

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: August 15, 2017
SUBJECT: 517 Ocean House Rd LLC v. Town of Cape Elizabeth Court Remand

Introduction

The Superior Court has remanded back to the Cape Elizabeth Planning Board the appeal of 517 Ocean House Rd LLC v. Town of Cape Elizabeth for more findings. The Planning Board discussed additional findings in response to the remanded items at the July 18th meeting. The Board tabled the matter so that some of the discussion that occurred on July 18 could be reduced to writing to aid the Board in formulating a motion.

Procedure

- The Planning Board permitted public comment at the July 18 meeting – therefore, on advice of the town attorney, the Board is not required to allow any further public comment, although the Board is free to do so.
- The Board should then discuss the court order and what it needs to do to respond to that order. The Superior Court expressly authorized the Board to take additional evidence, if it deems such additional evidence necessary. If the Board decides to take additional evidence, it should allow an additional period for public comment after the new evidence is received.
- Otherwise, any additional findings must be based on the plans and materials approved by the Planning Board on May 19, 2015, as well as the facts available to the Planning Board at the time of approval. Those additional facts would include, for example, the information obtained through a site walk that was conducted on April 18, 2015.
- The Superior Court also expressly authorized the Board to impose additional conditions. Therefore, to the extent the Board believes that the most appropriate way to address the Superior Court's concerns on remand is through additional conditions, it should articulate those.
- At the close of discussion, the Planning Board may vote to respond to the remand with a motion, or may table the discussion to the September meeting.
- Town Attorney John Wall will attend the meeting and be available to provide advice.

Discussion

The Superior Court has remanded three items for further findings. The Planning Board discussed each item at the July 18th meeting, and referenced information in the applicant submission, the regular Planning Board meeting and the site walk. The Planning Board discussion has been formatted into draft findings for the Planning Board's consideration, located below in the Motions section of this memo. The draft findings are offered for the Planning Board's consideration, and can be omitted, revised and/or expanded as the board sees fit.

The Planning Board also expressed at the July 18th meeting its desire for the Planning Board's role in the appeals process to end. The Superior Court has offered to the Planning Board the opportunity to add conditions of approval, in addition to expanded findings. To address the Superior Court's concerns as fully as possible, the Planning Board might want to consider supplementing findings with one or more conditions of approval. Below are draft conditions of approval for the Planning Board's consideration. These draft conditions are offered for discussion purposes only, and the Board is free to accept, reject, or amend them as the Board deems appropriate.

Court remanded finding: 1. Whether the lighting is adequate for safety in the parking area behind Building #3 in nighttime hours, if such use is contemplated;

Potential condition of approval: That there be no use by anyone of the parking area behind Building #3 in nighttime hours, which shall be defined as dusk to dawn.

This potential condition is suggested to reinforce the Planning Board's understanding, based on the proposed uses by the applicant and understanding at the site walk, that the rear parking area would be reserved only for use for a landscaping business that operates during daylight hours.

Court remanded finding: 2. Whether the light fixtures are sufficiently shielded so that they do not unnecessarily light the night sky;

Potential condition of approval: That all the existing lighting, as shown on the site plan and shown on a picture of the east side of building #4 (included in the application) continue to be angled downward to eliminate any unnecessary illumination of the night sky.

This potential condition is suggested to reinforce the Planning Board's understanding, based on observations at the site walk and depictions in the application materials, that all the existing lighting is angled downward.

Court remanded finding: 3. Whether the plantings between the sidewalk and the parking area will obscure the view of parking cars and parking areas from the sidewalk.

Potential condition of approval: That additional buffering be added to the plan to further obscure the parking areas from the sidewalk as follows: (1) a double staggered row of 24 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the east side of the 11 space parking lot; (2) a double staggered row of 16 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the east side of the 6 space parking lot; (3) a double staggered row of 8 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the south side of the 6 space parking lot; and (4) a double staggered row of 8 dwarf bottlebush (*Fothergilla gardenii*, 2' - 2 1/2' at time of planting) to be planted adjacent and along the striped area adjacent to the 4 space parking area, for a total of 56 dwarf bottlebush.

This potential condition of approval duplicates the buffering plan for a new parking lot that was constructed in the Town Center District. It would create a double staggered row of shrubs that frame the parking lots at 541 Ocean House Rd. It would create the most robust parking lot buffering in the Business A District. (See attached illustration of 541 Ocean House Rd with additional buffering)

Motions for the Board to Consider

A. Motion to Make additional findings

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, dated April 27, 2017, in 517 Ocean House Rd LLC v. Town of Cape Elizabeth and to supplement the findings articulated in the Board at its meeting on July 19, 2016:

1. The parking area behind Building #3 will not be used during nighttime hours, and therefore lighting adequate to promote safety in the nighttime is not required. As shown on the plans, the back parking lot is proposed to be gated to prohibit use by the public and will be used only by the landscaping business, which according to the applicant has normal business hours of dawn to dusk.

Insert additional condition of approval if desired.

2. The light fixtures on the buildings located at 541 Ocean House Rd are shielded or angled downward so that they do not unnecessarily light the night sky. During the site walk, Planning Board members observed that existing lighting was pointing down and the plans show that no new lighting is proposed. The materials submitted by the applicant include photos of the existing buildings with existing lighting pointing down. None of the existing lights are high intensity and therefore would not unnecessarily light the night sky. (See picture included in application showing lighting pointing down)

Insert additional condition of approval if desired.

3. The plantings between the sidewalk and the parking area will obscure the view of parked cars and parking areas from the sidewalk. The Planning Board applies the requirement to "obscure" to mean "make indistinct." The Planning Board noted that the expanse of parking and paved areas that need to be obscured is reduced by the amount of paving the applicant is removing and replacing with grass in front of building #4. The view of the parking areas will be obscured with half barrels planted with ornamental grasses, granite boulders, and a landscaped bed around the signage. All of these measures are sufficient, in the judgment of the Board, to soften the view of the parking areas from the sidewalk in order to meet the "obscuring" criterion.

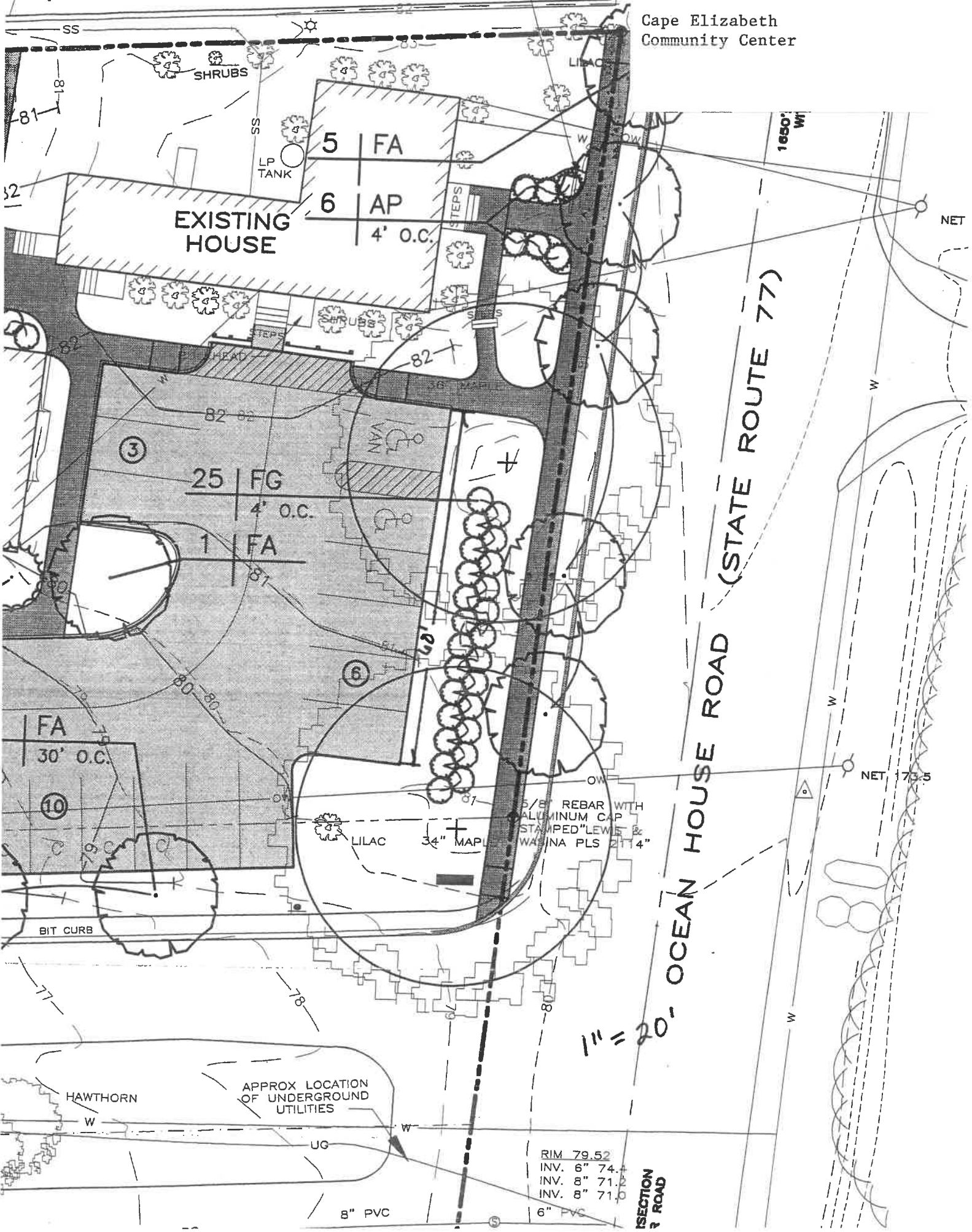
Insert additional condition of approval if desired.

WITH LIGHTS FOR SIGN

Ammonia Ctr

5/8 REBAR WITH YELLOW PLASTIC CAP STAMPED "RIS 1262" ON 1

Cape Elizabeth Community Center



5/8" REBAR WITH ALUMINUM CAP STAMPED "LEWIS & WASHINA PLS 2114"

1" = 20' OCEAN HOUSE ROAD (STATE ROUTE 77)

RIM	79.52
INV. 6"	74.4
INV. 8"	71.2
INV. 8"	71.0

SECTION & ROAD

8" PVC

6" PVC

APPROX LOCATION OF UNDERGROUND UTILITIES

HAWTHORN

BIT CURB

EXISTING HOUSE

5 | FA

6 | AP

25 | FG

1 | FA

FA

30' O.C.

LILAC

34" MAPLE

4' O.C.

4' O.C.

4' O.C.

1650' W

NET 173.5

NET

SS

LP TANK

HEAD

36" WALK

OW

W

W

W

70

80

78

77

80

80

82

82

82

82

81

18

SHRUBS

LILAC