

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

November 17, 2020

7:00 p.m. Remote meeting

Present:     Josef Chalut, 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. Chalut called the meeting to order.

Mr. Chalut asked for the approval of the minutes of October 20, 2020. The minutes were approved as presented 7-0.

OTHER BUSINESS

**Short Term Rental Amendments** - The Town Council has referred for Planning Board review proposed Short Term Rental Amendments and a revision to Recommendation #86 of the 2019 Comprehensive Plan, Sec. 19-10-3 Amendments Public Hearing.

Mr. Chalut outlined the role of the Planning Board on this matter. The board has no decision making role, but as an advisor to the Town Council. He said there will be a 3 minute limit to each comment. He also said Police Chief Fenton and Code Enforcement Officer, Ben McDougal are here.

Mr. Chalut opened the public hearing.

Jill Seaman of 34 Shipwreck Cove Road said she plans to retire there. When she purchased the house, the rentals helped to cover expenses and taxes. She has found a property manager and she called the CEO and asked him to look at the house. She did everything she was supposed to do to this properly. People who are doing the right thing are being hurt by this. I would hate to have to

reconsider this as my retirement home because of some bad eggs. She would not like to see a limit to only a primary residence. She believes there will be more underground if there is a limit. This is taking away property owners' rights.

Christy Green of 285 Mitchell Road said they rent out their home so they can go to their summer home. The 42 day maximum limit is cumbersome for them. They live here full time and rent in the summer. They rent responsibly.

Jennifer Aronson of 27 Lawson Road said she approves of the amendment to limit to primary residence. There are too many strangers coming into the neighborhood. It is unsafe, and unsafe for children. 42 days is too long, that's the whole summer.

Cindy Doucette of Richmond Terrace has rented her house for many years and hasn't had any problems. She needs to rent her house to prepare for retirement. 42 days is too short, and it is a hardship because she will not be able to rent another place to live for just 42 days. It penalizes people who have been responsible renters. She has had no complaints. She wants to have more leeway.

Elizabeth Menz of 27 Cross Hill Road said they rented their home during the summer months to finance their 3 sons' college education. She questioned the recommendation about the 7+ acres category. She would like more transparency about who or what will benefit from this provision. She wants the same privileges. Special interest groups are getting more privileges.

Michael Howard of 15 Rocky Point Lane said his position is, why should anyone be able to run a commercial transient lodging facility in a residential neighborhood? He would view that as running a business in a residential area. The purpose of zoning is to restrict the kind of business activities that take place in an area. He does not think it is appropriate to be running a hotel in a residential area. In places where there are zoning laws, people should abide by those. He would support not allowing unhosted stays. This does not go far enough. Commercial activity should be restricted to a commercial zone.

Craig Cooper, Property Manager of 6 Point Road, believes this is casting too wide a net to catch and control the few problem areas in Cape Elizabeth. Over 90% of the complaints are in basically in 2 areas. This is hurting homeowners who are renting without problems.

Tim Hebda of 55 Richmond Terrace said STRs do not add value to the town. They erode the peace of our neighborhoods and drain the resources of the town. The properties can still be rented on a long term basis. This ordinance is

a compromise. Is this enforceable? Who will monitor behaviors? Is it still going to fall back on the neighbors?

Richard Barker of 4 Boathouse Lane said Peabbles Cove, where he lives, is a tight little community of 24 cottages. At the time he retired, 20-30 years ago, there were only 1-2 cottages that were rented. 8 cottages are now rented, most of the owners do a good job of trying to abide by the rules. They all do not. The feel of the community has changed completely; every Saturday we have a new group of people coming in. They come in with their friends, their neighbors, many from out of state. He thinks it is a good thing to limit.

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

Mr. Sahrbeck spoke about the 7 acre provision, based on review of a map. Every one of our meetings was open, that's the transparency. No one lobbied us. With 7 acres, no neighbors would be affected.

Mr. Chalot noted that in their addendum, they raised the fairness of this issue.

Mr. Gilbert asked how people who are renting STRs are reporting how many days are being rented. Should we require quarterly reports be submitted to the code enforcement officer?

The addendum is the Planning Board recommendations, and Ms. O'Meara asked if the Planning Board wants to include Mr. Gilbert's idea.

Mr. Curry said the problem is that once you create a right, you can't just take it away without due process of law. This is a complex ordinance that we are trying to simplify.

In response to a question, Ben McDougal, Code Enforcement Officer, said this is much more enforceable than what is in place now. It is difficult to enforce. It relies on the neighbors to report what we need to enforce. In summer, it hinders my regular work. It could be 8-10 hours a week in the summer.

Mr. Huebener asked if they can hire more enforcement staff?

Mr. McDougal said that is probably going to happen within the next year or so.

Paul Fenton, Police Chief, said they are already spread pretty thin. The Police department is still willing to be the eyes and ears and report back to Ben.

Mr. McDougal does not support mandatory quarterly reports from STR owners. It is a lot more work and a lot more paper. It's a good idea in concept if he had

another person in the office, but he does not have the time to manage these documents.

Mr. Sahrbeck said we are an advisory of the zoning laws. The final decision is up to the town council.

Ms. Jordan made the following motion:

The Planning Board recommends that the 2019 Comprehensive Plan be revised to replace Recommendation #86 with the following:

Restrict Short Term Rentals (STR) to protect the peaceful quiet enjoyment of neighborhoods and preserve housing stock. Limited STR activity associated with primary residency, or in lower density portions of town, may be allowed within a permit structure that allows tracking of activity and funding for enforcement.

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

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the facts and the information presented, the Planning Board recommends the Short Term Rental Amendments to the Town Council for consideration.

Mr. Sahrbeck seconded the motion and it was approved 7-0.

OLD BUSINESS

**Town of Cape Elizabeth Communications Tower** - The Town of Cape Elizabeth is requesting site plan review of a 180' tall telecommunications tower and 16' x 11.5' support building to be installed at 8 Dennison Dr (R5-10), Sec. 19-9 Site Plan Public Hearing and Sec. 19-8-12, Tower and Antenna Performance Standards.

Matt Sturgis, Town Manager, introduced the project and said the submittals are to address any issues that have been identified. This project will be a critical improvement to our public safety and our public works infrastructure. It will enable the town to better serve the residents of Cape Elizabeth and to improve our ability to protect the public safety, health and welfare of the residents of our town.

Steve Harding of Sebago Technics showed the plan of the project. They have provided a memo on collocation. They are putting the police, fire department and public works on the same tower. There will be other spaces available on

the tower and spaces for support buildings for future collocators. DEP approval will include amending an existing town permit to include the tower area, after which it will qualify for an exemption. They have addressed all the items in the peer reviewer's letter. They are trying to avoid ledge removal so they will bring the utilities overhead from the pole rather than underground. He spoke about the gravel and that they won't plow there.

He showed the coverage maps of the existing coverage and the proposed coverage. There is a letter from Mark Davis, communications consultant, that there should be no radio interference.

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

Mr. Gilbert asked if this facility could be used by wireless companies. Can this site actually meet the needs of a wireless company?

Mr. Harding said this is a 180 ft. tower, so it has enough space for other wireless companies. He does not think any wireless companies have even looked at this tower.

Fire Chief Peter Gleeson said there is no fiber optic on the Spurwink tower. Fiber is available here. No one has looked at collocating on this tower. 180 ft. is standard for towers, but they would have to show that they have better coverage than the companies have now in order for them to come onto this facility.

Mr. Sahrbeck is glad to see the coverage map, because this is the most important way to show the necessity for this tower.

Mr. Bodenski asked if the generator is just sized for the town's equipment? If a collocator came on, would they have their own generator etc?

Mr. Harding said he thinks it would support other needs, but he does not know that for a fact.

Chief Gleeson said it has the capacity to do more. His experience is that the other companies have their own generators.

Mr. Huebener made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting Site Plan Review of a new 180' tall public safety telecommunications tower and 16' x 11.5' support

building to be located at 8 Dennison Drive (R05-10), which requires review under Sec. 19-9, Site Plan Regulations and Sec. 19-8-12, Tower and Antenna Performance Standards.

2. The Planning Board deemed the application complete on October 20, 2020, conducted a site visit on October 27, 2020 at 5:15 p.m., and held a public hearing on November 17, 2020.
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 preserves an existing 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 does not require an adequate quantity and quality of potable water or sanitary waste disposal.
9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The development will provide for adequate disposal of solid wastes at the adjacent recycling center.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.

15. The development will provide a vegetative buffer throughout and around the site and screening as needed.
16. The development will not substantially increase noise levels and cause human discomfort.
17. No storage of exterior materials on the site are proposed.
18. The proposed tower is needed by the police, fire and public works departments to provide for public health and safety and will provide colocation opportunities.
19. The proposed tower will be constructed in a color intended to blend into the surrounding environment.
20. The proposed tower will be adequately buffered by existing woodlands surrounding the site.
21. No lighting of the tower is proposed.
22. The proposed tower will be constructed to the current ANSI/EIA/TIA 222 Revision F standard.
23. The proposed tower base will be enclosed with an 8' high fence, topped with 3 strands of barbed wire.
24. No advertising is proposed on the tower.
25. The proposed tower will not interfere with the radio, television, or telecommunication service enjoyed by the community.
26. The proposed tower is located on town property and it will be the responsibility of the town to remove it upon cessation of operations.
27. No performance guarantee is needed because the town is responsible for compliance with town regulations.
28. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-12, Tower and Antenna Performance Standards.

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 site plan review of a 180' public safety telecommunications tower to be

located at 8 Dennison Drive be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer Todd Gammon's letter dated November 10, 2020;
2. That a note be added to the plan as follows:

A final certified statement of non-interference shall be provided by a professional engineer and approved by the Town after construction and full operation of the tower if a written complaint of interference is submitted to the Town.

3. That there be no alteration of the site nor issuance of a building permit until the plans are revised to address the above conditions and submitted to the town planner.

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

#### NEW BUSINESS

**Magnolia Terrace Private Rd and Resource Protection Permit** - Christopher Cary is requesting review of a 377'± Private Road to be called Magnolia Terrace and Resource Protection Permit to fill 3,550 sq. ft. of RP2 wetland to create frontage for a new lot in the vicinity of 4 Alexander Drive (R4-44C), Sec. 19-7-9 Private Road Review Completeness, and Sec. 19-8-3 Resource Protection Permit Completeness.

John Mitchell of Mitchell and Associates showed a plan of the existing conditions. It is a 10.7 acre parcel off Eastman Road. It is in the RA District and Resource Protection District. The road coming in from Eastman Road is Alexander Drive. It extends approximately 400 ft before taking a 90 degree turn. At the end of Alexander Drive is a paved driveway that provides access to the Cary residence. The parcel is wooded with the wetlands delineated by Statewide Surveys in September this year. There are RP-1 and RP-2 wetlands. He showed where they are located on the plan. He spoke about the utilities and where they will be located.

Mr. Mitchell showed the plan of the proposed division of the property into two lots. Lot 1 has the existing house. Magnolia Terrace, the proposed private road, will be 18 ft. wide with 14 ft. wide travel way and 2 ft. wide gravel grassed shoulders on each side. They met with Chief Gleeson and he requested a turnaround and a residential sprinkler system. He showed a plan of the proposed road and explained why it was laid out like it is. It's to create a useable building envelope because there are so many setbacks affecting the



parcel. He showed the drainage plan and said they will install a culvert and a rain garden. The soils have been tested as suitable for a septic system. They showed a wetland impact plan. DEP said they do not need a permit because it is under 4300 sq. ft. They have submitted a self verification notice to the Army Corps of Engineers, and have gotten a verbal approval.

Mr. Mitchell said they will install a yield sign for Magnolia Terrace. They will replace proposed granite monuments with iron pins.

The waivers they are requesting are:

The traffic study, because they are only adding one lot.

The final design of the septic system.

Stormwater calculations because they are only adding a small area.

Road width is narrower because they are only adding 1 additional lot.

Side slopes of the road.

Iron pins instead of granite monuments.

Curving of the road.

High intensity soil map.

Mr. Mitchell also asked if there is a possibility to expedite the approval.

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 Christopher Cary for a Private Road review of Magnolia Terrace and a Resource Protection permit to fill 3,550 sq. ft. of RP2 wetland to construct 377'± of private road to create frontage for a new lot located at 4 Alexander Dr be deemed complete with the following waivers: traffic study, HHE 200, stormwater calculations and a high intensity soil survey.

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

Mr. Chalot asked if they needed to have a public hearing?

Ms. O'Meara said they do not need a public hearing, but some of the abutters have written with comments and they should be given the opportunity to make their comments heard. Mr. Chalot said that expedited review would not be available.

The Board agreed to have a site visit.

Mr. Chalot asked about the road width for Alexander Drive.

Mr. Mitchell said it is 18 ft wide of paved travel way. They are proposing Magnolia Terrace to be 18 ft wide with 14 ft. of travel way and 2 ft. wide gravel shoulders

Mr. Gilbert asked if there are any other potential lots?

Mr. Mitchell described a potential lot located south of the existing home, but said it would be very difficult and costly.

In response to a question about future potential development, Ms. O'Meara said there would be a maximum of one more lot.

The Board scheduled the site visit for 3 pm. Friday November 20, 2020.

There was a discussion of the survey plans and certification.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Christopher Cary for a Private Road review of Magnolia Terrace and a Resource Protection permit to fill 3,550 sq. ft. of RP2 wetland to construct 377'± of private road to create frontage for a new lot located at 4 Alexander Dr be tabled to the regular December 15, 2020 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Huebener seconded the motion and it was approved 7-0.

Ms. O'Meara said there are 2 items on the agenda for the next workshop, one is a fence amendment and the other is to add parking to the Town Farm District.

The Board voted unanimously to adjourn at 9:05 pm.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary