

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Planning Board  
DATE: March 25, 2015  
SUBJECT: Land Use Zoning Amendments

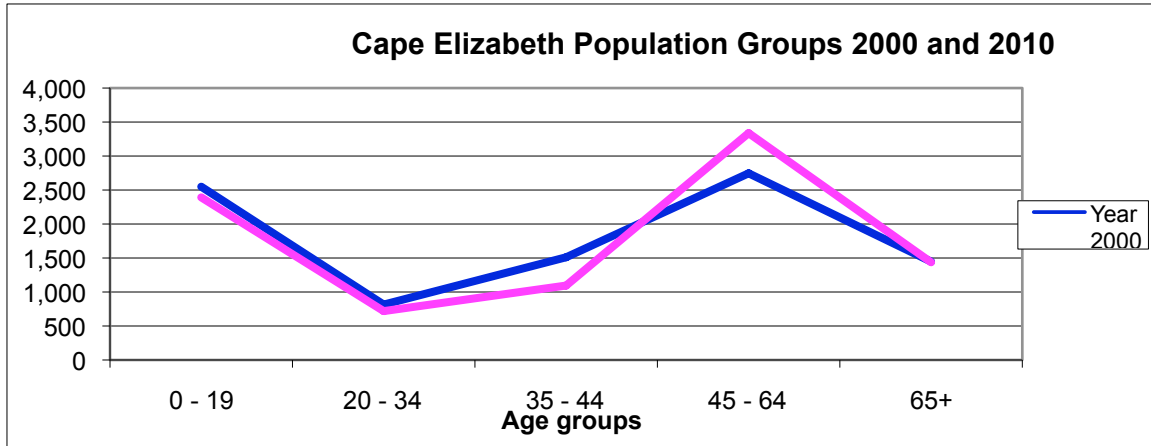
### Introduction

At the February 11, 2013 meeting, the Town Council referred recommendations from the Future Open Space Preservation Committee (FOSP) and the last package of Comprehensive Plan recommendations, referred to as the "Land Use Amendments package" to the Planning Board for implementation. This memo contains the list of recommendations and a description of the proposed amendment.

### Why adopt these amendments

• **Comprehensive Plan.** The bulk of the proposed amendments are explicitly recommended in the Comprehensive Plan. The plan emerged from a 2-year effort by the town to plan through the year 2020. The plan was drafted by a 10-member committee representing a range of community perspectives and unanimously adopted by the Town Council in 2007. Deemed consistent with state goals, the comprehensive plan is not only the town's broad vision of land use policy, but also the legal underpinning for land use regulations. Town land use regulations must be consistent with the comprehensive plan. This amendments package represents the last set of high priority recommendations from the comprehensive plan.

• **Town demographics.** Like the entire state, Cape Elizabeth's average age is increasing as seniors become a larger percentage of the town's population. The comprehensive plan incorporated this trend into its recommendations to focus on multi-family housing. The current housing available for our seniors who want to transition out of single family homes is very limited and adding multi-family units could meet that need. More generally, diversifying the housing types can meet needs for more than seniors.



• **Public Benefit Goals.** The town vision strongly emphasizes preserving open space, agricultural lands, and sensitive environmental areas. These amendments include incentives for the private sector to advance public goals.

#### How to read the draft amendments

Excerpts from the Zoning and Subdivision Ordinance are the basis for the proposed amendments. Only ordinance sections that are proposed for revision and closely related sections are shown. The bulk of the Zoning Ordinance and Subdivision Ordinance will remain unchanged and include substantial regulations. Proposed text changes are shown in red underline. Existing ordinance language to be deleted is shown in ~~red strike-through~~. A clean copy showing how the ordinance changes would read if all proposed changes are adopted can be provided upon request.

#### Referrals and draft recommendations

Below is a list of the FOSP recommendations (#.), annotated with Comprehensive Plan recommendations (•). Following each recommendation is a description of the text amendments proposed to implement the recommendation. Next to the Implementation description is the page and line location of the proposed amendment in the Land Use Amendments text document.

1. **Land Use Chapter Recommendations.** The town council requests the planning board to restart its implementation of the Land Use Chapter recommendations in the 2007 Comprehensive Plan, with emphasis on the [above] recommendation (which follows).

*FOSP recommended that the current regulations promoting clustering be retained. More work should be done to investigate the potential for increasing the amount of open space that is preserved while maintaining the density allowed that makes this a desirable option for property owners. More emphasis should also be put on preserving contiguous open space and connectors and less on open space as buffer strips.*

Pg 14, Ln 22 **Implementation:** The cluster regulations are located in Sec. 19-7-2, Open Space Zoning, in the Zoning Ordinance. There is no proposal to delete or reduce the Open Space Zoning regulations. Subsection D (1) in the Open Space Zoning provisions establishes priorities for what land is preserved as open space. Amendments to this section are proposed that make contiguous open space a higher priority and discourage buffer strips. It should be noted that open space zoning developments must also comply with the Subdivision Ordinance, which includes a buffer provision. Buffering is still required, but more emphasis is placed on contiguous open space.

- 9. Designate BB Districts as Sewer Service Areas.

Pg 1 **Implementation:** Existing Sewer Service Areas are shown on the town sewer map (blue palette colors). The attached map proposes to designate areas zoned Business B (BB, shown in pink) as sewer service areas. The town currently has 2 BB zones, one located at the Inn by the Sea, and a newer one located immediately south of the Town Center Zone on the Murray Earthworks contractor facility on Fowler Rd. This change eliminates a step needed for new development in the BB District to connect to public sewer.

- 14. Review the minimum lot size and setback requirements for multi-family and attached single family dwellings (condominiums) to determine if they are creating obstacles to developing a variety of housing types.

Pg 5, Ln 25 **Implementation:** The Planning Board compared dimensional  
Pg 6 requirements for subdivisions and multiplex development. The  
Pg 7, Ln 25 table below shows that minimum lot size requirements  
Pg 9 are higher for multiplex development than for a single lot  
Pg 10 subdivision. The amendments equalize the standards by reducing  
Pg 11 the minimum lot size from 10 acres to 5 acres in the RA District and  
from 5 acres to 3 acres in the RC District. The setback differentiation  
is also eliminated.

Multi-unit dimensional standards comparison with single family development									
Zoning District	Use Permitted	Minimum Lot Area		Density (sq. ft.)		Maximum units/building	Setbacks (ft) <sup>4</sup>		Height
		Single family	Multi-unit	Single family	Multi-unit		Single family	Multi-unit	
RA	Multiplex housing	none	10 acres	80,000	66,000	5	30/30/30	75	35'
Proposed			5 acres			n/a		30'	
RB <sup>3</sup>	Multiplex housing	none	80,000 sq. ft.	60,000	60,000	5	30/30/30	75	35'
Proposed						n/a		30'	
RC	Multiplex housing	none	5 acres	20,000	15,000	5	20/20/20	75	35'
Proposed			3 acres			n/a		20'	
TC <sup>2</sup>	Multifamily dwelling unit <sup>1</sup>	none	7,500 sq. ft.	80,000	3,000	none	25-35/15/15	25-35/15/15	35'
BA <sup>5</sup>	Multifamily dwelling unit <sup>1</sup>	none	15,000 sq. ft.	80,000	7,500	none	10-25/5/5	10-25/5/5	35'
<sup>1</sup> Only allowed as accessory to a nonresidential use <sup>2</sup> Design requirements also apply; side/rear setback is 50' abutting residential district <sup>3</sup> See Sec. 19-7-2, Open Space Zoning <sup>4</sup> Setbacks are shown as front/side/rear. Front setback is shown based on local street classification. <sup>5</sup> Design requirements also apply; side/rear setback is 20' abutting residential district									

- 15. Evaluate establishing a density bonus for 55 and older restricted developments.

**Implementation:** The Planning Board is recommending that the existing eldercare housing provisions (Zoning Ordinance) provide adequate density bonus. It is also proposing changes to multiplex development regulations that will generally promote housing that can meet senior needs.

- 82. Increase the density of the RB District, which includes 7% of the acreage of the town, with Open Space zoning, where public sewer is available, from 30,000 sq. ft. to 20,000 sq. ft per lot, and increase the Open Space Zoning open space requirement from 40% to 45% in the RB District.

Pg 13, Ln 19 **Implementation:** In Sec. 19-7-2, Open Space Zoning, the maximum  
Pg 14, Ln 13 density in the RB District has been increased to 1 unit per 20,000 sq. ft. for developments served by public sewer. In subsection C (4), the mandatory amount of open space to be preserved has been increased from 40% to 45% for developments served by public sewer. Consistent with the Comprehensive Plan goal to promote a diversity of housing types<sup>1</sup>, the amendments include an incentive to construct 1 and 2 bedroom units.

<sup>1</sup> Comprehensive Plan Housing Goal 1: The Town should promote a diversity of housing types to accommodate residents of all age groups and household sizes.

- 83. Review the design of open space in the Open Space Zoning provisions to maximize the amount of open space in a single contiguous parcel and discourage narrow strips, except when strips are necessary for trail connections.

Pg 14, Ln 22 **Implementation:** The Open Space Design standards have been reorganized for clarity and to more clearly implement open space priorities. This section includes the guidance on what type of land is preserved as open space in a development and the legal mechanism used to permanently preserve the land. The section has been reorganized into 2 sections. Section 1, Land to be preserved, addresses preserving open space in large, contiguous chunks with connections to other open space and neighborhoods. It also updates what land is highest priority for preservation by applying the FOSP open space priorities.

The second section modernizes the legal requirement to protect preserved open space. This section was revised with significant input from town attorney John Wall. A new addition to this section is an explicit statement encouraging that preserved open space be accessible to the general public and not just to residents of the development. This is the common practice of the Planning Board with the cooperation of the developer.

- 84. Make the Open Space Impact Fee not applicable when a subdivision is designed in compliance with the Open Space Zoning Regulations, which include a separate open space requirement.

Pg 2, Ln 14 **Implementation:** The amendment adds to the open space impact fee section in the Subdivision Ordinance that compliance with the Open Space Zoning provisions in the Zoning Ordinance is a method to meet the open space impact fee requirement. The Open Space Zoning provisions require a minimum 40% open space preservation and include detailed standards regulating what land is preserved as open space.

- 85. Eliminate the cap on the number of units per building allowed for multiplex developments located in the RC and RB Districts. Create design standards for buildings exceeding 5 units and a maximum height limit that is greater than the current 35' height limit. This will be available only in conjunction with the Agricultural TDR (# 85), developments targeted to 55 and older (# 15) or an affordable housing overlay district (#19).

Pg 3, Ln 14  
Pg 18, Ln 45  
Pg 22, Ln 9  
Pg 7, Ln 16  
Pg 7, Ln 24 **Implementation:** Reference to units per building have been deleted from the Multiplex Housing definition. The remaining multiplex design standards in the definition have been replaced with a new and expanded Multiplex Development Standards section located in the Open Space Zoning Provisions. Amendments

Pg 12, Ln 1 in the RA, RB and RC Districts require that any new multiplex development must comply with the new standards. The Multiplex Development Standards also include density bonus options for multiplex development when agricultural land, affordable housing or more open space is preserved.

Pg 20, Ln 10 The Multiplex Development Standards include illustrated design requirements. At this time, pictures are shown as placeholders for line drawings intended to be used as illustrations. Similar illustrations are in the Town Center and Business A Districts.

- 86. Reduce the minimum lot size required for multiplex housing in the RC District from 5 acres to 3 acres and eliminate the minimum lot size for multiplex housing in the RB District.

**Implementation:** See Recommendation #14 above.

- 90. Designate the RB Districts as Sewer Service Areas.

Pg 1 **Implementation:** The Sewer Service area map shows existing sewer service areas in shades of blue. RB Districts proposed to be designated as sewer service areas are shown in yellow. This change eliminates a step needed for new development to connect to public sewer.

- 91. Require new subdivision development in the RB District to be served by public sewer.

**Implementation:** The Planning Board is concerned that a blanket requirement to connect to public sewer will have an unreasonable economic impact on small development and is not recommending this change. The Planning Board remains committed to strongly encouraging connection to public sewer whenever feasible. For example, the new Multiplex Development Standards requires public sewer connection, and provides a bonus when the public sewer connection is more than 1/4 mile away.

2. **TDR.** *FOSP recommended that the town retain the current TDR regulations. The Planning Board should be tasked with reviewing the TDR sending areas map to align it with Open Space criteria priorities.* The town council requests that the planning board include this recommendation in its comprehensive plan Land Use Chapter recommendations.

Pg 27 **Implementation:** Revisions to the TDR map are proposed based on the open space priorities recommended by FOSP. The proposed changes were finalized after receiving public comment at a

public forum focusing on large property owners. Existing TDR areas are shown in yellow. Areas to be deleted are shown with red outline and hatch. TDR areas to be added are shown in light brown.

Pg 23- TDR provisions have been generally cleaned up. Finally, a new  
Pg 25 provision has been added to implement the agricultural land TDR  
Pg 25, Ln 40 bonus recommended in the Comprehensive Plan.

3. **Growth Areas.** *FOSP recommended that the review of growth areas be referred to the Planning Board as part of the resumption of the Planning Board's comprehensive plan implementation work. The Planning Board's comprehensive planning implementation work should include public outreach about the benefits of open space zoning. The Planning Board should also recommend ordinance amendments that make preservation of agricultural land a higher open space priority when preserving open space as part of new development.* The town council requests the planning board to do so.

**Implementation:** The Planning Board recommends that no change to growth areas is required at this time.

4. **New Subdivision Ordinance consistency.** When the new Subdivision Ordinance was adopted, general purpose section numbers, such as public notice and public hearing procedures, were changed. These sections are referenced in the Zoning Ordinance and the amendments update the references.

Pg 5, Ln 1 **Implementation:** Proposed amendments to the Zoning Ordinance  
Pg 28, Ln 45 to update references to public notice and performance guarantee  
Pg 29, Ln 16 requirements have been added.  
Pg 29, Ln 31  
Pg 30, assorted

5. **Non-conforming lot frontage.** The Code Enforcement Officer has encountered some conflict with provisions regarding street frontage for non-conforming lots. He has asked the Planning Board to add language clarifying the current practice of requiring lots with insufficient frontage to comply with the Private Access provisions.

Pg 3, Ln 41 **Implementation:** Language has been added that clarifies a lot with insufficient street frontage can still be buildable, but must comply with the Private Access provisions, which typically means a Private Accessway Permit from the Planning Board.

### Planning Board Recommendation

At the March 23, 2015 meeting, the Planning Board voted unanimously in support of the following motion:

BE IT ORDERED that, based on the materials submitted and the facts presented, the Planning Board recommends the Land Use Amendments, as revised by consensus at the March 23, 2015 meeting, to the Town Council for consideration.

The Planning Board looks forward to meeting with the Town Council to review the proposed amendments.





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

## Private Accessways

1 message

**Benjamin McDougal** <benjamin.mcdougal@capeelizabeth.org>  
To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Tue, Nov 25, 2014 at 12:35 PM

Maureen,

We have discussed lots that lack the required road frontage and how they should be handled. An example would be a lot that has 50 of road frontage on a public road. Past precedent shows that lots like this went to the Planning Board for a Private Accessway permit. In my opinion, as the Zoning Ordinance currently reads, we are on shaky legal ground proceeding in this manner. Section 19-4-3.A seems to clearly state that I should issue building permits on such lots, with no regard to the private accessway provisions. See below. The remedy for this is to reference the private accessway requirements in 19-4-3.A. Seems like a relatively simple addition if we want to be on strong legal ground sending these to the board.

**"A. Nonconforming Lots :** The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, **minimum street frontage**, or similar requirement of the district within which they are located.

### **1. Vacant Nonconforming Lots**

a. Vacant nonconforming lots may be built upon in conformance with the provisions of the district in which they are located **even though the lots do not meet the minimum lot area, net lot area per dwelling unit, street frontage**, or similar requirements as long as the requirements of the chart below are met. **(Effective August 11, 1999 and revised effective July 4, 2001)**

**The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: (Effective August 11, 1999) "**

Regards,  
Ben

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