

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: June 21, 2016
SUBJECT: 517 Ocean House, LLC v. Town of Cape Elizabeth, et. al.

Introduction

As a result of an Order dated May 10, 2016, the Cumberland Superior Court has remanded the above-referenced matter to the Planning Board for additional findings of fact for a site plan approved for 539-541 Ocean House Rd. The Court identified the following specific issues for additional findings:

1. “[W]hether the lighting is adequate for safety without excessive illumination and whether the light fixtures are shielded.”
2. “[W]hether the plantings between the road and the parking area will obscure the view of parked cars and parking areas.”
3. Whether the existing stormwater system on the site, with the modifications proposed by the applicant in its application and the revision of the plan as described in paragraph 4 of the Town’s Engineer’s letter, will meet the approval standard set forth in Section 19-9-5(D).

Suggested Procedure

- The Planning Board should summarize the agenda item for the benefit of the public.
- The Planning Board should allow an opportunity for public comment. Planning Board rules allow the Planning Board to limit public comment to a total of 15 minutes, with a maximum of 3 minutes per speaker.
- At the close of the public comment period, the Board may begin discussion of the remand.
- At the close of discussion, the Board has the option to make or not make additional findings, or to table the item to the item to the next meeting.

Materials and information provided to the Planning Board

Information provided to the Planning Board for this meeting include the plans and materials submitted by the applicants Nick Tammaro, Jen Feeney and Sheldon Goldman and available at the May 19th meeting, the Planning Board approval letter, correspondence from the town engineer and code enforcement officer and a transcript

of the portion of the May 19, 2015 meeting of this agenda item. The transcript is based on the video of the meeting, which is posted on the town website, and was prepared by town staff.

Information available to the Planning Board for each of the remanded items is summarized below:

Lighting

Written Submission: The applicant provided a description of existing lighting on the site (See page 3 of April 30, 2015 submission letter). Pictures of the existing buildings also show existing lighting fixtures.

Plan: The Existing Conditions plan shows 3 existing lights positioned to illuminate existing doorways on building #4. Building #1 has 2 wall mounted lights and building #2 has one light. There are also 2 existing signs adjacent to Ocean House Rd that are illuminated. No new lighting is shown on the site plan.

Landscaping

Written submission: The applicant's written submission introduces the project with the statement that "The site plan was designed to change the overall feel of the property from a completely paved, commercial looking frontage (from the old Agway), to a more appealing look with the removal of +/7,000 s.f. of pavement. This reduction includes the relocation of one entrance and replacing store-front parking with a 25' x30' patio, landscaping and grassed areas." (page 1)

On page 4, the applicant states:

This will be one of the highlights of this project. First, the relocation of one of the entrances will replace +/7,000 s.f. of pavement in front of the restaurant, to be replaced by landscaping; second, there will be the additions of street trees and a meandering walking path along Ocean House Road which links to pedestrian paths to the restaurant. See attached plans for details on the other buffering, landscaping, and fencing.

Plans: On the *existing conditions plan*, along the 300' of frontage on Ocean House Rd, over 1/2 of the frontage was paved or gravel. Two paved entrances both exceeding 40' width plus a gravel parking lot.

Along the eastern boundary line, which is also in the Business A District, are 10 mature pines. As observed at the site walk, the lower level branches of the white pines had died.

Along the western boundary line, the first 140± abuts the BA District and a residence. The remaining western boundary abuts the Residence A District. Along the residence, 8 existing alberta spruce are located over a shared water line easement. The applicant's property is paved to the property line. Along the Residence A District property line, the area is grass and 10 white pines previously planted by the applicant on his and the abutter's property.

Along the rear property line, the entire area is gravel and a stock yard for the landscaping business and the abutting property owner, who is also an applicant.

The site plan depicts how paved and impervious areas have been pulled back from the front yard and the demolition of structures close to the property line.

Two existing greenhouses located along the western property line and closest to the residential district will be demolished. Most of the area will then be loamed and seeded. A portion of one former greenhouse will be used to expand an existing gravel parking area and a 6' high stockade fence will be installed. A shed and shipping container will also be removed from the eastern boundary line.

The landscape plan shows proposed plantings, fencing, lawn areas, and includes a table of planting names, quantities and size at time of planting. One hundred feet of road frontage that is currently paved will be replaced with a lawn, flipping the frontage ratio to mostly green.

Along the eastern property line, the mature pines will be removed. A 6' high stockade fence and ornamental grasses will be installed along the entire property line.

Along the western property line, a 6' high stockade fence will wrap around the corner of the residential lot and 3 new trees will be planted in the area currently paved. Along the Residence A boundary, three trees will be added to the existing white pines. Along this property line, the closest building will be 40' away from the property line and the area will be loamed and seeded, in addition to the new trees.

Along the frontage along Ocean House Rd, a pedestrian path will be installed in the right-of-way. Between the path and the road, a grassed esplanade will be planted and include 4 new maple trees. New planting beds will be installed around the existing signs. A rosa rugosa border will wrap around the proposed patio.

The parking areas include half barrels with ornamental grasses.

Stormwater

Written submission: The applicant's written submission, dated April 30, 2015, includes the following information:

NCS conducted a brief stormwater analysis for the proposed site improvements (attached). This analysis is based on an onsite topographical survey and analyzing the current and proposed drainage patterns. In summary, there are no changes in drainage patterns, no proposed increases in building footprints and minimal changes in the parking layout. The proposed site improvements decrease the pavement by +/4,500 s.f. and remove +/2,800 s.f. of building. The proposal results in a net reduction of 12% or .14 acres of impervious surface area. As a result of this decrease in runoff surfaces, NCS respectfully requests a waiver of a pre-and post- development stormwater study (Zoning section 19-9-5.D).

Plans: The *existing conditions plan* shows existing 1' topographic contours that are used to show the flow of stormwater. The existing conditions plan also shows existing building footprints, parking areas labeled with a paved surface, crushed stone surface and gravel surface, and existing vegetation including grass lawn area, all of which is used to calculate the extent of impervious surface. The area along the road frontage is shown and labeled drainage ditch and includes direction of flow arrows. Existing culverts along the road frontage are shown and labeled with size of culvert and invert elevations (indicated direction of flow) included.

The *site plan* shows the location of proposed building footprints, extent of paved surfaces, gravel surfaces and grass lawn areas. The site plan shows the removal of 2 existing greenhouse structures, a shed and a shipping container. The plan shows that the area occupied by these structures will be either loamed and seeded as lawn or maintained as impervious surface. In addition, an existing paved area in front of building #4 will be removed and replaced with a patio and loamed and seeded. These changes will cause a reduction in impervious area that will allow stormwater to be absorbed on-site where it previously drained off-site.

The *construction details plan* includes stormwater construction details, such as a stormwater trench section (where the existing drainage ditch located in the right-of-way in front of the property will be enclosed with a pipe to facilitate construction of a pedestrian path and landscaping) and concrete catch basin detail.

Town Engineer's comments: The Town Engineer's letter dated May 12, 2015 provided the Planning Board with specific recommendations for revisions to the plans.

Paragraph 2 supports a finding of completeness.

Paragraph 3 supports a waiver from a formal stormwater plan.

Paragraph 4 recommends design revisions to the proposed enclosure of the drainage ditch.

Paragraph 5 does not address stormwater.

Paragraph 6 recommends design revisions for construction of the drainage ditch enclosure.

Planner's comments concerning review standards of remanded items

Sec. 19-9-5. Approval Standards

M. Exterior Lighting

The existing conditions plan shows site lighting and features. The Board may consider whether the lighting fixtures and the feature of the property may function to shield lighting beyond the property line. More detail on lighting fixtures is included in the written materials. Pictures of the existing buildings also show the lighting. One of the applicants currently operates a landscaping business on the property and the application states: "The applicants feel this current lighting scheme is adequate for the proposed uses and has served this site for many years."

Building #1 has a halogen light located adjacent to the office door. The Board may consider whether this light is shielded from the east property line by the building. According to the plans, it is 75' away from the north property line, which abuts the stockyard area owned by one of the applicants. It is 200' from the west property line and shielded by an existing row of white pine trees. It is 160' from the south property line, which is the common line with Route 77.

A second light, a "typical dual lamp flood light" is mounted on building #1 and illuminates the existing gravel parking area. This light is 70' from the east property line. The Board may consider whether it will be shielded by a proposed stockade fence. It is 100' from the north property line. The Board may consider whether it is shielded by the existing building. It is 220' from the west property line. The Board may consider whether it is shielded by an existing row of white pines. It is 95' from the south property line, which is the common line with Route 77. The Board may consider whether it will be shielded by the red maple trees to be planted in the esplanade located between Route 77 and the new path.

Building #2 has a wall mounted light. This light is 115' from the east property line. The Board may consider whether it is shielded by existing buildings and a proposed stockade fence. It is 90' from the north property line. The Board may consider whether it is shielded by an existing building. It is 165' from the west property line. The Board may

consider whether it is shielded by an existing row of white pines. It is 140' from the south property line, which is the common line with Route 77. The Board may consider whether it will be shielded by an existing building and proposed red maple trees to be planted in the esplanade located between Route 77 and the new path.

Building #4 has 3 "typical dual lamp flood lights." These lights, which also appear on the pictures submitted by the applicant, are angled downward. The light closest to the back of the building is 140' from the east property line. The Board may consider whether it is shielded by a proposed stockade fence. It is 165' from the north property line. The Board may consider whether it is shielded by existing building #2. It is 150' from the west property line. The Board may consider whether it is shielded by existing building #4. It is 90' from the south property line, which is the common line with Route 77. The Board may consider whether it will be shielded by proposed red maple trees to be planted in the esplanade located between Route 77 and the new path.

The middle building #4 light is 185' from the east property line. The Board may consider whether it is shielded by a proposed stockade fence. It is 220' from the north property line. The Board may consider whether it is shielded by buildings 2, 3, and 4. It is 120' from the west property line. The Board may consider whether it is shielded by building 4. It is 50' from the south property line, which is the common line with Route 77. The Board may consider whether it will be shielded by proposed red maple trees to be planted in the esplanade located between Route 77 and the new path.

The light on the front of building #4 is 210' from the east property line. The Board may consider whether it is shielded by a proposed stockade fence. It is 240' from the north property line. The Board may consider whether it is shielded by building 4. It is 50' from the west property line. The light is angled downward to provide lighting to the proposed patio. The Board may consider whether it will be shielded by a rosa rugosa hedge, sign planter and red maples.

N. Landscaping and Buffering

The existing pavement on the western side of the site fronting on Route 77 will be removed. The area will be loamed and seeded and the area adjacent to the new patio will be framed with a rosa rugosa hedge. The main entrance will be realigned and the parking adjacent to the entrance will be squared up. The existing grassed area between the parking and Route 77 will be planted with red maple trees and a path will be installed. The parking lot toward the rear will be framed with granite boulders. Half barrels with ornamental grasses will also be added to define the edges of the parking areas. An existing planter with sign will also remain.

D. Stormwater Management

The total impervious area of the site will decrease, with an expected decrease in stormwater runoff. The total area of impervious surface, however, is more than 10,000 sq. ft., triggering review under Chapter 18, Stormwater Control Ordinance. Due to the decrease in impervious surface, the applicant has not provided pre- and post-stormwater calculations. Under Sec. 18-2-7 of the Stormwater Control Ordinance, the Planning Board may grant certain waivers as follows:

Sec. 18-2-7. Design Adjustment. The Planning Board may waive any filing or design requirements unnecessary for full consideration of any proposed Storm Water Runoff System, such as data relating to site features and runoff rates downstream of the entrance to a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any requirements of this Ordinance where it finds from the basic site data furnished under Section 18-2-6 (a) that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance.

The Town Engineer supports the applicant's proposal for stormwater.

Motion for the Board to Consider

BE IT ORDERED that, based on the plans, materials, and other information submitted by the applicant, advice provided by staff including the town planner, town engineer, and code enforcement officer, and the site visit conducted on April 18, 2015, the Cape Elizabeth Planning Board makes the following findings in response to an Order from the Superior Court and remand in 517 Ocean House LLC, v. Town of Cape Elizabeth, et. al:

1. The site lighting (is/is not) adequate for safety. The evidence supporting that finding includes:

2. There (will/will not) be excessive illumination based on the fixtures shown in the application, fixtures observed during the site walk, the distance of fixtures from property lines, and the downward angling of fixtures closest to property lines. The evidence supporting that finding includes:

3. Lighting (will/will not) be adequately shielded by existing buildings, existing and proposed fencing and existing and proposed plantings. The evidence supporting that finding includes:

4. The landscaping around and within parking lots, including the lawn areas, maple trees, half barrels with ornamental grasses, and sign planters (do/do not) soften the hard surface of parking areas. The evidence supporting that finding includes:

5. A landscaped area (is/is not) located between the road and the parking lot and includes plantings that sufficiently obscure the view of parked cars and parking lots. The evidence supporting that finding includes:

6. The Planning Board (waives/does not waive), as provided for in Sec. 18-2-7, the filing of pre and post stormwater calculations and any other information not provided by the applicant. The evidence supporting that finding includes:

7. The Planning Board finds that the basic site data provided (is/is not) adequate to make a determination of compliance with Sec. 19-9-5 (D), Stormwater Management. The evidence supporting that finding includes:

8. The Planning Board (does/does not) reduce or waive any requirements of this Ordinance because the basic site data furnished under Section 18-2-6 (a) that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance. The evidence supporting that finding includes:

9. Based on the information provided on the existing conditions of the site and the reduction in impervious surface, adequate provisions (will/will not) be made for the collection and disposal of stormwater. The evidence supporting that finding includes:

10. The conversion of paved and other impervious areas to loamed and seeded lawn area (will/will not) result in retaining stormwater using natural features. The evidence supporting that finding includes:

11. The reduction in impervious area (will/will not) detain and retain water on the site at a rate below pre-development of the proposed site plan. The evidence supporting that finding includes:

12. On and off-site downstream channels (will/will not) have sufficient capacity to carry flow without adverse effects. The evidence supporting that finding includes:

13. The closure of the existing drainage way adjacent to the new path (is/is not) specifically approved. The evidence supporting that finding includes:

14. The stormwater design (will/will not) damage streets, adjacent properties, downstream properties, soils or vegetation. The evidence supporting that finding includes:

15. The stormwater design (does/does not) impede upstream stormwater flows. The evidence supporting that finding includes:

16. The biological and chemical properties of the receiving waters (will/will not) be degraded by the stormwater runoff from the development site. The evidence supporting that finding includes:
