

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

June 16, 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 May 19, 2020. The minutes were approved as presented 6-0.

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 Review.

Jim Fisher of Northeast Civil Solutions and Alyssa Phanitdasack presented for the applicant. They showed the site plan. Mr. Fisher said they still do not have the VRAP from the DEP. As for the sight distances they will trim the bushes, but sight distances are not a problem. They have augmented the landscaping.

Mr. Sahrbeck joined the meeting.

As for pedestrian circulation, Mr. Friedland would like to leave it as it is. He proposes a stone dust coating which will be more in character with the site. The light poles will come out, but the bases will stay. Mr. Friedland is working on a life safety plan with Mr. McDougal. At this time, they are not proposing to hold classes. They only want approval for retail and a small office. They will

come back for another approval when they want to have classes. The dust collector and the saws will only be used when they are cutting a piece of lumber for a customer.

They want outdoor storage for seasonal items such as shovels, rakes, ice pellets etc. Those items will come indoors at night.

Mr. Chalot asked where they propose to display those items.

Mr. Fisher said it will be on the front sidewalk underneath the eave, on either side of the front door on small racks for the small items.

Mr. Sahrbeck said this is the first we've heard of these seasonal items to be on display outside the building. We are hearing that there won't be classes. Our hopes are that we will know all the things that are planned for this building.

Mr. Fisher said they will sell things that people might need if they are building something.

Mike Friedland said it will be retail for wood and wood related products. It could be fasteners, house wrap, hand tools. We will probably sell garden supplies.

Mr. Huebener asked if they see this turning into a hardware store over time?

Mr. Friedland said no way. It will be wood and wood related products.

Mr. Huebener asked about the lighting along the road.

Mr. Fisher said they will get to that later.

Alyssa Phanitdasack showed the front of the building. She said they have changed the door and added a dormer over the main entry. The main entry will have 3 sliding doors, and they have added a large window on either side. This shows where they will have the wall packs. On the Scott Dyer side, they have added a large window. This is not the updated plan because the window is off center to the left because of existing conditions. They are using the existing opening.

Mr. Sahrbeck said before Ms. Phanitdasack came onto the project, it was represented to us numerous times that that was a concrete block wall and it would be difficult to put an entrance or window over there. Just now it is being shown to us that there are two openings in that wall.

Ms. Phanitdasack apologized for that misrepresentation, and said she had only been able to see the inside of the building once.

Mr. Curry asked what is a wall pack.

Ms. Phanitdasack said it is a square light for the parking lot.

Mr. Chalot asked why they have used the same slope for the new roof. The ordinance is specific about the minimum slope. He also asked about the window to the right of the triple doors. Does it reflect the platform inside the building.

Ms. Phanitdasack said it would be opaque, so you would not be able to see in. We need the window to wall opening, but that is where the platform goes up.

Mr. Friedland said the image shows a triple door, but chances are it's going to be a double doors with fixed panels on the sides.

Mr. Sahrbeck asked about the opaque window. Does that go towards the 50%?

Mr. Friedland said it could be frosted, like you would have for a bathroom.

Mr. Huebener asked about the slope of the roof.

Ms. Phanitdasack said they copied the existing slope because it is visually more cohesive.

There was a further discussion of the slope of the roof.

Mr. Chalot wanted a survey of the Board about whether the obscured window is OK. The majority of the board said it is OK.

In response to a question, Ms. O'Meara clarified her recommendation that the applicant recheck their calculations about the square footage of the front facade.

Mr. Chalot said it looks like a 50% of windows to him.

The Board commented that the gable is a big improvement.

There was further discussion of the roof slope.

Mr. Friedland said that he designed it that way and he likes it that way. He is the owner and the designer and that is what he wants.

Mr. Gilbert found that the ordinance allows one to match an existing slope, and the Board agreed to leave it as designed.

Mr. Gilbert asked if there will be a sign on the side.

Mr. Friedland said there will not be a sign on the side.

Mr. Chalot confirmed that you are not having any DIY classes and the cutting room will just be used to cut lumber for shoppers and not as part of the maintenance business. The only thing it might be used for in the future is the DIY, so it won't become a shop for operations for the maintenance business.

Mr. Fisher said that is correct at this time.

Mr. Chalot spoke about the increased traffic at the intersection. He suggested a sign saying no left turns onto Scott Dyer Road at certain hours.

Mr. Fisher said it is not effective to put a sign there. They are only adding 2 trips during the peak hours.

Mr. Gilbert thinks this would be a reasonable question for the traffic engineer.

Mr. Chalot asked the Board if they want to require that the table showing parking be added to the site plan.

Mr. Fisher said they can add the table, but now that the classes are gone, they have more than twice as many parking spaces than are required.

Ms. O'Meara clarified that adding the table is not to regulate the parking, but to get somewhere on the plan what the proposed uses are.

Mr. Chalot said they want a note on the plan that the lawn area is not to be used for display.

Ms. Jordan would like a note on the plan about the removal of the light poles and the trimming of the shrubs on the Scott Dyer Road side. She cannot find a condition about the easement for the sidewalk.

Ms. O'Meara said it is not to be a condition of approval.

Mr. Chalot asked why the pedestrian sidewalk goes all around the parking area and not right to the center of the building. He wants there to be pavers, not stone dust.

Mr. Fisher said they can shift it. The owner thinks the stone dust fits in with the landscaping.

Several members of the Board said they were not in favor of the stone dust.

Ms. O'Meara said town staff has asserted that stone dust is problematic.

Mr. Fisher said it's easy to replace the stone dust with concrete.

Mr. Chalot said they don't want bituminous, but pavers, in keeping with the village feel.

Mr. Friedland said his personal taste is for stone dust.

The Board noted several town center properties that use pavers, including the town green, and agreed that the shorter path with pavers were preferred.

Ms. O'Meara said that it is very important to be clear what the Board is approving for the use of that 400 sq. ft. space (cutting room). She said she has talked with the sound engineer and he said if the dust collection system was not vented to the outside, it would not be a significant increase in decibels. If you are only using one piece of equipment at a time, and the dust collection system, you are likely under the 65 dbas. The concern comes in when you look at what that 400 sq. ft. space is actually going to be used for. The applicant has submitted a life safety plan calling for that to be Factory 1, a workshop space. If it is going to be a workshop, the expectation is there will be a lot of use of tools, maybe multiple people and multiple tools at the same time. If the board is very, very clear limiting what that space can be used for, then you are probably OK with the noise standard.

Mr. Chalot said the applicant has represented that the workshop is only to be used for DIY classes in the future and to cut lumber for those who come to the store. We could have them put a note on the plan that the shop would not be a workshop for any other purpose, nor could it be rented out for use by others.

Mr. Friedland wants the note to just prevent the use of more than one tool at a time. He doesn't want too many limitations on the space. If a friend wants to make a table in there, he does not want to say no.

Mr. Curry said that cutting boards would be an ancillary use; it is ancillary to the lumber store itself. The next level is the DIY classes. The third level would be that this becomes a production facility for Mr. Friedland's other businesses. He is in favor of a restriction on the plan for only use to be the sale of lumber and cutting a piece to size for a customer. We do not ever envision this

becoming a manufacturing facility to support Mr. Friedland's construction business.

Ms. O'Meara said when she goes to Home Depot or Lowes to get a piece of wood cut, it is a saw on the side of an aisle. The applicant is proposing a whole room with maybe a door. It seems like a very significant investment for a casual cut for someone buying lumber, especially when he is submitting life safety plans that is rating this for factory use. And your own web site says you are trying to move your Willard Square business into this building. Ms. O'Meara said she asked him that at the February Planning board meeting and he said no he is not doing that. The concern is that the building is not matching what the story is for the uses proposed.

Mr. Friedland said the 400 sq. ft. area is proposed for the classes. He would like it to be there when he comes back to amend the plan. He is going to have an office with a desk and a computer there. He will not store anything inside the building for Willard Square; all the materials and all the tools will be inside the trucks. The Code Officer told him that if they are cutting anything, they need to put down industrial use.

Mr. Gilbert asked what Factory 1 allows?

Ms. O'Meara said that is a designation by the Code Officer, but normally not reviewed by the Planning board. Alarm bells are going off because that is not what is being proposed. There are plans that label that room a workshop, and that is not what the Planning Board was told. She said they must have a clear statement of what the applicant is proposing for uses.

Mr. Sahrbeck said that "a moving target" is a nice way to describe this. I have more questions now than I had when this meeting started. Credibility goes a long way. It was presented to us that the Scott Dyer side was a brick side and there was no way you could put anything because it was too much of a cost then a window pops up and we get pictures of two openings. It was presented to us on numerous occasions that they cannot put anything on there because it was all brick. It was too cost prohibitive. To not have a clear distinct use of this goes against everything this Board is tasked with doing, coming up with a plan, knowing what we are getting and going forward. Now we are seeing seasonal items like snow shovels and rock salt. Is the surfboard thing going to come up in the summer? The draft motion includes 13 conditions of approval; that is more than any other project.

Mr. Bodenski spoke about the use of the project. At the beginning, this applicant started out with a lumber yard, a retail store, classes, food trucks and music. Now it's been narrowed to a retail establishment. But I'm not clear what

is going to happen in this place. I'm not on board with it. And we haven't talked about the lighting along Route 77 yet.

Mr. Curry said he agrees with Mr. Sahrbeck that it's a moving target, but he feels it is within our power to reduce it to simplicity. If we limit our approval to selling lumber and associated carpentry equipment, then everything else goes away. He will have to come back for another approval if he wants to do anything else.

Ms. Jordan said she is leaning towards Mr. Curry's view.

Mr. Huebener said he would vote for a motion to table.

Mr. Gilbert said the change of use makes it a moving target.

Mr. Chalot said he is concerned that the use would need to be spelled out in the conditions of approval. He would table it.

Mr. Friedland wants clarification about the retail. What difference does it make if he sells surfboards, rock salt or shovels? It will be approved for industrial use so I can cut wood for customers, retail and an office. My goal is to sell items to benefit the people of the town.

Mr. Chalot said they need to discuss the street lighting.

Mr. Fisher said he had checked with a lighting company and each fixture is \$3000 for the pole and the light. Each fixture will be around \$3500-\$4000 with the base etc. If you multiply that times 3 and you get \$12,000 for an existing site with a shoestring budget trying to make it work. We want to contribute but \$12,000 is exorbitant and has nothing to do with the actual site. They will contribute the cost of one light, \$3500-\$4000.

Mr. Huebener said he does not see how we cannot require the lights. It is part of the Town Center plan. If we do not put them in and the other sites in town have these lights, we are opening ourselves up to the next person not wanting to put them in.

Mr. Fisher said he does not think we are talking about actually putting them in. We will contribute to them, but we don't know when the town is actually going to get around to put them in. Regulations are written for every possible parcel. Regulations don't work that way, there's got to be a little bit of give and take. It's too steep for this project.

Mr. Chalot asked how much leeway do we have on this issue.

Ms. O'Meara said the board can go either way. She also clarified that the standard means actually installing the lights with wiring.

Mr. Fisher said now you are talking about a lot more money and that is too much for this site. It doesn't have anything to do with this site.

Mr. Sahrbeck said it has a lot to do with this site. This has always been town Center. It was Town Center when it was purchased, and it has been Town Center this whole time. This requirement has always been on the books. Other people have done it. To describe it as not being part of this property is inaccurate. I understand the prohibitive cost, and I feel for you, but at the same time we set a precedent here. If it's part of the ordinance, our hands are tied on it being a requirement of the application.

Mr. Bodenski said he agrees with Mr. Sahrbeck. This is the entrance way to the Cape. If the town is putting lights on the east side of 77, we need lights on the other side. 1. We are setting precedent here; 2. well, Michael didn't get the lights; and 3. it's in the ordinance. I think we need the lights.

The board asked staff to identify the applicable ordinance requirements. Ms. O'Meara quoted from the Town Center design standards. The lights on the other side of 77 are 65 ft. apart, and she used that to measure and mark the location for 3 lights along the developed portion of the lot's Ocean House Rd frontage in order to get a sense of how the standard could apply to this project.

Ms. Jordan asked if the town will be replacing the sidewalk on the west side of 77 as part of the Town Center Plan.

Ms. O'Meara said the Town Center Plan did not recommend sidewalk replacements. The plan recommendations focused on places where there is no sidewalk.

Mr. Huebener 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. institutional use for 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 July 21, 2020 meeting of the Planning Board.

Mr. Curry seconded the motion.



Mr. Sahrbeck said he hopes that if this is tabled, he wants more concrete information for the next meeting. He does not want to go into a 5th meeting with so many questions about this application.

The roll call came to Mr. Sahrbeck who said there is someone who wants to make a public comment.

Mr. Chalot interrupted the roll call and opened the public comment period.

Victoria Volent of 58 Cottage Farm Road said she has been following this since February and she is also confused on the use. When she listens in on the meetings, she hears one thing and then, the web site for the Lumberly is totally different. She hopes the applicant changes the website to match with what is going on. There is a picture on the website that depicts a woodshop. If this is not going to be a classroom, but a cutting room, they should change the plans to say that. She would like to see a note on the plan that the cutting room is for use by employees only, that power tools will be used by employees only. The traffic study was done for lumber and a classroom. If this is going to be retail, she would like to see the traffic study take that in consideration. She asked about the surfboards, and what are they selling on site? On the website, it says you will be creating in house creations for sale. Noise is an issue, and that depends on the use.

No one else came to speak, so the public comment period was closed.

The Board then resumed their roll call vote on the motion to table. The motion passed, 7-0.

#### OTHER BUSINESS

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

Ms. O'Meara reported that applicants would like a special workshop after the regular meeting on July 21. The board agreed.

Public comment, no one made any comment

The board voted 7-0 to adjourn at 9:15 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary