

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: June 20, 2017  
SUBJECT: 27 Fowler Rd BB District Zoning Amendments

### Introduction

The Cape Elizabeth Town Council has referred to the Planning Board a request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B. Potential text changes to the Business B Zoning District are also under consideration to permit a landscaping contractor. The Planning Board will hold a public hearing in compliance with Sec. 19-10-3, Amendments [to the Zoning Map and Zoning Ordinance.]

### Procedure

- At the May 2, 2017 workshop, the Planning Board decide to move this item to a public hearing in order to receive public comment. A public hearing has been scheduled for this evening.
- The Planning Board may want to describe the proposed map amendment and draft zoning ordinance text changes.
- The Board should open the public hearing.
- At the close of the public hearing, the board may discuss the amendments.
- At the close of discussion, the Board may table the item to a workshop for further discussion (this was the intent expressed at the May 2nd workshop) or may consider a vote to recommend the zoning change to the Town Council.

### Discussion

The Zoning Map change and draft text changes are attached. The text changes have been revised to reduce the minimum lot size for a landscape contractor from 1 acre (43,560 sq. ft.) to 40,000 sq. ft. The lot at 27 Fowler Rd is 43,420 sq. ft.

The Planning Board stated its intent to hold a public hearing to hear comment on the rezoning request, and also allow comment on the draft text amendments. The public hearing notice is attached.

### Motion for the Board to Consider

A. Motion to Table to Workshop

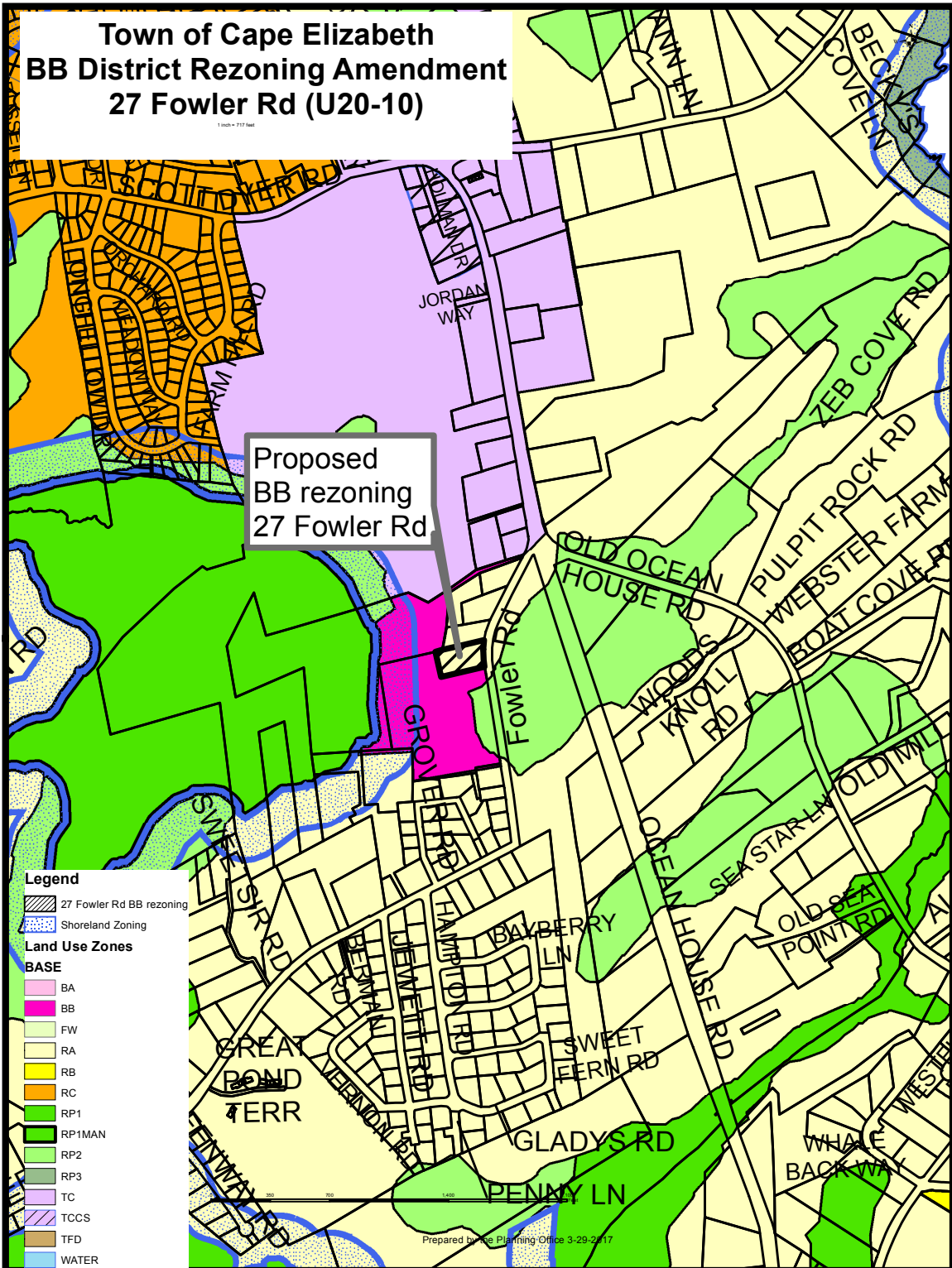
BE IT ORDERED that, based on the map and materials submitted, and the facts presented, the request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor be tabled to the August 1, 2017 workshop.

B. Motion to recommend to Town Council

BE IT ORDERED that, based on the map and materials submitted, and the facts presented, the request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor (be recommended / not be recommended) to the Town Council for consideration.

# Town of Cape Elizabeth BB District Rezoning Amendment 27 Fowler Rd (U20-10)

1 inch = 717 feet



Prepared by the Planning Office 3-29-2017

**BB Zoning District Amendments  
BB District Map change**

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

**Earthwork:** One or more commercial operations involved in preparing or moving earth for use in construction, including foundations, buildings, roads, utilities and landscaping. (Effective February 12, 2005)

**Earthwork Contractor:** A business that primarily and regularly conducts Earthwork and performs one or more of the following activities in the course of and related to conducting its Earthwork:

1. Processing, storing and stock piling minerals, wood, compost and other similar materials for resale (processing may include screening, crushing, chipping, recycling or blending multiple products);
2. Storing prefabricated materials associated with construction;
3. Parking, maintaining and fueling construction vehicles and equipment (fuel storage shall be for the exclusive use of the business and not for resale);
4. Loading, unloading and transporting product used in conducting Earthwork;
5. Transporting and storing snow; and
6. Administrative activities. (Effective February 12, 2005)

**Earthwork Contractor's Yard:** The portion of a lot used by an Earthwork Contractor for conducting its business activities outside or within structures erected in accordance with Town Ordinances. An Earthwork Contractor shall be deemed to use any portion of a lot upon which the Earthwork Contractor conducts any of the activities enumerated in items number 1 through 6 of the above definition of Earthwork Contractor, other than transporting materials across designated driveways. (Effective February 12, 2005)

**Landscape Contractor:** A business that primarily and regularly conducts off-site yard maintenance and performs one or more of the following activities in the course of and related to conducting landscaping:

1. Yard maintenance activities such as mowing, trimming, removal, planting, fertilizing, application of pesticides and other treatments for plants, trees and grass; installation and maintenance of hardscape; and incidental maintenance of outdoor areas [ Note: such as cleaning fountains, pool basins, gutters, drainage ways];

2. Storing and stock piling minerals, wood, compost, plantings, fertilizers, pesticides and similar materials [Note: such as winterization burlap?] limited to use in yard maintenance and snow removal and not for resale.
3. Parking and maintaining landscaping contractor vehicles, equipment and owner/employee vehicles. No landscape contractor vehicle shall exceed a single axle and 26,000 lbs gross vehicle weight (gvw). Deliveries to the Landscape Contractor's yard by vehicles that exceed a single axle and/or more than 26,000 lbs gvw shall be limited to one (1) per week.
4. Snow removal services, excluding on-site storage of snow transported from off-site;
5. Welding to maintain landscape contractor equipment and incidental welding for landscape contractor customers;
6. Administrative activities.

**Landscape Contractor's Yard:** The portion of a lot used by a Landscape Contractor for conducting its business activities outside or within structures erected in accordance with Town Ordinances. The area used for outside storage shall be limited to no more than fifty percent (50%) of the total lot area. All landscape contractor vehicles, equipment, and storing and stockpiling of materials shall be included in the outside storage area and shall be screened with a six (6) foot high solid wood fence or a landscaped buffer or a combination of both. No portion of the outside storage area shall be included in the front yard. [Note: Do you want to limit the hours of operation]A Landscape Contractor shall be deemed to use any portion of a lot upon which the Landscape Contractor conducts any of the activities enumerated in items number 1 through 6 of the above definition of Landscape Contractor.

## **SEC. 19-6-6. BUSINESS DISTRICT B (BB)**

### **A. Purpose**

The purpose of the Business District B is to recognize locations where moderate intensity, non-retail commercial uses have developed in close proximity to residential areas. (Effective February 12, 2005)

### **B. Permitted Uses**

The following uses are permitted in the Business District B:

#### **1. *The following resource-related uses:***

- a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9

- b. Agriculture
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting
- f. Horticulture, including nurseries, greenhouses, and commercial sale of items produced in nurseries and greenhouses; accessory retail sales shall be permitted

**2. *The following residential uses:***

- a. Single family detached dwelling existing as of December 8, 1993
- b. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

**3. *The following nonresidential uses:***

- a. Fish and farm market (Effective June 10, 2010)
- b. Athletic or recreational facility, riding stable, or corral
- c. Earthwork Contractor's Yard (Effective February 12, 2005)
- d. Wind energy system (Effective October 8, 2008)
- e. Day Camp (Effective July 10, 2013)
- e.f. Landscape Contractor's Yard

**4. *The following accessory uses:***

- a. Home occupation
- b. Home business
- c. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- d. Amateur or governmental wireless telecommunication facility antenna (Effective April 15, 2000)
- e. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
- f. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. (Effective April 15, 2000)
- g. Agriculture related use (Effective June 10, 2010)

**C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Applicability:

**1. The following nonresidential uses:**

- a. Hotel or motel
- b. Restaurant

**D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

**E. Standards**

**1. Performance Standards**

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Business B District include:  
  - Sec. 19-7-6 Eldercare Facility Standards

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

<b>MINIMUM LOT AREA</b>	
<b><i>(1) Nonresidential uses, containing no dwelling unit other than an accessory residence for a caretaker or attendant</i></b>	None, provided that if the lot is not sewered and requires the installation of sanitary plumbing, it shall conform to the regulations of the State Subsurface Wastewater Disposal Rules concerning waste disposal
<b><i>(2) Eldercare facilities</i></b>	5 acres
<b><i>(3) Single family dwelling unit</i></b>	80,000 sq. ft.
<b><i>(4) Earthwork Contractor</i></b>	20 acres (Effective February 12, 2005)
<b><i><u>(5) Landscape Contractor</u></i></b>	<b><u>40,000 sq. ft.</u></b>
<b><i><del>(65)</del> Wind energy systems</i></b>	20,000 sq. ft. (Effective October 8, 2008)
<b>MAXIMUM NO. OF DWELLING UNITS PER AREA</b>	
<b><i>(1) In eldercare facilities</i></b>	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever

	is less
<b>MINIMUM STREET FRONTAGE</b>	
<b>(1) Earthwork Contractor</b>	100' (Effective February 12, 2005)
<b>(2) All other uses</b>	None (Effective August 11, 1999)
<b>MINIMUM SETBACKS</b>	
<b>(1) All uses unless otherwise specified</b>	
(a) Side yard setback	25 ft.; 50 ft. if the lot abuts a Residence District
(b) Rear yard setback	25 ft.; 50 ft. if the lot abuts a Residence District
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Buildings with footprints of up to 2,000 sq. ft.	50 ft.
- Buildings with footprints of more than 2,000 sq. ft.	50 ft. (Effective January 13, 2005)
- Parking spaces and parking aisles	35 ft.
<b>(2) Nonresidential use abutting a Residence District</b>	A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A, Buffering of Nonresidential Uses.
<b>(3) Eldercare facilities</b>	50 ft. from property line
<b>(4) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</b>	
(a) Side yard setback	10 ft.



(b) Rear yard setback	5 ft.
<b><i>(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</i></b>	
(a) Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
<b><i>(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</i></b>	
(a) Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(b) Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
<b><i>(7) Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b><i>(8) Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b><i>(9) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i></b>	
(a) Side yard setback	12.5 ft.

(b) Rear yard setback	12.5 ft. (Effective December 10, 2003)
<b><i>(10) Earthwork Contractor's Yard</i></b>	
(a) Road setback	40'
(b) Setback from all other property lines	70' (Effective February 12, 2005)
<b><i><u>(11) Landscape Contractor's Yard</u></i></b>	
<b><i><u>(a) Setback from all property lines</u></i></b>	<u>25'</u> <b><i>No outside storage shall be allowed in the front yard.</i></b>
<b><i>(12) Wind energy system</i></b>	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
<b><i>(1) Antenna attached to a structure</i></b>	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
<b><i>(2) Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
<b><i>(3) Freestanding amateur or governmental wireless telecommunication tower</i></b>	50' measured from average original grade (Effective April 15, 2000)
<b>MAXIMUM WIND ENERGY SYSTEM HEIGHT</b> (Effective October 8, 2008)	
<b><i>(1) All uses to center of turbine</i></b>	100'
<b>MAXIMUM BUILDING FOOTPRINT</b>	
<b><i>(1) All uses</i></b>	None (Effective August 11, 1999)
<b>MAXIMUM BUILDING HEIGHT</b>	
<b><i>(1) All uses</i></b>	35 ft.

## **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Nonresidential uses listed in Sec. 19-6-6.C.1
2. Eldercare facilities
3. Earthwork Contractor's Yard
4. Landscape Contractor's Yard
- 3-5.

Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

June 9, 2017

**PUBLIC HEARING NOTICE  
CAPE ELIZABETH PLANNING BOARD  
To Interested Residents and Property Owners  
in the vicinity of 27 Fowler Rd**

The Town of Cape Elizabeth Planning Board will hold a public hearing on **Tuesday, June 20, 2017, starting at approximately 7:00 p.m.** in the Town Hall, 320 Ocean House Rd to hear public comment on the following questions:

1. Rezoning. The owners of the property located at 27 Fowler Rd have requested that the property be removed from the Residence A (RA) Zoning District and placed in the Business B (BB) Zoning District. **Do you have comments about moving this property from a residential district into a commercial district?** [Please note that 27 Fowler Rd directly abuts a BB District, so this is not considered "spot" zoning.]
  
2. Amendments. If the property is moved into the BB Zoning District, changes to the BB Zoning District regulations are proposed to permit a landscape contractor as a permitted use and to regulate that use. Proposed changes under consideration include establishing a minimum lot size of 40,000 sq. ft., restricting the size of contractor vehicles to no more than 26,000 lbs gross vehicle weight, including snow removal services and welding as part of the landscape contractor use, limiting outside storage to no more than 50% of the lot area, prohibiting outside storage in the front yard and requiring screening of the outside storage area with a 6' high wood fence and/or landscaped buffer. (See the town website, [www.capeelizabeth.com](http://www.capeelizabeth.com), for the complete text of the amendments). **Do you have comments about the draft text amendments?**

If you have any questions, please contact the Town Planner at 799-0115 or [maureen.omeara@capeelizabeth.org](mailto:maureen.omeara@capeelizabeth.org). The Planning Board encourages the public to provide written comments, which should be sent care of the Town Planner. Please visit the Town website, [www.capeelizabeth.org](http://www.capeelizabeth.org) to review the meeting agenda and/or sign up to receive an alert when an agenda has been posted.