

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

April 21, 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.

CALL TO ORDER

Mr. Chalut called the meeting to order.

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.

Mr. Chalut asked for the approval of the minutes of February 24, 2020. The minutes were approved as presented 7-0.

The Board then discussed the letter from Mr. Curry and how to conduct site walks during this time of COVID 19 restrictions.

Ms. O'Meara said they need to follow CDC guidelines; everyone would need to wear a mask, everyone would need to stay at least 6 feet apart, they would need to close it to members of the public because you cannot have more than 10 people at a gathering, (there are 7 board members and Ms. O'Meara and that leaves 2 people for the applicant) but she could videotape the site walk and have it posted on the Town website so it would be available for the public to see.

The Board agreed that this would be the way to proceed.

CONSENT AGENDA

**Ocean House Common Subdivision Approval Extension** - Ocean House Common Subdivision is requesting an extension of the approval granted December 17, 2019 for a 4-lot subdivision located at 326 Ocean House Rd (R02-4-6), Sec. 16-2-6(b) approval extension.

John Mitchell made the request for a 90 day extension. He said they have received the DEP approval.

No one came forth to comment on this item, so the public comment period was closed.

A brief discussion was had about how to get the Board to sign the plan. It was decided that they would meet Ms. O'Meara in the parking lot at the town hall and sign it there.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the request submitted and the facts presented, that the request of David Jacobson, on behalf of the Ocean House Common site plan amendment and subdivision, located at 326 Ocean House Rd, for a 90-day extension of the Planning Board approval granted December 17, 2019 be approved, with an extension to July 10, 2020.

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

OLD BUSINESS

**Edgecomb Way Private Road extension** - Jay Cox is requesting Private Road Review and a Resource Protection Permit to extend Edgecomb Way, located in the vicinity of 75 Ocean House Rd (U26-1-1, 2), to provide access to future lots, Sec. 19-7-9 Private Road Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Jay Cox for KGM, LLC said they are here for a 275 ft. extension of a previously approved private road, Edgecomb Way. They want to access an upland that is beyond the wetland. They are here for a Private Road review and a Resource Protection Permit to impact the RP2. They are seeking the same waivers as in the previous approval, an 18 ft. traveled way with 2 ft. grass shoulders, within a 35 ft. right of way. They are also requesting a waiver of the dimension of the turnaround. Since the road will create frontage for the abutters to create lots, they will install utilities to support a maximum of 4 lots. They propose a T turnaround at the end of the road. It would all be paved. They will construct a 36 in. culvert. Maintenance of the road and culvert would be by the homeowners. They have amended the maintenance agreement to require annual reporting to the Town. He spoke about the stormwater and where it will flow.

No State permits are required. An Army Corps US Fish and Wildlife permit has been under review. Resource Protection Permit is to impact 3988 sq. ft. to access the upland. They have complied with all of Steve Harding's comments.

He showed the utility plan.

Mr. Chalot opened the public hearing. No one came forth, so the public hearing was closed.

Mr. Sahrbeck made the following motion:

#### Findings of Fact

1. Jay Cox is proposing to extend the Edgecomb Way Private Road (located in the area of 75 Ocean House Rd) and a Resource Protection Permit to alter 3,988 sq. ft. of RP2 wetland which requires review for compliance with Sec. 19-7-9, Private Roads, and Sec. 19-8-3, Resource Protection Permit
2. The road extension will not result in undue water pollution. The road extension is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
3. The potential lots gaining access from Edgecomb Way will have a sufficient quantity and quality of potable water.
4. The road extension will not cause soil erosion, based on the erosion control plan provided.
5. The road extension will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The road extension provides for road network connectivity while discouraging through traffic. The road extension is laid out to conform to existing topography as much as is feasible. Potential lots are provided with vehicular access. The road extension is designed to meet town standards, with waivers granted for a road right-of-way reduction from 50' to 35', and road traveled surface reduction from 22' to 18' plus 2' grassed shoulders.
6. The road extension will provide for adequate sewage disposal by installing a public sewer line connection available for potential lots.
7. The road extension will result in solid waste disposal after construction.
8. The road extension will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline.

9. The road extension is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant has demonstrated adequate technical and financial capability to complete the project.
11. The road extension is not located in the Shoreland Performance Overlay District and will not adversely impact surface water quality.
12. The road extension will not adversely impact the quality or quantity of ground water.
13. The road extension is not located in the 100-year floodplain.
14. The road extension is in compliance with the Town wetland regulations in the Zoning Ordinance, subject to issuance of a Resource Protection Permit.
15. The road extension will provide for adequate stormwater management.
16. The road extension is not located in the watershed of Great Pond.
17. The road extension is not located in more than one municipality.
18. The road extension is not located on land where liquidation harvesting was conducted.
19. The road extension will provide potential lots with access to utilities.
20. The proposed road extension will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
21. The proposed road extension will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
22. The proposed road extension will not substantially increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
23. The proposed road extension will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;

24. The proposed road extension will not pose problems related to the support of structures;
25. The proposed road extension will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
26. The proposed road extension is not located in coastal dunes or contiguous back dune areas;
27. The proposed road extension will maintain or improve ecological and aesthetic values;
28. The road extension will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
29. The road extension will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
30. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1 and Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jay Cox to extend the Edgecomb Way Private Road (located in the area of 75 Ocean House Rd) and a Resource Protection Permit to alter 3,988 sq. ft. of RP2 wetland be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated March 9, 2020;
2. That the Army Corps of Engineers permit be obtained before any construction on the site occurs;
3. That all potential lots with frontage on Edgecomb Way be connected to the public sewer system; and
4. That there be no alteration of the site until the plans and materials have been revised to address the above conditions and submitted to the town planner, and the plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

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

## NEW BUSINESS

**Inn by the Sea Cabana Site Plan Amendment** - The Inn by the Sea is requesting an amendment to the previously approved site plan to add 2 10' x 10' seasonal cabanas to the lawn area located at 40 Bowery Beach Rd (U17-40), Sec. 19-9, Site Plan Amendment completeness and public hearing.

Michael Briggs, General Manager of the Inn by the Sea, said they propose to add two 10 ft. by 10 ft. cabanas to the lawn. There has been a decline in tented events, which would have utilized the lawn. There will be 2 10X10 pop ups with aluminum welded frames with canvas canopies. They are secured to the ground. No music, no water, no power no lighting and no signage.

Mr. Chalot asked if the decks are temporary or permanent.

Mr. Briggs said they are temporary, and would be removed at the end of the season.

Mr. Chalot opened the public comment. No one had a comment, so the public comment was closed.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Inn by the Sea, located at 40 Bowery Beach Rd, for an amendment to the previously approved site plan to install 2 seasonal 10' x 10' cabanas on the southeast corner lawn be deemed complete. In accordance with Sec. 19-9-4 C3, the Planning Board waives the submission of financial and technical capability information due to the limited size of the project.

Mr. Curry seconded the motion and it passed, 7-0.

The Board does not need a site walk.

Mr. Chalot opened the public hearing, and no one came forth to speak, so the public hearing was closed.

Mr. Curry made the following motion:

Findings of Fact

1. The Inn by the Sea, located at 40 Bowery Beach Rd, is requesting an amendment to the previously approved site plan to install 2 seasonal 10' x 10' cabanas on the southeast corner lawn, which requires review for compliance with Sec. 19-9, Site Plan Regulations.
2. The Inn by the Sea 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 those approvals which are not altered by the proposed amendments remain in effect.
3. The cabanas amendment reflects the natural capabilities of the site to support development.
4. The applicant has demonstrated adequate technical and financial capability to complete the project.
5. 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 Inn by the Sea, located at 40 Bowery Beach Rd, for an amendment to the previously approved site plan to install 2 seasonal 10' x 10' cabanas on the southeast corner lawn be approved.

Ms. Jordan seconded and it was passed, 7-0

**Doyle Elizabeth Farms Subdivision Amendment** - Ian and Gena Doyle are requesting an amendment to the previously approved Elizabeth Farms Subdivision to expand the building envelope for the lot located at 11 Cole Field Rd (U53-2C), Sec. 16-2-5, Amendment to a previously approved subdivision completeness and public hearing.

Steve Hight, contractor, said the Doyles want to put a 600 sq. ft. extension on their house. That would put it outside the building envelope onto existing lawn.

Mr. Chalot opened the public comment. No one came 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 Ian and Gena Doyle for an amendment to the previously approved Elizabeth Farms Subdivision to expand the

building envelope for the lot located at 11 Cole Field Rd be deemed complete.

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

The Board did not need a site walk.

Mr. Chalot opened the public hearing. No one came to speak, so the public hearing was closed.

Mr. Chalot wants the new line be parallel to the existing building envelop line.

Ms. Jordan made the following motion:

#### Findings of Fact

1. Ian and Gena Doyle are requesting an amendment to the previously approved Elizabeth Farms Subdivision to expand the building envelope for the lot located at 11 Cole Field Rd (U53-2C), which requires review for compliance with Sec. 16-2-5, Amendments to a previously approved subdivision.
2. The Elizabeth Farms Subdivision has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance, and the findings and decisions of those approvals which are not altered by the proposed amendments remain in effect.
3. The subdivision amendment will not result in undue water pollution. The subdivision amendment is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
4. The subdivision amendment is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
5. The expanded building envelope will be provided with access to utilities.
6. The subdivision amendment substantially complies with the requirements of Sec. 16-3-1, Subdivision Standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Ian and Gena Doyle for an amendment to the previously approved Elizabeth Farms Subdivision to

expand the building envelope for the lot located at 11 Cole Field Rd be approved, subject to the following conditions:

1. That the legend showing how the proposed expanded buildable area is designated, be moved outside of the lot and be moved to a legend square;
2. The new eastern building envelope line shall be offset parallel to the existing eastern building envelope line.

Mr. Curry seconded the motion and it passed, 7-0.

**18 Ledgewood Ln Private Accessway Permit** - James Gray is requesting a Private Accessway Permit to make the lot located at 18 Ledgewood Lane (U36-63) a buildable lot, Sec. 19-7-9, Private Accessway Permit completeness and Public Hearing.

Todd Gammon of Blais Civil Engineers presented the project. They showed a drawing of the area. This lot is at the end of Broad Cove Road. They have a non-conforming lot within the Residence A District. The lot has been assigned an address of 18 Ledgewood Lane, and is 19,600 sq. ft. They propose a 30 ft. wide accessway about 25 ft. long to get to the building setback line. They have public sewer and public water in the street. There is a utility pole adjacent to the lot. They are proposing a 14 ft. wide paved driveway with 2 ft. grass on gravel on each side up to the building setback line. The driveway will be cross sloped to sheet the stormwater into the grass instead of out into the road. They have asked for an received a waiver from the Fire Chief for not having an emergency turnaround.

Mr. Gammon said they have addressed the comments by Steve Harding. They will have a 5 ft. radius at the edge of pavement. The requirement is 20 ft. radii, but that will add a lot of impervious surface and stormwater flow onto the road, so they are going with 5 ft. They had proposed a fence, and the neighbor did not like that, so they are going to do a landscape buffer.

Mr. Curry asked about a swale where the driveway meets the street.

Mr. Gammon said it is just a grassy area, not a swale.

Mr. Chalot asked how they will indicate the plantings.

Mr. Gammon said the plan now shows fencing, but instead of fencing they will show plantings of evergreens 15 ft. on center.

Mr. Gray said they have agreed to the planting of the evergreen trees instead of the fence.

Mr. Chalot opened the public comment period.

Russ Keenan of 3 Spoonrift Lane said they have come to an agreement that there will be no fence.

Mary Steidel of 15 Ledgewood Lane is concerned about a different lot on Spoonrift.

Ms. O'Meara said they cannot answer that. The Planning Board can only act on the application before it.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of James Gray for a private accessway permit for the lot located at 18 Ledgewood Lane to cure a road frontage deficiency and make the lot buildable be deemed complete.

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

The Board did not need for a site visit.

Mr. Sahrbeck said this is a private access plan, so there is no need to see the trees in the back of the lot.

Ms. O'Meara shared a picture she took of the lot along the east property line.

Mr. Huebener made the following motion:

#### Findings of Fact

1. James Gray is requesting a private accessway permit for the lot located at 18 Ledgewood Lane to cure a road frontage deficiency and make the lot buildable, which requires review for compliance with Sec. 19-7-9, Private Accessways.
2. The proposed lot shall be improved with only one dwelling unit and related accessory buildings and uses.
3. The private accessway shall be located within a dedicated right-of-way having a width of 30'.

4. The sub-base shall be constructed with gravel meeting MDOT Spec. 703.06 Type D with a depth of at least fifteen (15) inches, and having a width of at least eighteen (18) feet.
5. The travel way shall be constructed with a minimum of three (3) inches of crushed gravel having a width of at least fourteen (14) feet, with the remaining width of gravel based loamed and seeded.
6. The accessway shall be paved with 2 inches of asphalt paving. The maximum grade within the first fifty (50) feet of the edge of street paving shall not exceed five percent (5%). Pavement radius at the intersection with the street shall be five (5) feet.
7. Gutter drainage along the street shall be allowed to sheet across the face of the intersection and the proposed design will keep drainage from the private accessway from running into the public street.
8. The Fire Chief is recommending that the construction of a turnaround be waived in favor of using Ledgewood Lane as a turnaround.
9. The accessway is located so that sight distance conforms to the requirements of the Subdivision Ordinance.
10. The private accessway shall serve only one lot.
11. The Planning Board has not reduced the requirements of Sec.19-7-9 (D)(4) to a lesser standard, except for the radius standard.
12. Adequate disposal of sewage shall be provided as evidenced by connection to the public sewerage system.
13. A building envelope is depicted wherein the house and accessory buildings will be located on the lot demonstrating conformance with the setback requirements of the district in which it is located and any natural constraints and that the house site will be buffered from abutting residential properties, subject to the additional plantings and fencing to be provided.
14. The application substantially complies with Sec. 19-7-9, Private Accessways, and Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of James Gray for a private accessway permit for the lot located at 18 Ledgewood to cure a road

frontage deficiency and make the lot buildable be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated April 15, 2020;
2. That the building envelope be labeled on the plan. A note shall be added to the plan that all principal and accessory structures must be located within the building envelope;
3. The plantings (evergreens of a size 6'-7' at time of planting and spaced 15' apart on center) would be on the westerly and northerly sides of the property in lieu of the fence shown.
4. That there be no issuance of a building permit until the plans have been revised to address the above conditions and the plan has been signed by the Planning Board and recorded, with the road maintenance agreement, in the Cumberland County Registry of Deeds.

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

**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 retail lumber store and education classes, Sec 19-9 Site Plan Completeness.

Jim Fisher of Northeast Civil Solutions showed the plan. It is a 1 acre parcel with 2 access points, one on Ocean House Road and the other on Scott Dyer Road. They propose 22 parking spaces and a rehab of the building. They are no longer proposing a farmers market, food trucks or concerts. There is one building and one small out structure for the storage of lumber.

There is an environmental action plan in the packet. They do not have the VRAP program yet from the DEP. They will be taking up some pavement and replacing it with loam and seed. They have had a traffic assessment, which shows no significant impact on traffic. The indication by the traffic engineer is that the intersection of Scott Dyer, Ocean House and Shore Road is unique. It is a relatively high crash site, primarily at the Shore Road, Ocean House Road side. They are not proposing any change to the access on Scott Dyer Road.

The lighting plan shows at the access point to Scott Dyer Road, there is a 0.7 foot candle at the boundary. That can be adjusted by the hood on the lighting in that area. They propose lighted signage. They will have that information later. There is street lighting along Ocean House Road. The Town is proposing to put in sidewalks and lighting on the other side of the road. The Town may

choose to do it on this side of the road because it is in the public right of way. It has nothing to do with us. That would be a substantial expense to put on a small entrepreneur at this site.

Mr. Chalot asked if they were going to show the architectural plans since they were in the packet and are needed for completeness.

Mr. Fisher said they have addressed those issues and the architect is not present tonight.

Mr. Friedland said he would answer questions about the business or the building.

Mr. Chalot said the building needs to meet the Town Center standards. We cannot waive those standards. That needs to be part of the presentation.

Mr. Fisher said the front of the building shows a proposed double door for lumber deliveries, and there is a pedestrian door. The overall facade has 51% openings on the Ocean House Road side. The end of the building facing Scott Dyer Road, is subject to a request for a waiver for there to be less than 50% openings. At this point there is 40% openings. The exterior materials will be 6 in. high hemlock boards.

Mr. Chalot asked if they are proposing an aluminum door on the front.

Mr. Friedland said they have not yet decided what door they will choose. The interior will have a raised area for the classes and space for storage underneath.

Mr. Sahrbeck said the applicant has asked for a waiver on the Scott Dyer side of the building as to what percentage of windows or openings. He does not think they can waive standards.

Ms. O'Meara said that is true.

Mr. Chalot doesn't think they need to be in compliance to be deemed complete.

Mr. Sahrbeck then asked Mr. Friedland what changes they would make on the Scott Dyer Road side.

Mr. Friedland said it is difficult to meet the design standards. He said he thinks those standards do not apply to existing structures. It's extremely expensive to meet the standards.

Several Board members said the issue of meeting the design standards is not an issue for completeness.

Mr. Curry talked about the traffic study, and that the report cites a high crash area. The report also said further study would be needed.

Mr. Fisher said that crash area is not here, but at the Shore Road side.

Mr. Chalot opened the public comment on completeness. No one came to speak, so the public comment was closed.

Mr. Bodenski said the traffic study talks about sight distances for Scott Dyer Road. The applicant needs to spend more time addressing the traffic study.

Mr. Fisher said they will ask the DOT if they can remove some of the bushes.

Ms. Jordan made the following motion:

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 retail lumber store with DIY classes in the existing 1,980 sq. ft. building located at 287 Ocean House Rd be deemed complete.

Mr. Curry seconded and it passed, 6-1(Sahrbeck).

Mr. Chalot said they need to review the Town Center Standards and come up with a concept that addresses the standards. He said they can either launch into it now or table it to the next meeting.

Mr. Fisher said they are not changing the building exterior.

Mr. Chalot said they have made many changes to the building, the siding, doors, roof and windows. The Board and Mr. Fisher referenced the project's architect and Ms. O'Meara clarified that there is no architect on the project team.

Mr. Friedland said he has a designer, not an architect.

The Board agreed not to launch into that discussion now.

Mr. Friedland said he thought he met the Town Center design standards and does not know what else to do Mr. Chalot said it is not the job of the Planning board to design the building.

The board discussed scheduling a site visit, but wants updated exterior plans first.

Ms. Jordan made the following motion:

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 retail lumber store with DIY classes in the existing 1,980 sq. ft. building located at 287 Ocean House Rd be tabled to the regular May 19, 2020 meeting at which time a public hearing will be held.

Mr. Sahrbeck seconded the motion and it passed, 6-1.

#### OTHER BUSINESS

**Planning Board digital submissions** - The Planning Board will consider digital Planning Board submission guidelines.

The Planning Board reviewed the digital submission guidelines that were prepared to facilitate remote Planning Board meetings. The board agreed to revise the guidelines to specify that documents be submitted in one pdf and a plan set in one pdf. The site walk procedure will also be added to the guidelines. Board members noted that the situation is evolving and procedures will need to evolve with them.

The Planning Board voted unanimously to adjourn at 10:30 p.m.

Respectfully submitted,

Hiroimi Dolliver  
Minutes secretary



