

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: July 19, 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 Planning Board discussed the findings at the June 21st meeting. The discussion has been formatted into draft findings for the board to consider this evening.

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 next meeting. *Each* finding should be considered by making a motion, a second, any discussion (which can include any changes to the proposed finding, either by friendly amendment, in which the motion maker and second agree to the amendment, or a vote on the amendment) and then a vote.

Motion for the Board to Consider

BE IT ORDERED that, based on the plans and materials 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 facts supporting this finding include the plans, which show 6 different

locations where lighting exists. The location of the fixtures on the plan, combined with the Planning Board's knowledge of the site gained from the site walk, indicated lighting was adequate. At the site walk, it was observed that the site is flat and there was existing lighting for illumination during the hours of darkness. Information was also obtained at the May 19, 2015 meeting from the applicant in response to questions from Planning Board members Sahrbeck and Volent. A Planning Board member asked Mr. Tamaro about lighting and he stated there was sufficient lighting. A light is not located in the back parking lot, but this lot is not open to the public. It is to be used by the employees of the landscaping business and the plans show 2 gates that limit the public's access to the back parking lot. The Planning Board also relies on comments from the Town Engineer. The Town Engineer did not raise any issues regarding lighting, which suggested that the lighting was adequate.

There should now be a second to this finding, then discussion, then a vote.

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 facts supporting this finding include review of the plans submitted and observations from the site walk showing buffers, such as trees and shrubs, at the property lines. At the site walk, the Planning Board members looked carefully at the existing lighting and no new lighting was proposed. On the back property line there will be no lighting and no public parking. The Board asked and was informed that there had been no complaints made regarding excessive light from the existing fixtures. The Planning Board discussed a photometric study and decided to waive that submission requirement.

Second this finding, discussion, vote

3. Lighting (will/will not) be adequately shielded by existing buildings, existing and proposed fencing and existing and proposed plantings.

The facts supporting this finding include review of the plans submitted and observations from the site walk showing buffers, such as trees and shrubs, at the property lines. The plans show the location of trees, fencing and buildings which provide shielding of existing lighting. The Board asked and was informed that there had been no complaints made regarding excessive light from the existing fixtures.

Second, discussion, vote

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 facts supporting this finding include review of the plans submitted and observations at the site walk. Trees will be planted and granite boulders will also be placed. The combination of half barrels with plantings, 3 maple trees and perennials will soften the view. The replacement of asphalt with lawn area will also soften the view. Cars will be visible, but there will be enough buffer to soften the view of parking areas. The Planning Board noted you can see cars all the parking lots in town, including the recently approved Rudy's project, which is in the same zoning district as this project and subject to the same requirements.

Second, discussion, vote

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 facts supporting this finding include review of the plans submitted and observations at the site walk. The combination of half barrels with plantings, 3 maple trees and perennials, and replacement of asphalt with lawn area will soften the view. An esplanade planted with street trees along the frontage of the property, combined with plantings along the edge of the property, draws focus away from the parking lot and therefore obscures it. The most visible parking lot, which is stark, will be removed and replaced with grass. Cars will be visible, but there will be enough buffer to soften the view of parking areas. The Planning Board noted you can see cars all the parking lots in town, including the recently approved Rudy's project, which is in the same zoning district as this project and subject to the same requirements. The intent is not to hide the parking lot, but to soften it and blend it into the landscape and the proposed plan softens the starkness of the existing conditions.

Continue with each finding a second, discussion, vote

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 facts supporting this finding include the letter from Northeast Civil Solutions submitted by the applicant, specifically page four which describes the reduction in impervious area and the existing stormwater flow. This letter demonstrates that a stormwater analysis was done by the applicant and that

there is a reduction in impervious surface. Because of the decrease in impervious surface, the calculation of pre-development (existing conditions) and post-development (proposed plan) stormwater volume calculations for the 2 and 25 year storm would be "pointless." A large area of asphalt was removed and replaced with grass. Buildings were also removed. There was no existing stormwater problem identified. The Town Engineer supported the waiver request and the Planning Board finds there was sufficient basis to support the waiver.

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 facts supporting this finding include the plans and the letter from Northeast Civil Solutions submitted by the applicant, specifically page four which describes the reduction in impervious area and the existing stormwater flow. This letter demonstrates that a stormwater analysis was done by the applicant and that there is a reduction in impervious surface. The Town Engineer's letter, specifically paragraph 4, agrees that adequate data was submitted and the Planning Board relies on the Town Engineer's expertise.

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 facts supporting this finding include the applicant's proposal to remove asphalt and buildings and not increase the existing building footprint, decreasing the impervious surface and resulting in less stormwater discharge from the site. The Town Engineer's letter talks about the flow of water on the property, and changes to the piping, demonstrating that he had clearly has considered downstream impacts and he did not need or ask for any additional data to be provided in order to deal with offsite impacts. We have all the information we need as required by Site Plan Review, as supplemented by the Storm water Ordinance, along with the response of the Town Engineer Steve Harding and the response by Northeast Civil Solutions.

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 facts supporting this finding include the applicant's submitted plans,

including details of stormwater structures to be added. The Planning Board also relies on the applicant's proposal to significantly reduce the impervious surface on the site and the Town Engineer's recommendations.

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 facts supporting this finding include the plans and materials submitted by the applicant depicting existing conditions and proposed improvements that reduce the existing impervious surface and the Town Engineer's recommendations. The Planning Board specifically notes the additional front yard planting replacing an existing parking area.

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 facts supporting this finding include the plans and materials depicting a significant decrease in impervious surface. Because there is less impervious, there will be less runoff from the site. The newly landscaped areas will capture and retain runoff that currently is leaving the site after hitting pavement. The Planning Board also relies on the recommendations of the Town Engineer.

12. On and off-site downstream channels (will/will not) have sufficient capacity to carry flow without adverse effects.

The facts supporting this finding include the plans and materials depicting a significant decrease in impervious surface. Because there is less impervious, there will be less runoff from the site. The newly landscaped areas will capture and retain runoff that currently is leaving the site after hitting pavement. The Planning Board also relies on the recommendations of the Town Engineer.

13. The closure of the existing drainage way adjacent to the new path (is/is not) specifically approved.

The facts supporting this finding include the plans submitted by the applicant and the proximity of the open channel to the road and the new path. The Town Engineer made specific recommendations regarding drainage in proximity to the new path, and supported closing the open channel once the pedestrian path is added.

14. The stormwater design (will/will not) damage streets, adjacent properties, downstream properties, soils or vegetation.

The facts supporting this finding include the plans and materials submitted by the applicant and the recommendations of the Town Engineer.

15. The stormwater design (does/ does not) impede upstream stormwater flows.

The facts supporting this finding include the plans and materials submitted by the applicant and the recommendations of the Town Engineer. The decrease in impervious surface will enhance percolation of stormwater on the property rather than a potential back up onto upstream properties.

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

The facts supporting this finding include the plans and materials submitted by the applicant that replace asphalt with lawn, resulting in increased percolation and treatment by vegetation of water that does discharge from the site.