

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Planning Board *cey*
DATE: September 28, 2017
SUBJECT: BB District Landscape Contractor map and text amendments

Introduction

The Town Council has referred to the Planning Board a request by Brad Pearson to change the zoning at 27 Fowler Rd (U20-10) from Residence A (RA) to Business B (BB). Amendments to the BB District regulations are also under consideration to make a Landscape Contractor a permitted use.

Process to date

March 13, 2017	Town Council refers to Planning Board
April 4th	Planning Board Workshop
May 2nd	Planning Board Workshop
May 18th	Planning Board meeting
June 20th	Planning Board public hearing to hear comments
August 1st	Planning Board Workshop
August 18th	Planning Board meeting
August 30th	Planning Board site visit to 27 Fowler Rd
September 19th	Planning Board public hearing/vote

Description of proposed amendments

Attached is a map depicting the Zoning Map change to add 27 Fowler Rd to the BB District and the Zoning Ordinance text changes to permit a landscape contractor in the BB District.

The text changes are based on the structure for an Earthwork Contractor. Unlike an earthworks contractor (minimum lot size 20 acres), the proposed minimum lot size for a landscape contractor is 40,000 sq. ft.

Performance standards for a landscape contractor have been prepared, such as limiting the amount of outdoor storage area to no more than 50% of the lot size, not allowing outdoor storage in the front yard, and requiring that the outdoor storage area be screened with a wood stockade fence or landscaped buffer. In order to further the distinction with an earthworks contractor, a limit on the size of landscape contractor vehicles to be kept on site is proposed to be 14,000 lbs. gvwt.

Recommendation

The Planning Board has received both written comments and oral comments expressing concern about the expansion of commercial activities on Fowler Rd.

Testimony has been received in favor of the changes in order to support a local business. The Planning Board also received a summary of ongoing code violations on the 27 Fowler Rd property. At the September 19, 2017 meeting, the Planning Board voted 6-1 to make the following recommendation.

BE IT ORDERED that, based on the map and proposed text amendments, and the facts presented, the request of 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 BB District regulations to permit a landscaping contractor not be recommended to the Town Council.

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

Proposed
BB rezoning
27 Fowler Rd

Legend

- 27 Fowler Rd BB rezoning
- Shoreland Zoning
- Land Use Zones

BASE

- BA
- BB
- FW
- RA
- RB
- RC
- RP1
- RP1MAN
- RP2
- RP3
- TC
- TCCS
- TFD
- WATER

Prepared for Planning Office 3-29-2017

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;

2. Storing and stock piling minerals, wood, compost, plantings, fertilizers, pesticides and similar materials 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 GVWR (gross vehicle weight rating) of 14,000 lbs. Deliveries to the Landscape Contractor's yard by vehicles that exceed a single axle and/or more than 26,000 lbs GVWR 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;
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 contiguous and 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 located within 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. 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:

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

MINIMUM STREET FRONTAGE	
(1) Earthwork Contractor	100' (Effective February 12, 2005)
(2) All other uses	None (Effective August 11, 1999)
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
(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.
(2) Nonresidential use abutting a Residence District	A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A, Buffering of Nonresidential Uses.
(3) Eldercare facilities	50 ft. from property line
(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	
(a) Side yard setback	10 ft.
(b) Rear yard setback	5 ft.

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

MAXIMUM BUILDING HEIGHT	
(1) <i>All uses</i>	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