

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

July 21, 2020

7:00 p.m. Remote meeting

Present: Josef Chalats, Chair Peter Curry
 Daniel Bodenski Carol Anne Jordan
 James Huebener Jonathan Sahrbeck
 Andrew Gilbert

Also present was Maureen O'Meara, Town Planner.

As a result of the COVID-19 virus, the Planning Board will conduct the meeting via remote access as provided by Maine law. The Planning Board will use Zoom meeting to conduct the meeting and to allow the public to remotely attend and participate. Zoom will allow all Planning Board members, applicants, and members of the public to hear all discussion and hear votes, which will be taken by roll call, as required by law.

CALL TO ORDER

Mr. Chalats called the meeting to order.

Mr. Chalats asked for the approval of the minutes of June 16, 2020. The minutes were approved as presented 6-0.

CONSENT AGENDA

Ocean House Commons Two Lights Dental Site Plan revisions - Dr. Jacobsen is requesting de minimus changes to the elevations for Two Lights Dental building on the previously approved site plan located at 326 Ocean House Rd (R2-4-6), Sec. 19-9-5 Site Plan Amendments.

Matt Provencal, Mark Mueller Architects, said as they started final construction documents they discovered that a few window locations became tight, and they wanted to add windows in the rear. The board reviewed plans showing the elevation changes.

None of the Board wanted a substantive discussion, so Ms. Jordan made the following motion:

Findings of Fact

1. Mark Mueller, on behalf of Two Lights Dental, is requesting de minimus changes to the architectural design, specifically windows, of the building

located at 326 Ocean House Rd which requires review under Sec. 19-9, Site Plan Regulations.

2. The 326 Ocean House Rd site plan has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan regulations, and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.
3. The proposed building elevation changes comply with the Town Center Design Standards.
4. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Mark Mueller, on behalf of Two Lights Dental, for de minimus changes to the architectural design, specifically windows, of the building located at 326 Ocean House Rd, be approved.

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

Mr. Huebener joined the meeting.

NEW BUSINESS

School campus accessibility improvements, Phase 2 - The Town of Cape Elizabeth is requesting amendments to the school campus site plan to extend the previously approved access ramp located at the rear of the Cape Elizabeth Middle School located at 12-14 Scott Dyer Rd (U21-12), Sec. 19-9-5 Site Plan Amendment Completeness and Public Hearing

Bob Malley, Director of Public Works, said they undertook a Phase 1 of these improvements earlier this year. Phase 1 involved an accessway from the middle school parking lot down to a viewing area just west of the Holman field. It's proposed to continue from that viewing area southerly to connect to an existing walkway that leads from the High School parking lot over to the tennis courts.

Steve Harding of Sebago Technics said they completed Phase 1 and needed a connection to the ballfield and tennis courts. The walk is 426 ft long, 5 ft. wide and 2159 sq. ft. They will resurface a portion of the existing path by the tennis courts. There are 1200 sq. ft. of disturbed area which qualifies for DEP exemption for a school. They are requesting a waiver of the boundary plan and the right title and interest. There will be no change to the parking. The

drainage will be less than 10,000 sq.ft. of impervious surface. There will be no landscaping, no new lighting, no new signs.

Todd Gammon has done a peer review and made a few revisions.

Mr. Chalot opened the public comment period, no one indicated a desire to speak, so the public comment was closed.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for an amendment of the previously approved site plan for the school campus, located at 12 Scott Dyer Rd (U21-12), to extend the access ramp across the athletic field complex from the end of the Phase 1 ramp to the tennis courts be deemed complete. Waivers have been granted from submitting the property deed and the property boundary because the information is already on file in the town office as part of the original site plan approval.

Ms. Jordan seconded and the motion passed, 7-0.

Mr. Chalot opened the public comment period. No one spoke up, so the public comment period was closed.

Mr. Bodenski said he is aware that the slope is steep, and wants to know if they will be able to keep the grade to 5%.

Mr. Harding said the overall grade is 4.8%. They have made curves in the path rather than have a straight path.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting amendment of the previously approved site plan for the school campus, located at 12 Scott Dyer Rd (U21-12), to extend the access ramp across the athletic field complex from the end of the Phase 1 ramp to the tennis courts, which requires review under Sec. 19-9, Site Plan Regulations.
2. The School campus site plan has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan regulations, and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.

3. The plan for the development reflects the natural capabilities of the site to support development.
4. The plan does provide for a system of pedestrian ways within the development.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.
7. The development is designed to accommodate existing utilities.
8. The applicant has demonstrated adequate technical and financial capability to complete the project.
9. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for an amendment of the previously approved site plan for the school campus, located at 12 Scott Dyer Rd (U21-12), to extend the access ramp across the athletic field complex from the end of the Phase 1 ramp to the tennis courts be approved, subject to the following conditions:

1. That the plans be revised to address the comments of Acting Town Engineer Todd Gammon in his letter dated July 15, 2020.
2. That there be no alteration of the site until the plan are revised to address the above condition and submitted to the town planner.

Mr. Huebener seconded and the motion passed, 7-0.

Mr. Sahrbeck thanked Mr. Malley for all his service to the town since he is retiring very soon.

OLD BUSINESS

287 Ocean House Rd Site Plan - Michael Friedland is requesting Site Plan Review for a change of use of the property located at 287 Ocean House Rd (U22-76) to a village retail lumber store and office, Sec 19-9 Site Plan Review.

Jim Fisher of Northeast Civil Solutions showed the site plan and noted the changes. The walkway now goes through the parking lot. They are still waiting for the VRAP from the DEP. They have made some changes to notes on the plan. The outdoor retail sales venue of seasonal items will be on the front sidewalk underneath the eave. Anything put out there will be taken in at night.

Alyssa Phanitdasack showed the elevation of the front. The entry door has been updated to show the actual product. There will be two sliding doors that will slide out. The beam over the dormer in the front is a structural element, so they will keep the ridge cap. They added some notes on the layout.

Mr. Chalot opened the public comment period.

Cindy Voltz of 33 Phillip Road is in support for the plan. She is happy to see this be developed and removing an eyesore from the neighborhood. She thinks requiring the additional lighting for town purposes could be a detriment to the development of the property. She thinks the town should do the lighting, not put it onto the property owner. She cited an earlier development along Hill Way and that the town installed sidewalk rather than requiring the developer to do it.

Zev Myerowitz of 12 Hill Way said they were allowed to defer some development of the sidewalks. He said he supports this development. He does not think this regulation applies to a redevelopment project.

Chris Gamble of 10 woodland Road is in support of this project. It's exciting to see new businesses like this come into our community. As for the lighting, he thinks putting the burden on the business owner is substantial. If there is any way the town can help the business owner open his business, he would be in support of that.

Adam Steinman of 49 Shipwreck Cove Road is fully in support of this project. He has seen significant burdens placed on Mike. He has done everything, complied with everything. It's time for approval.

Glen Rudberg of 13 High Bluff Road said he supports this project. He questions whether the infrastructure improvements should be funded by the businessman or by the town. He'd like to remove any and all burdens to improve the eyesore. He thanks the owner for staying with the process.

Douglas Campbell of 259 Ocean House Road is fully in support of Mike's vision. He thinks we should stop throwing obstacles in front of him and let him get started and into business. It shouldn't be Mike's responsibility to take care of lighting on town property.

No one else indicated a desire to speak, so the public comment was closed.

Mr. Sahrbeck requested that the applicant give them a cost estimate for the lighting.

Mr. Fisher said it would be \$3500 per fixture plus the cost of installation, approximately \$10,000 per pole. He said they are willing to contribute \$5000 to the town.

Mr. Curry said the context is important. This is on the outskirts of the town center. He thinks there should be one light at the juncture of the walkway and the sidewalk. He does not feel the other two lights are so necessary.

Mr. Gilbert said he thinks Mr. Curry's suggestion is a good one.

Mr. Bodenski likes the suggestion of Mr. Curry.

Mr. Sahrbeck thinks this is a good compromise. He also said this ordinance has been in place for 10 years and the applicant should be required to put in all three lights. Two other local businessmen have complied.

Jim Fisher said the cost of installing one light would be less than \$30,000 but more than \$10,000.

Next there was a brief discussion of having this to be a solar powered light.

Mr. Huebener asked for the background on this requirement.

Ms. O'Meara said the town adopted the Town Center plan in 1993. In 1995 the town adopted the Town Center Zone. The Town Center Zone has the design standards and requirements for sidewalks and lighting. She cited a few projects that have been required to install sidewalks against their wishes. The lighting has been centered on Ocean House Road.

Ms. Jordan said her inclination is to have a contribution to a fund, or then to Mr. Curry's suggestion.

Mr. Chalot said he would be ok with a contribution or the one light installed.

Mr. Curry said it is a cosmetic feature.

Mr. Friedland said he could not discern from the code what was required. The cost for town lighting is very stressful. He did not see this coming, and it is expensive.

Ms. Jordan said this project has come a long long way from when it first came to them.

Mr. Sahrbeck said the usage was still an issue. He would like it on the record exactly what this building will be used for.

Ms. O'Meara said it was in the last submission that this will be a retail establishment. The cutting room was an issue, which is being addressed in the conditions.

Mr. Chalot mentioned the traffic report that said the applicant should offer traffic mitigation. He said they will trim the brush, but there is not much else they can do.

Mr. Fisher said that there will be 2 trips at peak hours. He also said this intersection has been studied numerous times and no mitigation has been proposed.

Mr. Huebener said he is not concerned about the traffic. Several Board members agreed with him.

Mr. Huebener said he is willing to go with Mr. Curry's suggestion of one light. He is concerned about setting a precedent or being sued. Four other board members agreed with him and two wanted to require 3 lights, but would go with one as a second choice.

Mr. Sahrbeck said he is still concerned about the number of conditions on the approval. He said this is leaving the Code Officer to police the applicant. He is concerned about the precedent.

There was further discussion about conditions. Ms. O'Meara was asked if staff are comfortable administering the conditions. She noted that the code enforcement officer's preference is for no conditions and requiring the applicant to return next month with a clean plan, but the Planning Board practice has been to use conditions as a convenience to the applicant to revise plans and proceed instead of having to wait until the next meeting. Conditions must be satisfied before work can begin on the site.

Mr. Huebener made the following motion:

Findings of Fact

1. Michael Friedland, dba Yam Yams LLC, is requesting site plan review to operate a 1,980 sq. ft. village retail lumber store in the existing 1,980 sq. ft. building located at 287 Ocean House Rd, which requires review under

Sec. 19-9, Site Plan Regulations. The following findings are subject to the applicant satisfying all conditions on the approval.

2. The Planning Board held a workshop on January 7, 2020, meetings on February 24, 2020 (application deemed incomplete), April 21, 2020 (application deemed complete), May 19, 2020 (public hearing held), June 16, 2020 and July 21, 2020. A site visit was conducted on May 26, 2020 at 6 p.m.
3. The plan for the development reflects the natural capabilities of the site to support development.
4. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
5. The plan does provide for a system of pedestrian ways within the development.
6. The plan does provide for adequate collection and discharge of stormwater.
7. The development will not cause soil erosion, based on the erosion plan submitted.
8. The development will be provided with an adequate quantity and quality of potable water.
9. The development will provide for adequate sewage disposal.
10. The development will be provided with access to utilities.
11. The development will not locate, store or discharge materials harmful to surface or ground waters.
12. The development will provide for adequate disposal of solid wastes.
13. The development will not adversely affect the water quality or shoreline of any adjacent water body.
14. The applicant has demonstrated adequate technical and financial capability to complete the project.

15. The development will provide for adequate exterior lighting without excessive illumination.
16. The development will provide a vegetative buffer throughout and around the site and screening as needed.
17. The development will not substantially increase noise levels and cause human discomfort.
18. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
19. The site and building design complies with the Town Center Design requirements.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Michael Friedland, dba Yam Yams LLC, for site plan review to operate a 1,980 sq. ft. village retail lumber store in the existing 1,980 sq. ft. building located at 287 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised to address the concerns of the Town Engineer in his letter dated 7-14-2020;
2. That under Notes, note 2 on the Site and Layout Plan and on Sheet AE100, note regarding the cutting room, both notes be replaced with the following note:

The cutting room shall be limited to occasional cutting of wood and wood products by retail store employees for retail store customers at time of purchase, which shall occur during the hours the retail store is open to the public. Retail hours of operation are specified on the Site and Layout Plan as Monday - Saturday, 7:00 a.m. to 6 p.m. and Sunday 8:00 a.m. - 2:00 p.m.

3. That the applicant obtain DEP VRAP Phase II Environmental Site Assessment (ESA) approval for all proposed improvements to the site. Nothing shall be permitted to penetrate or remove the existing asphalt that is not included in the VRAP approval;
4. That the applicant install 1 town center compatible pedestrian light in working order, in the grassed esplanade at the junction of the walkway and the public sidewalk. This light shall be shown on the site plan.

5. That a preservation plan for the existing vegetation to be preserved be added to the plans. The preservation plan shall restrict disturbance of roots within the dripline of trees and no storage of materials shall be allowed within the dripline of trees;
6. That the note on the Erosion and Sedimentation Control Notes/Details sheet under the plant schedule be removed or replaced with note 4 on the Site and Layout Plan;
7. That there be no display of materials on the lawn area, including the path installed in the lawn area. No activities shall be scheduled or programmed for the lawn without first obtaining approval from the Planning Board as a site plan amendment;
8. That there be no outside storage of materials except for the lumber rack, nor any storage containers unless they are shown on the approved site plan. Outside display of materials are only allowed on the concrete walkway in front of the building. Display materials shall be placed to preserve appropriate accessibility into the building and shall be removed when the retail store is closed;
9. That there be no interior use or occupancy of the building without compliance with all building and fire codes as determined by the Code Enforcement Officer and the Fire Chief;
10. That there be no alterations to the site, nor building or any other local permit issued until the plans and materials have been revised to address the above conditions and a complete set of project plans are submitted to the town planner. The applicant must also provide a performance guarantee in accordance with Sec. 19-9-4(B)(4).

Mr. Curry seconded the motion and it was approved, 6-1(Sahrbeck).

NEW BUSINESS

19 Fessenden Rd Private Accessway Permit - Paul Stewart is requesting a Private Accessway Permit to create frontage for an existing lot located at 19 Fessenden Rd (U16-21), Sec. 19-7-9, Private Accessway Completeness.

Bob Metcalf said the lot is at 19 Fessenden Road, (U16-21). He showed a plan of the 2 lots. Lot 2 has a house on it and lot 1 is 33,498 sq. ft. The existing residence will remain and be renovated. The driveway will be relocated to the westerly side of the house. They will replace the septic system. There is an overhead power line and they would like to run the service underground to both of the lots.

He showed a plan of the proposed layout of the lot. They will preserve the tree line, but a lot of the shrub growth in front of the trees is invasives, so they will remove them. They propose a 12ft. wide travel surface with 2 ft. gravel shoulders on either side. Because of space considerations, they will not have an emergency turnaround and propose to have a sprinkler system instead. They plan plantings along the property lines. He spoke about the stormwater and that they propose 2 rain gardens.

They are requesting 4 waivers: 1. Serviceability for the Portland Water District, they will not issue that until the sprinkler system is designed. 2. The width of the travelled way. 3. The turnaround will not be built, but a sprinkler system will be installed. 4. The radius of the junction at the street to be reduced from 20 ft. to 15 ft.

Mr. Chalot opened the public comment period. No one indicated a desire to speak, so the public comment period was closed.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Paul Stewart for a Private Accessway for an existing lot located at the rear of 19 Fessenden Rd be deemed complete.

Mr. Sahrbeck seconded and the motion passed, 7-0.

The Board scheduled a site walk for Tuesday July 28, 2020 at 5:30 pm. They decided to open it to the public as long as they wear a mask and keep a proper distance.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Paul Stewart for a Private Accessway for an existing lot located at the rear of 19 Fessenden Rd be tabled to the regular August 18, 2020 meeting of the Planning Board at which time a public hearing will be held.

Ms. Jordan seconded the motion and it was approved, 7-0.

OTHER BUSINESS

Planning Board digital/remote operations - The Planning Board will review meeting logistics and upcoming items.

Ms. O'Meara said the Town Council is referring the short term rental amendments to the Planning Board. There will be an application from CELT for some bridge construction over wetlands.

The board voted 7-0 to adjourn at 9:40 pm.

Respectfully submitted,

Hiroimi Dolliver
Minutes Secretary