

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

May 19, 2020

7:00 p.m. Remote meeting

Present:     Josef Chalot, 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. Chalot 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. Chalot asked for the approval of the minutes of April 21, 2020. The minutes were approved as presented 7-0.

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 retail lumber store and education classes, Sec 19-9 Site Plan Public Hearing.

Jim Fisher said he is here with Michael Friedland and Alyssa Phanitdasack, architect. He said he would begin by addressing the site plan review standards. He said the lumber storage rack is not an enclosed structure. It will sit on a concrete pad. They will not go through the asphalt, so they will not be disturbing the soil.

He addressed the VRAP and said that is only concerned with excavation of 3-4 ft. They will remove the pavement near the intersection, but will not do any excavation. He said their parking will be more spaces than required.

Mr. Fisher addressed the traffic study and said there will be 2 trips per peak hour. He said they will remove the vegetation at the corner. It is on MDOT

property, but they will remove it if they get permission. He talked about the crash statistics at that corner and the sight distances and said they are adequate.

They will stripe the sidewalk for the pedestrian walkway. They will be open to planting more vegetation along the Ocean House Road side. They want to be sure the lighting is at less than 0.5 ft. candles of light at any boundary that is immediately adjacent to another use. There is a greater light at the entrances. They are prepared to take them out if the Board wants us to.

The signs will be wooden. About the noise, the dust collector will be in use while the tools are in operation. That is its purpose. It is not very noisy. Mr. Friedland would like the option to add the same type of classes from 11am-2pm, 3 days a week.

Alyssa Phanitdasack, architect, showed illustrations of their proposals. She said the building is difficult to change because of its construction. She said they will remove the current siding and replace it with 6" hemlock ship lap siding. They want to remove most of the window muntins, but keep a few of them. They will create a new entry that is centered along the facade, as well a new window and signage. The ratio of window to wall on the front of the building is 42%, but the existing structure makes it difficult to add a window and maintain the rhythm of the building. They want to remove the roof ridge. The 50% fenestration on the Scott Dyer Road is not met.

Mr. Chalot asked if they could put windows in the gable on that side.

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

Mr. Chalot said he would like to go through the Town Center Standards. His first issue was a question for Ms. O'Meara about the requirements for an existing building.

Ms. O'Meara said there are some places where she thinks the Planning Board has some flexibility and others where they have none. There is nothing in this Ordinance that says an existing building is exempt from the standards. She said whenever the Town is sued, they have to hire an attorney to defend themselves, and that attorney is paid from taxpayer dollars. The Planning Board was sued over similar issues. The Board can ask for legal advice if they want it.

Mr. Gilbert asked if there is a hardship clause.

Ms. O'Meara said there is not.

Mr. Chalot said the first thing is the space and bulk standards. The building doesn't meet the setback requirements.

Ms. O'Meara said since they are not proposing an expansion of the existing building, it is considered a legal non conforming structure.

Design requirements. They are not changing the footprint of the building and the lumber storage rack is an accessory structure.

Scale. They are not changing the scale of the building.

Mr. Gilbert thinks that reducing the parking area will improve the scale.

Mr. Curry said since they are dealing with an existing building, he is not sure going into the fine detail is appropriate.

Roof pitch. Mr. Chalot thinks the roof cap on top should stay. The Board agreed that it can be removed.

The front facade shall have a distinctive entrance. Mr. Sahrbeck thinks that both the Ocean House and the Scott Dyer sides need to have a distinctive entrance.

Ms. O'Meara said this is an area where the Board has discretion. The Board might be able to decide that one frontage is the "front," in which case not "front" portions of the building do not have to meet the front standards.

Mr. Chalot thinks this is not a distinctive entry on Ocean House Road.

Mr. Curry said this is a very subjective requirement and he doesn't think they should be micromanaging this.

Mr. Chalot thinks the 7 of them can look at that and say it is or is not distinctive. Several of the members of the Board agreed that it is not a distinctive entry, and they need to adhere to the standards.

Ms. Phanitdasack said it is hard to work with the existing building. She thinks they can come up with some plans.

The board then considered the Scott Dyer side of the building.

Mr. Sahrbeck said it needs to be a distinctive entry on both sides. That is how he reads the Ordinance. He said they might like to have a consultation with the Town Attorney.

Mr. Chalat does not think that they are both front facades.

Mr. Freidland said according to the code, development in existing structures shall maintain the original rhythm and size of the openings. He wonders how this applies in this case.

Mr. Curry does not think they need to have a second distinctive entry on that side. He does think they need to discuss the fenestration.

Ms. Jordan said it is an existing building so that makes it hard, but they can make that side more attractive.

The Board agreed with Mr. Chalat that the Scott Dyer road did not need to have a distinctive entry, but it needs to be made more attractive.

Openings. Mr. Chalat said the front facade needs to have 50 % of windows and doors, and it is 43 %. He does not think they can waive that requirement. He then spoke about the Scott Dyer side of the building.

Ms. Phanitdasack said it is difficult to work with an existing building that is small.

Ms. O'Meara said the majority doesn't want the Scott Dyer side to be an entry, but needs to be made more attractive.

Exterior materials. The muntins on the windows will remain and will be painted. Ms. O'Meara showed pictures of nearby buildings with muntins on the windows.

Landscape and site development. Mr. Curry wants shrubbery to screen the parking lot.

Mr. Fisher said they cannot excavate. They need to go along the row of the front right of way line.

Mr. Chalat said they need a connection to the sidewalk on the Ocean House Road.

Mr. Gilbert asked if there was an area outside of the zone where no excavation is allowed.

Mr. Fisher said the VRAP program covers the entire property. The DEP says don't excavate anywhere.

Mr. Gilbert asked if they could add soil on the top and plant some shrubs that way.

Mr. Fisher said you can add on top, but no digging.

Parking lot. It is ok to get rid of one of the wings. They want to remove the one on the northerly side.

Buffering. There is existing buffering on the back line.

The Board decided to have a site walk. It will be under the new regimen, 10 people. The Board of 7 people, 2 representatives from the applicant and the town planner who will videotape the site walk and post it on the Town website. They set a date of Tuesday May 26, 2020 at 6:00 pm.

Mr. Bodenski wants the applicant to talk about the noise from the dust collector.

Ms. O'Meara said that, under site plan standards, the maximum noise levels in the commercial district are 65 db. at the property lines from 7 am to 10 pm. She said the applicant has provided noise levels for the power tools, and the loudest one meets the standard, but layering of equipment creates a problem.

Mr. Bodenski asked where the dust collector will be located.

Mr. Friedland said it would be mounted inside in the front, Ocean House Road side of the building. It doesn't vent to the outside.

Mr. Chalot asked what the walls are made of. There will be no open doors or windows. They need to know the noise levels at the property lines.

Ms. O'Meara said the noise study for the operation of 1 power tool indicates 55.4 db. at the property line. She is concerned about more than one piece of equipment running at the same time. She shared information gleaned from a internet search suggesting the dust collector runs at a decibel level of 80-90. Mr. Friedland said he will be happy to limit to two, one piece of equipment and the dust collector.

Mr. Curry asked if they had measured the level of sound while a tool is under load, or just running.

Mr. Bodenski said there need to be a reasonable worst case with 3 tools and the dust collector running.

Ms. Phanitdasack said they can add sound board to the walls inside.

They showed the lighting plan. Ms. O'Meara said there are 3 pole lights that exceed .5 ft. candles at the property line. If they want to keep them, they could shield them.

Mr. Fisher said there is no reason to have them there. They do not need them. The only light they need is the one outside by the lumber storage area. There are cobra lights so we do not need them.

Mr. Chalot asked how they are lighting the parking areas.

Mr. Fisher said there are lights on the building, the one by the storage area and the residual light from the cobra lights.

Mr. Chalot said they need to light the parking, and they want to have the fixtures be consistent with the town center.

They need to provide an updated lighting plan.

In response to a question about outstanding issues on lighting, Ms. O'Meara mentioned the pedestrian lighting at the Ocean House sidewalk.

Mr. Fisher said that for a project of this size and magnitude, putting in pedestrian lighting in the right of way, doesn't have anything to do with this project. It's underneath the cobra lighting, so it does nothing.

Mr. Chalot said the street lights give the whole town center a rhythm and continuity and gives a village feeling.

Mr. Fisher said if the Town wants to put in lighting there that is fine, to put that burden of responsibility on a very small business owner is huge. It is very expensive. To put that on one small business owner when there is no safety or security reason.

Mr. Friedland said he has a limited budget. He does not have endless dollars.

Mr. Gilbert said all these standards were in place before you bought the property. These are calculations you need to make before you buy something. A limited budget does not waive the standards.

Mr. Fisher said this is an incredible expense for a small business. He said the other lights were paid for by the public.

Ms. O'Meara said the CSalt property was paid for by the owner. The Ordinance explicitly says that individual property owners are responsible for installing the

sidewalk. This is what we require every business owner to do. This applicant has not needed to install a sidewalk, only the lighting. It would be useful if the applicant could develop a cost estimate.

Mr. Friedland said he is a small business owner trying to start a small business. He then said how much he has already spent and he has not yet begun to fix up the building. To have a private property owner to pay for public lighting on top of starting a business, it doesn't make sense to him.

Mr. Chalot said they need to check what the minimum number of lights would be needed. He does not think the Planning Board has the authority to waive this requirement.

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 1,324 sq. ft. village retail lumber store, 400 sq. ft. DIY classes and 256 sq. ft. of office in the existing 1,980 sq. ft. building located at 287 Ocean House Rd be tabled to the regular June 16, 2020 meeting of the Planning Board.

Mr. Curry seconded and the board approved 7-0.

#### OTHER BUSINESS

**Planning Board digital/remote operations** - The Planning Board will review meeting logistics.

The Board agreed that the logistics are fine. They have no complaints.

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

The board voted 7-0 to adjourn at 9:35 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary