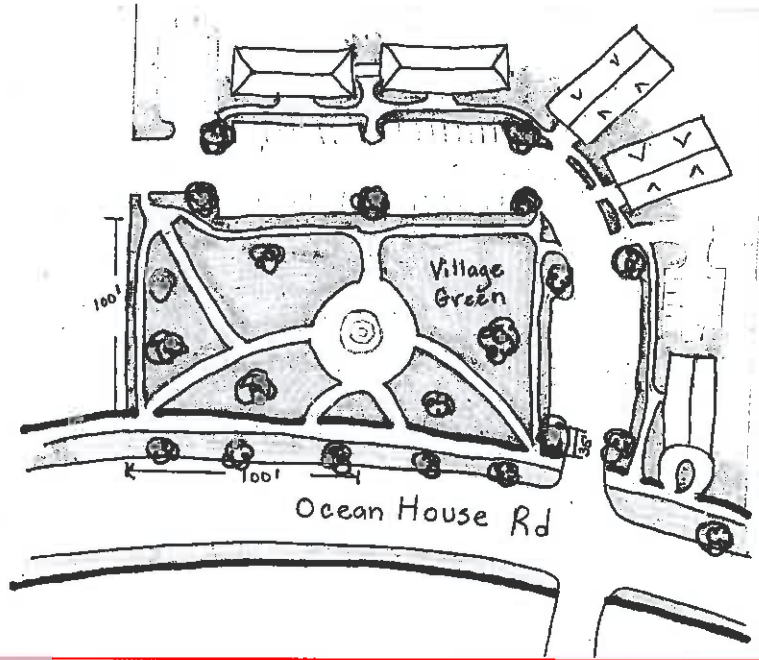
g. Landscaping and Site Development

(1) Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of the Town Center. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. Design elements of single family homes such as front steps and a front porch shall be incorporated whenever practicable. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the front yard landscape plan.

(4) Village green. This section shall apply when a village green, which has received conditional municipal approval from the Town Council, is included in a Site Plan Review application. One purpose of the Town Center District is to encourage a common meeting place. A village green is a prominent and highly visible park-like area where the public may gather, relax and contemplate both casually and as part of organized outdoor public events. A village green created in compliance with this section must have at least one hundred (100) continuous feet of road frontage on Ocean House Rd. a depth measured perpendicular from Ocean House Rd of at least one hundred (100) feet with a minimum width of one hundred (100) feet, and a minimum size of at least twenty-thousand (20,000) square feet. A village green shall be designed as a park, green or square, permanently preserved as groomed open space, and transferred in fee to the Town of Cape Elizabeth. A village green shall be developed with a defined edge framed with elements such as landscaping, roads, pedestrian walkways and distinctive buildings. A village green shall have a distinctive center and/or focal point. Pedestrian walkways shall be constructed that guide movement through and around a village green and connect a village green to the Town Center sidewalk network, adjacent buildings and properties. The requirements of subsection Sec. 19-6-4(D)(3)(d) Building and Parking Orientation, and Sec. 19-6-4(D)(3)(g)(2), Parking Lot, shall be applied in a manner that complements a village green.



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**ARTICLE IX. SITE PLAN REVIEW**

**SEC. 19-9-4. REVIEW PROCEDURES**

**C. Submission Requirements**

- 17. Conditional Municipal Approval.** If a village green development is proposed, the proposal shall include written evidence of conditional municipal approval by the Town Council of the proposed village green.
- 18. Waiver of information.** Where the Planning Board finds that due to special circumstances of a particular plan, the submission of any information listed in Sec. 19-9-4.C, Submission Requirements, is not required in the interest of public health, safety, and general welfare, or is inappropriate because of the nature of the proposed development, the Planning Board may waive such requirements, subject to appropriate conditions.

**ALTERNATIVE  
Village Green Zoning Ordinance Amendment**

**SEC. 19-1-3. DEFINITIONS**

Village Green Development: The development or redevelopment of a lot or lots located in the Town Center District which includes a village green designed to meet the standards of Sec. 19-6-4(D)(3)(g)(4) (Town Center Design Standards, Village Green).

**SEC. 19-6-4. TOWN CENTER DISTRICT (TC)**

**A. Purpose**

The purpose of this district is to encourage an identifiable Town Center that includes a village feeling, mixed retail and residential uses to serve residents, an environment inviting to pedestrians, a common meeting place, visual cohesiveness and enrichment and linkages to the Town's open space and nearby school campus. The Town Center District boundaries reflect the prevalence of public buildings and commercial uses and the historic compactness of development. The Town Center District requirements are tailored to the unique characteristics of the Cape Elizabeth Town Center.

**D. Standards**

**1. Performance Standards**

- f. No parking for uses other than school uses shall be allowed in the front yard setback.

**2. The following Space and Bulk Standards shall apply:**

<b>MINIMUM SETBACKS</b>	
<b>(1) School uses</b>	
(a) Side yard setback	50 ft. The side yard setback shall be increased to 100 ft. where it abuts a residential district.
(b) Rear yard setback	50 ft. The rear yard setback shall be increased to 100 ft. where it abuts a residential district.
(c) Front yard setback	75 ft.
<b>(2) Municipal uses</b>	
(a) Side yard setback	15 ft.

	The side yard setback shall be increased to 50 ft. where it abuts a residential district.
(b) Rear yard setback	15 ft. The rear yard setback shall be increased to 50 ft. where it abuts a residential district.
(c) Front yard setback	
Building with up to 5,000 sq. ft. of floor area	Minimum of 25 ft.-Maximum of 35 ft.
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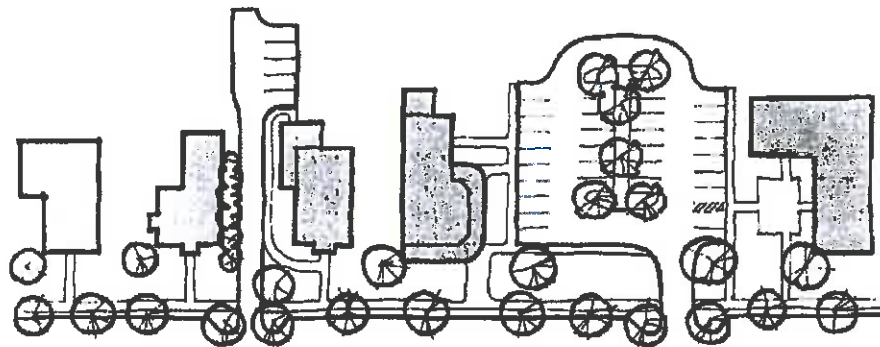
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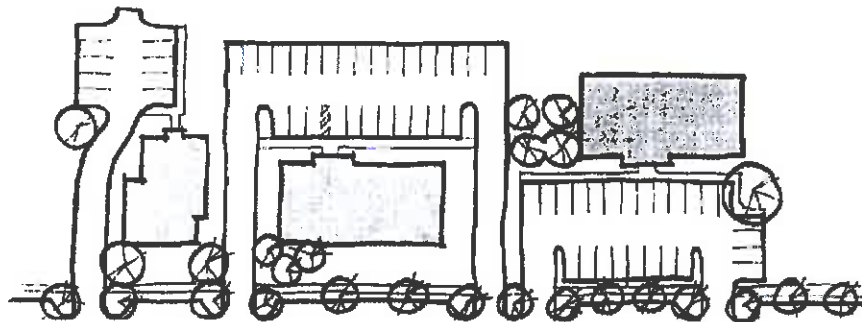
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- d. **Building and Parking Orientation.** The first impression of a building is from the side which faces the street. The front facade of the structure shall face the street. The structure shall be designed with a primary orientation to the street, although the primary entrance may be located on other than the front facade. The front facade shall include a distinctive entrance. A sidewalk shall be constructed parallel to the front facade. The side yard visible to the public should be designed to present a pleasing appearance to the pedestrian.



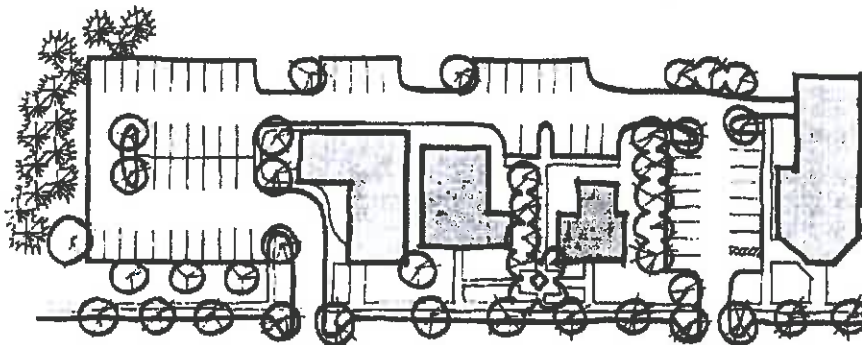
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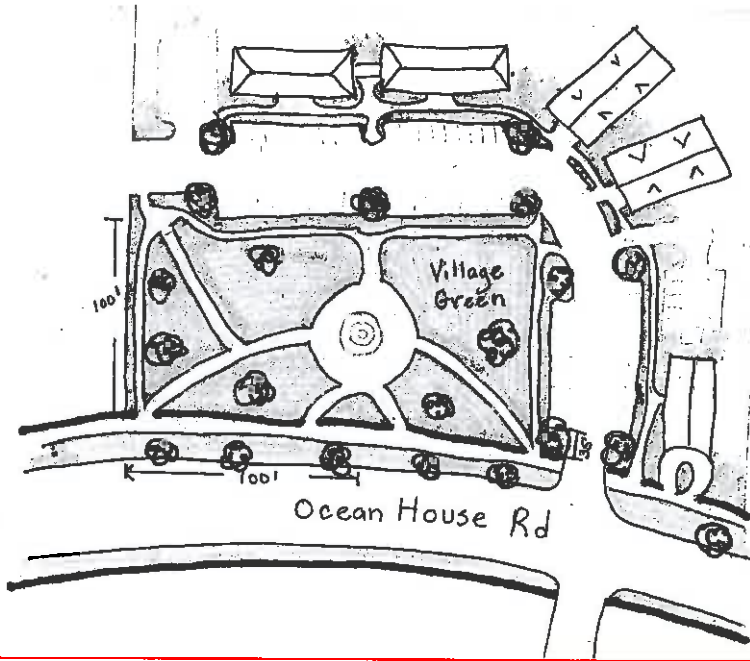
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1           g.     Landscaping and Site Development

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29           ~~minimum size of at least twenty-thousand (20,000) square feet. A village~~  
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35           ~~distinctive center and/or focal point. Pedestrian walkways shall be~~  
36           ~~constructed that guide movement through and around a village green and~~  
37           ~~connect a village green to the Town Center sidewalk network, adjacent~~  
38           ~~buildings and properties. The requirements of subsection Sec. 19-6-4~~  
39           ~~(D)(3)(d) Building and Parking Orientation, and Sec. 19-6-4(D)(3)(g)(2),~~  
40           ~~Parking Lot, shall be applied in a manner that complements a village~~  
41           ~~green.~~

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