

## **TOWN OF CAPE ELIZABETH MEETING NOTICE**

MEETING: Ordinance Committee  
DATE: December 17, 2015  
TIME: 1:30 p.m. - 3:00 p.m.  
PLACE: **Jordan Conference Room**, Town Hall

### **AGENDA**

1. **Minutes of meeting:** September 14, 2015
2. **Public Comment.**
3. **Committee Logistics.**
  - Public Comment procedures
  - Minutes
  - Paperless
  - Meeting schedule
  - Other committee organization items
4. **Village Green Zoning Amendment.**
5. **Next Meeting.**
6. **Public Comment.**

### **Public Participation at Ordinance Committee Meetings**

The intent of this policy is to allow for public participation by interested parties and to provide for orderly committee deliberation.

### **Speaking on topics on the regular Ordinance Committee meeting agenda**

After the public comment period has been opened, any person wishing to address the Ordinance Committee shall signify a desire to speak by raising his or her hand. When recognized by the chair, the speaker shall give his or her name

and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the Ordinance Committee. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of the Ordinance Committee members present. The time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority vote of the Ordinance Committee members present. The chair may decline to recognize any person who has already spoken on the same agenda item and may call on speakers in a manner so as to balance debate. Once the Ordinance Committee has begun its deliberations on an item, no person shall be permitted to address the Ordinance Committee on such item.

**Speaking on topics not on the regular Ordinance Committee meeting agenda**

Persons wishing to address the Ordinance Committee on an issue or concern local in nature, not appearing on the agenda, may do so at a regular Ordinance Committee meeting during any public comment period. Any person wishing to address the Ordinance Committee shall signify a desire to speak by raising his or her hand. When recognized by the chair, the speaker shall give his or her name and address or name and local affiliation. Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by a majority vote of the Ordinance Committee members present.

**Decorum**

Persons present at Ordinance Committee meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at Ordinance Committee meetings may only address the Ordinance Committee after being recognized by the chair.

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

September 28, 2015

4:00 p.m., Town Hall

Present:     Jamie Wagner, Chair  
              Caitlin Jordan  
              Jessica Sullivan

Staff:        Maureen O'Meara, Town Planner

The minutes of the September 14, 2015 minutes were amended and approved.

Public Comment

Councilor Wagner recognized John Greene, Sprague Corporation Farm Manager, who had sent a letter prior to the meeting. Also attending was Tilly Kelly, representing the Sprague Corporation.

The committee discussed elements of the letter.

Special Event Facility Amendment and Map Amendment

The committee began review of Sec. 19-8-15, Special Event Facility Standards.

Councilor Wagner asked about notification of the three year site plan expiration. Staff explained that expiration of approvals is included in the letter that applicants receive from the Planning Board at the time of approval. Councilors asked if all approvals have expiration dates and all do. The committee agreed that notification in the approval letter was sufficient.

Councilor Wagner asked about fees. Staff explained that the Site Plan application fee would apply and that no new fees are proposed.

The committee discussed the 275 person maximum number of guests. It was agreed that the number included hosts onsite. Councilor Jordan was concerned that an event might have inadequate staff to accommodate more guests. Staff suggested that enforcement is more predictable if based on a total number of people onsite. If this is a concern, it would be more practical to increase the total number. The committee discussed the number of people for an event, reviewed event capacity for other event facilities in town, and agreed to keep the number at 275.

The committee was satisfied with the 12 event limit. They confirmed that events could extend beyond 10 p.m., but that amplified music would be limited to 10 p.m.

The committee confirmed that the 8 hour event limit excludes set-up and break-down.

The committee considered a wedding weekend where a rehearsal dinner would be held and confirmed that would be counted as a separate event from the wedding. Mr. Greene does not want the rehearsal to be counted as a separate event.

Councilor Sullivan noted that the rehearsal is a separate day that creates noise and other impacts. Rehearsal dinners are often not at the same location as the wedding. Mr. Greene said that the dinner is often in the Lodge, with a small number of people such as close family. The committee agreed that a rehearsal dinner that meets the definition of a special event facility regulated activity should count as a separate event.

Councilor Wagner asked about the seasonal provision. Staff explained that arrangements such as porta potties or lawn parking could be allowed seasonally when they would not normally be acceptable. Councilor Wagner noted parking he observed on the lawn at the Inn by the Sea and Councilor Jordan noted the tent they use for events. Staff explained that the lawn parking is part of the approved site plan as overflow parking, designed with a gravel base and loamed and seeded. The tent location and capacity is also regulated by the site plan.

The committee reviewed the overlay district map amendment. Councilor Wagner asked if this map amendment has been approved by the Sprague Corporation. The Sprague Corporation representatives agreed that it is what they want. Committee members confirmed that other property owners would need to move through the map amendment process to create additional overlay districts.

A motion was made by Councilor Jordan, seconded by Councilor Sullivan, to recommend the amendments and map to the Town Council for consideration. The motion passed 3-0, with one revision noted.

#### Public Comment

Mr. Greene asked about next steps. The amendments will be submitted for consideration at the October 14<sup>th</sup> Town Council meeting, with a possible public hearing in November. Mr. Greene noted that the Sprague Corporation has 200 acres of agriculture and may hold an event on that land.

#### Next Meeting

No meeting was scheduled.

The meeting adjourned at 4:45 p.m.

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Planning Board  
DATE: September 29, 2015  
SUBJECT: Village Green Zoning Amendment

### Introduction

The Town Council referred to the Planning Board the Village Green Zoning Amendment at the May 11, 2015 meeting. The Planning Board has held 4 meetings, including a public hearing on September 15, 2015 (The minutes of the public hearing are attached).

### Why Amend the Town Center Zoning District?

The Town Center Zone was written with minimum *and* maximum setback requirements, as well as illustrated design standards, to promote pedestrian-friendly, village style development rather than a "Route One" style of development. New development is required to pull buildings closer to the road and to construct sidewalks and install landscaping between the road and the building. No parking is allowed in the front yard setback. This creates a more comfortable environment for pedestrians and also reduces travel speeds of vehicles on Ocean House Rd, another high priority for the public.

A village green set along Ocean House is consistent with the Town Center vision. Private development would then frame the village green, which is typical of traditional New England village commons. In order to create a village green along Ocean House Rd and place new construction behind the village green, the maximum front yard setback needs to be modified. The Village Green amendment allows a village green to "replace" the maximum front yard setback.

### Summary of Amendment

The Planning Board has added substantial "meat" to the "bones" of the first draft amendment. (See attached amendment) A new defined use called a "Village Green development," has been added to the Definitions section and the Town Center permitted uses section. The Village Green Amendment includes a new design requirement in the Town Center District describing what is needed to qualify as a village green. A village green "is a prominent and highly visible park-like area where the public may gather, relax and contemplate both casually and as part of organized outdoor public events." A village green must have at least 100 feet of road frontage on Ocean House Rd, with a minimum depth of 100' and a minimum size of 20,000 sq. ft. (about 1/2 acre). Additional requirements describe how the village green must be landscaped and ultimately donated to the town.

### Town Attorney comments

The Planning Board discussed at length the importance of the village green as a publicly owned open space and the financial commitment the town would need to make for maintenance. The Planning Board wanted to provide a mechanism for the Town Council to signal their eventual acceptance of a village green, and the costs that go with maintenance. The Planning Board explored a "conditional municipal approval" mechanism similar to Town Council consultation during major subdivisions. While this mechanism was included in an earlier draft, it was removed from the final recommendation, as advised by Town Attorney John Wall (see attached comments). Mr. Wall noted that the proposed requirement for conditional municipal approval "would effectively amount to contract zoning."

The Village Green amendment explicitly requires that a village green be offered to the town and that the village green must allow public access.

### Conclusion

By a vote of 6-0, the Planning Board approved the following motion:

BE IT ORDERED that, based on the materials prepared and the information presented, the Planning Board recommends the Village Green Alternative Amendment to the Town Council for consideration.

### *Attachments*

Minutes of September 15, 2015 Planning Board meeting  
Draft Village Green Zoning Amendment  
Comments from Town Attorney John Wall

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

September 15, 2015

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Acting Chair  
Josef Chalot  
Elaine Falender  
Jonathan Sahrbeck  
Henry Steinberg  
Victoria Volent

Absent: Peter Curry

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and called for the approval of the minutes of August 18, 2015. The minutes were approved, 6-0. The minutes of the September 1, 2015 Workshop were amended and approved 6-0.

OLD BUSINESS

**Berry Subdivision and Broad Cove Subdivision Amendments** - William S. Holt is requesting amendments to the previously approved Berry Subdivision, located on Two Lights and Hannaford Cove Rds, and the Broad Cove Subdivision, located on Running Tide Rd, to amend lot lines to merge abutting land, Sec. 16-2-5, Amendments to Previously Approved Subdivisions Public Hearing.

Ms. O'Meara said the proposal is to amend two subdivisions. The lots are increasing in size. This application was tabled from last month's meeting.

John Mitchell, of Mitchell and Associates, represented Dr. Holt. He showed a plan of the Holt property of 27 acres. He also showed the proposed changes to the Holt land, the Wasserman parcel and lot 4 of the Berry subdivision. He said they have addressed all the comments of the Planning Board and the public.

They now propose to merge the 13 acre parcel with lot 4. This provides road frontage to the back land. The subdivision covenants will now encumber the entire 16 acres. The building envelope has been decreased in size from their prior proposal. The traffic was reviewed during the 2010 Berry subdivision approval, and since Dr. Holt is only proposing one lot, traffic is not an issue. They have a letter from Charles Katz-Leavy regarding the private rights to the Tote pathway.

Any future division of lot 4 would have to come before the Planning Board. Dr. Holt is not interested in entertaining any access restrictions on lot 4. He also stated that any future development of the Wasserman land would have to come back to the Planning Board. He also explained why there can be no further development of the Estate Lot.

Mr. Chalot asked if there was a building envelope on the new parcel to be conveyed to the Wassermans.

2. That any easement for utilities or vehicular access granted to the Wasserman lot or Estate lot from Lot 4, as part of the division of the properties, be shown on the subdivision plan.

Mr. Sahrbeck seconded the motion and it was passed 5-1.

#### OTHER BUSINESS

**Village Green Town Center Zoning Amendment** - The Town Council has referred to the Planning Board an amendment to the Zoning Ordinance to alter the maximum front yard setback in the Town Center District when a village green is proposed, Sec. 19-10-3, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara said this item was referred by the Town Council to amend the Town Center zoning provisions if a village green is proposed. The Town Center is designed to be developed as a village. The buildings are pulled closer to the street, there is a sidewalk and landscaping, and no parking allowed between the building and the street. We not only have a minimum setback, but we have a maximum setback. According to the existing zoning, if you wanted to build a village green you would have to put it behind the buildings. The proposed change says if you want to have a village green, you do not have to meet the maximum setback. There are other requirements proposed, such as the size of the parcel and the green itself.

The Town Attorney has said the conditional municipal approval provision appears to be backdoor contract zoning. Ms. O'Meara said there is an alternative version of the proposed amendment that addresses his concerns.

Ms. Jordan opened the public hearing.

Paul Seidman of 21 Oakview Drive had a question for Ms. Volent. He asked if she believed a multiplex and village green development, including significant deforestation and destruction of RP2 wetland and/or vernal pools, is what the majority of Cape Elizabeth citizens would like to see occur?

Ms. Jordan said we are not talking about multiplex, so please focus on the village green. It is not part of any project.

Mr. Seidman wanted it on the record that at the August 4, 2015 Planning Board workshop, local developer Steve Mohr, speaking on behalf of Rhode Island developer Harry Angevine, stated the following: "we need you to endorse that ordinance."

Ms. Jordan restated that the intent is to develop an ordinance that allows for a village green, not an ordinance that allows for the development of that lot.

Stephanie Carver of 40 Stonybrook Road is the Chair of the Town Center Plan update committee. She is in favor of the ordinance. One of the goals of the plan was to create a village green that will serve as a gathering place for the community. It will encourage and support our small businesses. These small businesses have improved the way of life for many of the Town residents. We are faced with a unique opportunity. There are



several parcels that could be developed, and could incorporate a village green. She enumerated the benefits of a town green and said it would be a centerpiece for our trails that we have.

Anne Carney of 21 Angell Point Road said she is concerned that this ordinance surrenders control over a village green to private businesses and private landowners. She thinks a village green will have tremendous value to the Town if it is something the Town will control, not the private landowners. She feels the ordinance creates a lot of inconsistency. Is each parcel that is facing development going to have a village green? We've seen how the ordinance has created this nice feel, and is concerned the Town is surrendering control to the whims of private landowners. She would like this motion to be tabled.

No one else came forward, so the public hearing was closed.

Mr. Steinberg addressed the last speaker and said the proposal has design guidelines. You can't just design what you want and have it pass. It has to meet specific requirements. It will be controlled by the Town.

Mr. Sahrbeck said they want to make sure the Town has ownership.

Ms. Falender suggested that they change the drawing at the back of the ordinance to be more generic and not be reflective of a specific project. She also wants to move it to the Town Council.

Ms. Jordan said they can refer it to the Town Council with a revised drawing, and prior to it going to the Town Council, it be reviewed with the Board Chair.

There was a brief discussion on the specific points in the revised amendment.

Ms. Falender made the following motion:

BE IT ORDERED that based on the materials prepared and the information presented, the Planning Board recommends the Village Green alternative Amendment to the Town Council for consideration with the following condition:

That the illustrative drawing at the end of the Amendment be modified to show all access on Ocean House Road, and that parking areas and building areas, be clearly denoted and that the drawing be in a generic fashion not relating to any particular proposal that may have been presented.

Mr. Chalot seconded the motion and it was passed, 6-0.

Ms. Jordan opened the public comment on items not on the agenda.

Paul Seidman of 21 Oakview Drive said a lot of people wanted to be here but the open house at the high school is taking place concurrently so they were not able to be here.

The Board then voted unanimously to adjourn at 9:05 p.m.

Respectfully submitted,  
Hiromi Dolliver  
Minutes Secretary

**Village Green  
Zoning Ordinance Amendment**

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

**Village Green Development:** The development or redevelopment of a lot or lots located in the Town Center District which includes a village green designed to meet the standards of Sec. 19-6-4(D)(3)(g)(4) (Town Center Design Standards, Village Green).

**SEC. 19-6-4. TOWN CENTER DISTRICT (TC)**

**A. Purpose**

The purpose of this district is to encourage an identifiable Town Center that includes a village feeling, mixed retail and residential uses to serve residents, an environment inviting to pedestrians, a common meeting place, visual cohesiveness and enrichment and linkages to the Town's open space and nearby school campus. The Town Center District boundaries reflect the prevalence of public buildings and commercial uses and the historic compactness of development. The Town Center District requirements are tailored to the unique characteristics of the Cape Elizabeth Town Center.

**D. Standards**

**1. Performance Standards**

- f. No parking for uses other than school uses shall be allowed in the front yard setback.

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

| MINIMUM SETBACKS          |  |
|---------------------------|--|
| <b>(1) School uses</b>    |  |
| (a) Side yard setback     | 50 ft.<br>The side yard setback shall be increased to 100 ft. where it abuts a residential district. |
| (b) Rear yard setback     | 50 ft.<br>The rear yard setback shall be increased to 100 ft. where it abuts a residential district. |
| (c) Front yard setback    | 75 ft.   |
| <b>(2) Municipal uses</b> |  |
| (a) Side yard setback     | 15 ft.   |

|   |   |
|---|---|
|   | The side yard setback shall be increased to 50 ft. where it abuts a residential district.           |
| (b) Rear yard setback                               | 15 ft.<br>The rear yard setback shall be increased to 50 ft. where it abuts a residential district. |
| (c) Front yard setback                              |   |
| Building with up to 5,000 sq. ft. of floor area     | Minimum of 25 ft.-Maximum of 35 ft.   |
| Building with more than 5,000 sq. ft. of floor area | 50 ft.  |

(5) Village Green Development

(a) Side yard setback 15 ft.  
The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district

(b) Rear yard setback 15 ft.  
The rear yard setback for new construction shall be increased to 50 ft. where it abuts a residential district

(c) Front yard setback 25 ft.  
The front yard setback for parking shall be 35 ft.

(6) All other uses

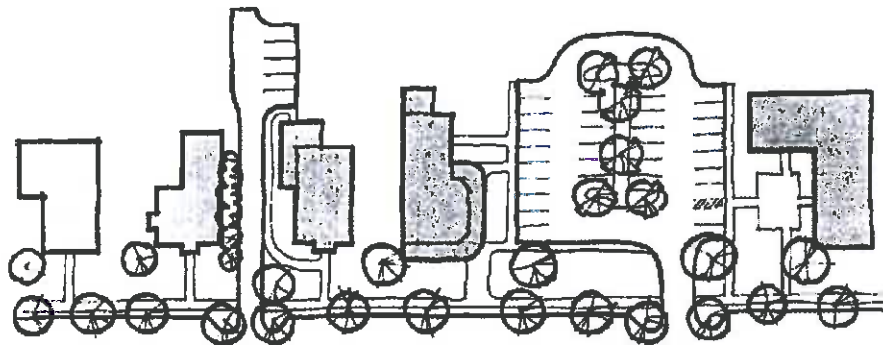
(a) Side yard setback 15 ft.  
The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district

(b) Rear yard setback 15 ft.  
The rear yard setback for new construction shall be increased to 50 ft. where it abuts a residential district.

(c) Front yard setback Minimum 25 ft.  
Maximum 35 ft.

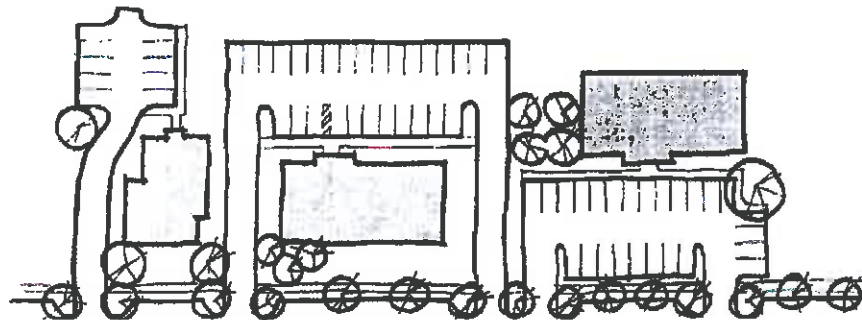
### 3. Design Requirements

- d. Building and Parking Orientation. The first impression of a building is from the side which faces the street. The front facade of the structure shall face the street. The structure shall be designed with a primary orientation to the street, although the primary entrance may be located on other than the front façade. The front facade shall include a distinctive entrance. A sidewalk shall be constructed parallel to the front facade. The side yard visible to the public should be designed to present a pleasing appearance to the pedestrian.



Compatible

Front and front/side entries are compatible with village character. Small parking areas (2-7 cars) work well behind a building. Larger parking areas (8-40 cars) work better to the side of a building.

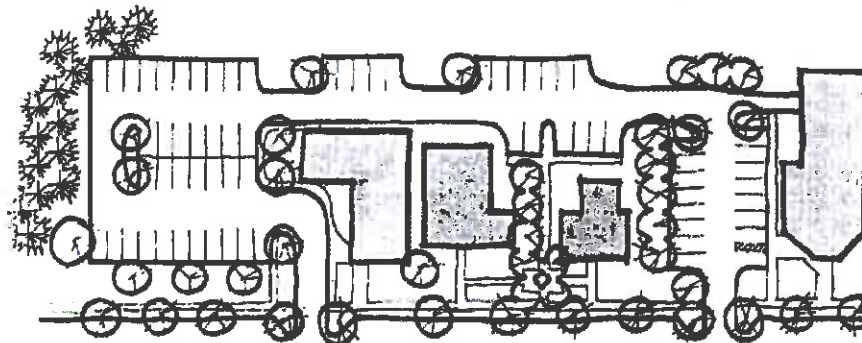


Incompatible

Rear entries incompatible with village character.

No public entry from sidewalk.

Parking in front setback not permitted and not compatible with village character.



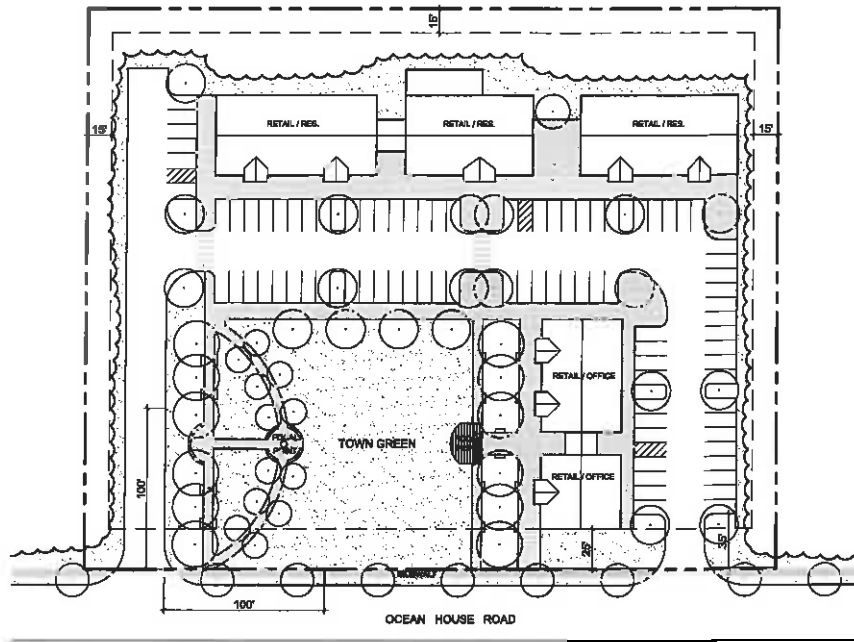
Compatible

Shared parking and shared driveways are encouraged. Cross connection with rear parking is encouraged if walkway and building layout orients people to street side front entries.

g. Landscaping and Site Development

(1) Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of the Town Center. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. Design elements of single family homes such as front steps and a front porch shall be incorporated whenever practicable. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the front yard landscape plan.

(4) Village green. This section shall apply when a village green is included in a Site Plan Review application. One purpose of the Town Center District is to encourage a common meeting place. A village green is a prominent and highly visible park-like area where the public may gather, relax and contemplate both casually and as part of organized outdoor public events. A village green created in compliance with this section must have at least one hundred (100) continuous feet of road frontage on Ocean House Rd. a depth measured perpendicular from Ocean House Rd of at least one hundred (100) feet with a minimum width of one hundred (100) feet, and a minimum size of at least twenty-thousand (20,000) square feet. A village green shall be designed as a park, green or square, permanently preserved as groomed open space with legal public access, and offered in fee to the Town of Cape Elizabeth. A village green shall be developed with a defined edge framed with elements such as landscaping, roads, pedestrian walkways and distinctive buildings. A village green shall have a distinctive center and/or focal point. Pedestrian walkways shall be constructed that guide movement through and around a village green and connect a village green to the Town Center sidewalk network, adjacent buildings and properties. The requirements of subsection Sec. 19-6-4 (D)(3)(d) Building and Parking Orientation, and Sec. 19-6-4(D)(3)(g)(2), Parking Lot, shall be applied in a manner that complements a village green.



SCALE: 1"=50'

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2  
3  
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5  
6  
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Maureen O'Meara <maureen.omeara@capeelizabeth.org>

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## Proposed Village Green amendment to zoning ordinance

1 message

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John Wall <JWall@monaghanleahy.com>

Wed, Sep 9, 2015 at 9:19 AM

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

Maureen,

Thank you for consulting me concerning the draft amendment to the TC district portion of the zoning ordinance. I have reviewed the draft and my comments are as follows:

1. With regard to the proposed definition of "village green development," you may wish to revise it to refer to characteristics of the village green in order to reduce any apparent circularity engendered by the reference to the design standards. If you stick with the definition you have, I think you could improve its clarity by adding "the Planning Board" after "from" in the third line and by adding "has been" after the "and" in the same line.
2. I am concerned that the "conditional" approval by the Council contemplated by the draft would effectively amount to contract zoning. In a zoning scheme that does not provide for contract zoning, applicants should be able to look at the ordinance and discern whether they can (or at least believe they can) meet the criteria for their proposed use of their property. If they can meet the criteria, they should be allowed to proceed. By leaving compliance with the ordinance at the absolute discretion of the Council (the legislative arm of the Town), the proposed provision would, in my view, remove the process from typical zoning and fall within the rubric of contract zoning. As you and I have discussed, I think the amendment could be drafted to require that the applicant offer to convey the fee to the "green" area of the development to the Town, but I do not think the right to proceed with the development could be contingent upon the Council accepting that offer. Rather, if the Council was not interested in the fee, there could be a provision for the applicant to protect that portion of the property through an easement or restrictive covenant.



If you would like further explication of these thoughts, please let me know.

Regards, John

John J. Wall, III

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