

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

December 17, 2015

1:30 p.m., Town Hall

Present: Caitlin Jordan, Chair  
Sarah Lennon  
Jessica Sullivan

Staff: Maureen O'Meara, Town Planner

The minutes of the September 28, 2015 minutes were approved.

Public Comment

No members of the public were in attendance at this time.

Committee Logistics

Councilor Jordan asked for discussion about general conduct of the meeting issues. The committee discussed how public comment would be handled. They agreed that when the committee agenda included multiple items, multiple comment periods would be held to allow the public to speak on each item before committee discussion began.

The committee agreed staff would continue to prepare minutes for committee review and approval.

The committee agreed to continue to receive meeting materials by email, except that the committee would request paper for specific large documents as needed.

The committee agreed that meetings would be scheduled as needed to accommodate the schedules of committee members. Right now, afternoon meetings were convenient and avoided adding more night meetings to the councilors' schedule.

Under related items, Councilor Jordan suggested that the current practice of handing off items with the Planning Board continue and committee members agreed.

Village Green Zoning Amendment

Councilor Jordan recognized Peter Curry, Planning Board Chair, and asked him to review the Planning Board recommendation of the Village Green Zoning Amendment.

Mr. Curry explained that the Town Center was unique in that it had both minimum and *maximum* setbacks. This amendment deals with the front yard setback. Points he wants to make include:

1. The lot south of town hall was a catalyst, but the amendment is not site specific;
2. The amendment provides an option and does not encourage development;
3. There are no changes to permitted uses.

The Planning Board discussed making town ownership acceptance a pre-approval requirement, but that too closely resembles contract zoning, which is not authorized in Cape Elizabeth. Instead, the amendment requires that a permanent public easement be offered to the town, which the town can accept or decline.

The amendment balances private property rights and advances town interests. The parcel south of town hall can be developed now under current ordinances. The town has the option to create a village green at its own cost, and has not funded it. Creation of a green by a developer may or may not happen, but the Planning Board felt that a developed lot with a green is better than a developed lot without a green.

The village green concept was in the original Town Center Plan (1993), and the 2014 plan. There is interest in a green, which is a New England cultural icon.

Members of the public arrived and the committee held a public comment period.

#### Public Comment

Paul Seidman, 21 Oakview Drive, said the village green is too narrowly defined. It should be defined as on town land. He does not want to pay for maintenance. A green will need support facilities for public gatherings. He prefers the library where people may "organically" gather.

Suzanne McGinn, 1180 Shore Rd, said she likes the village green concept but is opposed to only one location. She favors the library as the village green. The maximum setback is brilliant and perhaps we should consider increasing the setback to 75'-80'. We should look to town owned properties for a village green.

No other members of the public were present.

#### Village Green discussion resumed

Councilor Sullivan clarified that when a village green is proposed by a landowner, it will always go to the Planning Board for Site Plan Review and the design standards apply.

Councilor Lennon asked why the developer chose this option?

Mr. Curry said that the parcel south of town is an example, but the amendment is not limited to that parcel. A village green could be an attractive venue for development. People will want to come to you, so it can be a marketing opportunity. The residential space will also be more attractive with a village green. It may also be considered a gift with tax advantages. There may also be a philanthropic motive.

Councilor Lennon asked if the proposed change will allow more buildings on a lot? Do you have parking if you have a green or not? Mr. Curry said you will still have parking, and it could be located in the area that might otherwise be a village green. Councilor Jordan offered that the amendment allows you to build further back. Mr. Curry agreed, but only if there is space in back. How you configure the development is a fine art.

Councilor Sullivan confirmed that without the village green amendment, the lot south of town hall can still be developed. Without the amendment, the look will be more asphalt and building. Mr. Curry responded that development could still occur but without the public use and enjoyment. He noted that a village green can be created by the town without the Planning Board. If the land sourced for the village green is private, then that is a win-win. There is potential for a village green on private property, but it may also never happen.

Councilor Jordan concluded that if the town does not have control over the land, then we have to wait for the development to happen. This is the typical reactive approach. If we want a village green now, this is not the most efficient approach. Mr. Curry said that if you want to make town land a village green, you can go ahead. Councilor Jordan summarized that the amendment is all about setbacks. If the amendment is not adopted, another development like C-Salt is likely.

Councilor Lennon asked how long and complicated it would be to delay the amendment. Staff responded that amendments typically take a year to move through the process.

Councilor Lennon agrees with people who want the library to be the village green. The library is the cultural center. She wants to own the green, not lose control.

Councilor Sullivan noted the amendment requires the village green to have public access. This amendment effects private development and does not limit creation of village greens elsewhere in the town. If the town wants to buy property to create a village green, it can do that. This amendment allows creation of a green that is then controlled by the town. There are very strict design standards for town center buildings and required landscaping. If a development does not include a village green, it still must comply with landscaping standards. This could make a development nicer, so why not adopt the amendment?

Councilor Lennon said she prefers lawn in front of a building, not a village green next to a state highway. We should call it open land or opportunity for green parcel. The village green term suggests that other spaces are precluded. Maybe we want our village green at Fort Williams. It would be better near the library. She likes the concept but not the name.

Councilor Sullivan said the terminology is from the original plan, and she does not think it is worth changing. You can have several village green areas. This amendment does not preclude something happening elsewhere.

Councilor Jordan suggested the town not get pigeon-holed waiting for a development. We should look for other opportunities, options.

Councilor Lennon asked if this amendment would allow development of wetlands. Staff responded that the wetland regulations currently in place would still apply to any new development. Committee members noted that people are opposed to the amendment based on the misunderstanding that wetland changes are proposed to facilitate new development, which is not the case.

Mr. Curry emphasized that this is a Town Center District tweak to the front yard setback. The town can move forward with other opportunities for a village green. He noted that village greens are typically located at intersections and along traveled ways. The village green is a place making opportunity for the town center that would slow traffic and result in a safer crossing. The town owns the library land and can do it there. This amendment is to facilitate a situation with a private owner.

Councilor Sullivan observed that this amendment is proactive. It sets a tone for the future. We can't use a contract zoning tool if an opportunity arises.

Councilor Jordan referenced Mrs. McGinn's comments regarding the amendment language "development or redevelopment." Mr. Curry noted that land assembly happens. Councilor Sullivan noted that the town center is a small area and any opportunity is important.

Councilor Lennon asked about the Town Attorney's comments. Mr. Curry explained that the Planning Board wanted to get some sense up front from the Town Council that they would want to eventually accept a village green. It would be similar to the "conditional municipal approval" granted by the Town Council for major subdivisions. The Town Attorney, however, was concerned that this was a back-door contract zoning effort, which is not authorized in Cape Elizabeth. The Planning Board agreed to remove the pre-loaded Town Council approval but retained the requirement that a developer must offer to donate the village green to the Town and must also provide a public access easement.

Councilor Lennon asked when in the process this would be before the Town Council? Staff explained that it was similar to open space offered to the town as part of subdivision development, near the completion of the project. Councilor Sullivan emphasized the most important point is that the village green is offered to the town and there will be public access in perpetuity.

Councilor Lennon asked if there are any easements on the lot located south of town hall? Staff said yes. She asked about clearing limits. Staff responded that current wetland regulations would still apply.

Councilor Lennon asked what the Ordinance Committee's role is? Do we agree yes or no or send it to the Town Council? Councilor Jordan responded that we review the language, we can make any changes and then we present it to the Town Council. Councilor Lennon asked if we have to weigh in with our opinion or no opinion? We need to hear from the public. Councilor Jordan said we vote to send it to the Town Council. Councilor Sullivan added that the Town Council will hold a public hearing before a vote.

Councilor Jordan directed committee members to review the text of the amendment, starting with the definition.

Councilor Lennon asked why there is a requirement for 100' of frontage on Ocean House Rd? Mr. Curry explained the requirement is for aesthetics and presence on Ocean House Rd is important. The committee discussed the minimum dimensional standards for a village green. They noted the minimum dimensions result in a 10,000 sq. ft. lot but the minimum size requirement of 20,000 sq. ft allows for some flexibility in the final shape of the village green. The flexibility allows for different characteristics of different lots.

Councilor Lennon asked how the standards relate to wetlands. Staff answered that the current wetland regulations would still apply to any new development.

The committee discussed the illustration in the amendment, including where parking should be allowed. They discussed adding multiple illustrations, but decided not to incur more cost to develop more examples.

Councilor Lennon asked about the applicability of DEP wetland regulations. Staff responded that there are no changes to wetland regulations proposed and current wetland regulations would still be applicable.

Review of the amendment text concluded.

Councilor Sullivan made a motion to send the Village Green Amendment as proposed by the Planning Board to the Town Council for consideration. Councilor Lennon seconded the motion and it passed 3-0. Councilor Lennon noted there would still be discussion at the Town Council.

#### Next meeting

Councilor Jordan announced that the committee would next review the Board and Commissions Ordinance. The next meeting is scheduled for Tuesday, January 19th, from 1:30 to 3:00 p.m.

#### Public Comment

Suzanne McGinn, 1180 Shore Rd, said she wants the Ocean House Rd frontage requirement deleted.

Councilor Lennon said that the Town Council can change that. Councilor Jordan said to bring it to the Town Council.

The meeting adjourned at 3:30 p.m.