

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

September 15, 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.

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. Chalot called the meeting to order.

Mr. Chalot asked for the approval of the minutes of August 18, 2020. The minutes were approved as presented 6-0.

OLD 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 Public Hearing.

The applicant has requested the item be tabled. There is a question about the date the lot was created.

Ms. O'Meara said the information she relied on regarding the status as a legal nonconforming lot is no longer true.

Mr. Gilbert arrived.

Julia Frederick Landscape Architect with Mitchell Associates spoke for the applicant. She said they want to table the item to give their attorney more time to research the issue.

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

Mr. Sahrbeck wants there to be notices and a public hearing if this application comes back.

Several other board members agreed with Mr. Sahrbeck. Ms. O'Meara confirmed that will be done.

Ms. Jordan made the following motion:

THEREFORE, BE IT ORDERED that based on the plans and materials submitted and the facts presented, the application of Paul Stewart for a Private Accessway Permit to make an existing lot located at the rear of 19 Fessenden Rd buildable (U16-21) be tabled to a future Planning Board meeting.

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

NEW BUSINESS

14 Hill Way Site Plan, Subdivision Amendment - Two Penguin Properties LLC is requesting site plan review of a mixed use building with a short term rental on the first floor and one residential unit on the second/third floors, and amendments to the previously approved Tarbox Triangle Subdivision, located at 14 Hill Way (U22-74-3, 74, 74-1), Sec. 19-9 Site Plan Completeness and Sec. 16-2-5, Amendments to a previously approved subdivision.

Rick Dunton said they are returning to the short term rental on the first floor. He said they have responded to the Town Engineer's comments. He is requesting an expedited review of the project. They hope to get a completeness decision and discussion and findings. They have submitted a response to the staff memo. (It was submitted at 6:00 pm. today)

Mr. Chalot said he feels it is complete, and no Board members spoke up to raise any issues.

Mr. Chalot opened the public comment period.

Christina Cracolici of 1 Young Lane said this project fits in with the other properties in the area. It's better than a restaurant or pub.

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

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and the materials submitted and the facts presented, the application of Two Penguin Properties, LLC for site plan review of a mixed use building with a 1,920 sq. ft. Short Term Rental on the first floor and one residential unit on the second and third floors and amendments to the Tarbox Triangle Subdivision, located at 14 Hill Way be deemed complete.

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

The Board would like to have a site walk.

Mr. Sahrbeck asked if the letter from Mr. Dunton was in their packet.

Mr. Dunton said he sent it around 6 pm today.

Dr. Myerowitz said the letter was a point by point description of the project. He praised Mr. Dunton for getting the letter completed in a short period of time.

Mr. Chalot said he would like to go through the Town Center design standards one by one.

Mr. Dunton showed plans of the front elevation.

No one had comments about the scale of the building.

Dr. Myerowitz said the front entry is in the middle of the front elevation. The screen porch is another prominent entry for the second floor.

Mr. Curry said the front entry is certainly not what they are used to seeing and what is suggested by the design standards.

Dr. Myerowitz said it is not for village retail. It is below the deck. This entrance does align with the entrance of our 10 Hill Way building. He spoke about how they worked to design the atrium entrance on 10 Hill Way, which was well received by the Board.

Mr. Dunton showed a photo composite. Then he showed a front entrance rendering. The trees hide the front entry.

Dr. Myerowitz said this is supposed to be from the street view. We have a nice square entrance perpendicular to the street. This is very similar in grade to our adjacent building. The grade itself doesn't obstruct the view. If it would please the Board, he will be happy to remove that planting that is blocking the door.

Mr. Huebener said he likes the entrance. It is consistent and appropriate for the use. He is always concerned about being consistent with what we have done before.

Dr. Myerowitz spoke about the trees abutting the driveway. He said this is the sister to the building we have next door. The apple trees are coming down.

Ms. Jordan asked what class of commercial use is short term rental.

Dr. Myerowitz this use is locked in unless we implement the infrastructure changes for another use. He said short term rental is a legal permitted use and that is what he is going for. He spoke about the regulations he would have to comply with if this was for a different use

Mr. Chalot noted that when a new building is built to house a commercial use, different standards need to be met, such as ADA compliant etc.

Ms. Jordan is concerned about a future owner and the possibility of another use being wiggled in.

Mr. Gilbert asked if there is a lateral move available from use as a short term rental.

Ms. O'Meara read the ordinance and said this use is not in the conversion list. She said they can make it a condition of approval.

Mr. Gilbert is concerned if this raises legal flags.

Mr. Curry said the applicant just wants a residence. He cannot do that, so he has come up with the solution of a short term rental. He may not rent it out at all. Mr. Curry is concerned that the proposed use is not really what the ordinance had in mind. He said it is having someone live in the basement of your house.

Dr. Myerowitz said this is just like the properties next door. He gave more detail about that property and said the Planning Board had approved that one. He said he is concerned about the surrounding properties. He does not want to put a gas station or restaurant in that space. He is following the letter of the law.

Mr. Chalot said there are lots of commercial uses that are low key.

Mr. Sahrbeck said this is difficult. If short term rentals are not allowed, where do we go from here. We may need a legal opinion for the Board.

Ms. O'Meara said she did consult with the Town Attorney. Dr. Myerowitz would not be able to get an occupancy permit.

Dr. Myerowitz said he is willing to proceed. He said there are various ways he can get to occupy his proposed home. He did not wish to discuss this any further. He asked if the board was considering their request for an expedited review.

Mr. Chalut said that cannot happen tonight. That is usually decided at the workshop. They have not had a public hearing.

Mr. Dunton showed the landscaping plan.

Mr. Chalut noted that landscaping at the corner of Hill Way and Scott Dyer Road has created a fence round the property. It's a virtual wall.

Dr. Myerowitz said he thinks that is one interpretation. He cited the plantings at 8-10 Hill Way. We thought it was a beautification effort, he is happy to take them away or take a few of them away. He will thin them out if it satisfies your palate. This is really into an aesthetic issue. He will change it if the Board wishes. If you don't think it's pretty enough for you, I'll change it.

Mr. Curry said since the ground floor is going to be a rental, it should be buffered as if it is a residential property.

Mr. Gilbert is concerned that there may be an obstruction of the sight lines at the corner.

Dr. Myerowitz said there will be no obstruction. There is a clear line of sight. He said they have pulled back the plantings from the right of way into the property. He pointed out that the stop sign sticks out onto Scott Dyer Rd. The visibility is pretty full.

Mr. Sahrbeck asked about the parking for the Hill Way duplex.

Mr. Dunton enumerated the parking spaces, He said this would be addressed in the letter.

Mr. Chalut asked if they need to discuss changing the lot lines between Lots 2& 3.

The Board scheduled a site walk for 5:30 pm. on Thursday 24th of September.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and the materials submitted and the facts presented, the application of Two Penguin Properties, LLC for site plan review of a mixed use building with a 1,920 sq. ft. Short Term Rental on the first floor and one residential unit on the second and third floors and amendments to the Tarbox Triangle Subdivision, located at 14 Hill Way be tabled to the regular October 20, 2020 meeting of the Planning Board at which time a public hearing will be held.

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

1226 Shore Rd High Tide Dental Site Plan Amendments - Red Tail Properties, LLC is requesting amendments to the previously approved site plan for 1226 Shore Rd (U11-14) to change the use of Building B from storage to village retail and construct an 8 space parking lot, Sec. 19-9, Site Plan Completeness.

Stephen Bushey showed the site plan. There are 2 buildings on the property. The parcel is 1.3 acres. The front building was a medical office and has not been occupied for a number of years. The rear building, Building B is proposed to be a small retail use. The primary piece of our application is the renovations to the front building, Building A. This will be a dental office. They propose 8 new parking spaces. The existing parking lot has 12 spaces. There are a couple of spaces benefitting the back building, if and when it will be occupied, garage space and a couple of paved parking spaces at the rear of that building. There is a paved sidewalk in front of the building.

Mr. Bushey said they will keep the existing trees and add a rain garden. There will be 2 ADA parking spaces. The sign will be changed to the dental office and they will shift it to be outside the right of way. There are no tenants in Building B yet. It will be a retail use and an ADA ramp will be installed.

He said they will provide decibel levels for the emergency generator. The generator is there to provide a backup power source if the power goes out during a dental procedure. Based on the decibel level provided by the manufacturer, they expect it will be compliant at the property line.

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

Mr. Chalot asked about moving the dumpster.

Mr. Bushey said they plan to move it back 3 ft.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Red Tail Properties, LLC for Site Plan review of proposed amendments to the site plan for 1226 Shore Rd (U11-14) to add an 8 space parking lot and change the use of Building B from storage to village retail be deemed complete.

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

The Board agreed that a site walk was not needed.

Mr. Chalot noted that there is no photometric plan.

Mr. Bushey said that they can submit that plan and Ms. O'Meara suggested they could provide something in writing for the record.

Lucas Homicz said the sign should be about the same size as the prior one. The sign in the parking lot will be small, but he does not have anything more specific at this time.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Red Tail Properties, LLC for Site Plan review of proposed amendments to the site plan for 1226 Shore Rd (U11-14) to add an 8 space parking lot and change the use of Building B from storage to village retail be tabled to the regular October 20, 2020 meeting, at which time a public hearing will be held.

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

Rosewood Subdivision Amendment - Joe Frustaci is requesting subdivision amendments to split the existing lot 4B to create lot 4C and extend the Rosewood Drive private road (U34-22-4)), Sec. 16-2-5 Amendments to a previously approved subdivision completeness.

Peter Biegel, Landscape Architect, with Land Design Solutions is representing the applicant. They propose splitting Lot 4B, which is slightly over 1 acre, into 2 lots. They will extend Rosewood Drive about 67 ft. to give both lots the required road frontage. They are requesting 3 waivers: a right of way width waiver to reduce the size of the road extension from 50 ft. to 45 ft; a road not centered waiver because the existing road is not centered; and a waiver from the traffic study because they are adding one house at the end of a dead end road. They also want a waiver of the storm water report and calculations.

The road is already constructed and they are not changing any drainage patterns. They are reducing the impervious surface by 424 sq. ft. He showed a plan of the property including the water line they will connect to. They will comply with the water district's requirements. As requested, they will put pins in the new corners. The applicant will pay an open space impact fee. He has already satisfied the affordable housing requirement in a prior amendment.

Mr. Chalot opened the public comment period. There were no comments, so the public comment period was closed.

Mr. Curry asked whether there is a place for the fire engine to turn around.

Mr. Biegel said there is an existing hammerhead turnaround.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joe Frustaci for an amendment to the Rosewood Subdivision to split lot 4B (U34-22-4) to create a new lot and extend the private road right-of-way for Rosewood Drive to create frontage for the lot be deemed complete.

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

Ms. Jordan asked about the buffer between Lots 4B and Lot 4C.

Mr. Biegel said there is a wooded buffer.

Ms. Jordan also noted that the Town would not accept this as a public road since it is not centered.

The board did not want a site walk.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joe Frustaci for an amendment to the Rosewood Subdivision to split lot 4B (U34-22-4) to create a new lot and extend the private road right-of-way for Rosewood Drive to create frontage for the lot be tabled to the October 20, 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.

498 Spurwink Ave Resource Protection Permit - The Cape Elizabeth Land Trust (CELT) is requesting a Resource Protection Permit to install boardwalks and a bridge on the Pollack Brook Preserve located at 498 Spurwink Ave ((U43-8-5), Sec. 19-8-3, Resource Protection Permit Completeness.

Phillip Mathieu showed the detail of the bridge design. He said this is the National Park Service standard plan. The one difference is that they are not planning to have a railing on their bridge because it will only be about a foot clear of the water. They are also not including running planks which are only needed for remote areas or areas with a very high pedestrian load. They plan to use pressure treated wood for the stringers. They propose two separate spans, one of 26 ft. and another that is 14 ft.

Mr. Huebener suggested that they use pressure treated wood for the decking.

Mr. Mathieu said they will replace the boards as needed. They prefer to use as little pressure treated wood as possible.

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

Ms. Jordan wants a response to the Engineer's letter.

Mr. Mathieu showed the site plan. He also said all of the trails are existing trails. He showed a photo of how they will minimize the wetland impact.

Mr. Chalot asked how you can get onto these trails.

Mr. Mathieu explained that you can get on from Gull Crest and several other places.

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 Cape Elizabeth Land Trust for a Resource Protection Permit to construct 13 boardwalks and bridges in wetlands located on the Pollack Brook Preserve located at 498 Spurwink Ave (U43-8-5) be deemed complete.

Mr. Huebener seconded the motion and it was passed, 6-0. (1 not responding)

Mr. Chalot asked why they are using wood rather than aluminum.

Mr. Mathieu said aluminum bridges are not maintenance free. They deteriorate, so they would prefer the aesthetics of a wooden bridge. It's also less expensive.

The Board scheduled a site walk for Tuesday September 29, 2020 at 5:30 p.m.

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 Cape Elizabeth Land Trust for a Resource Protection Permit to construct 13 boardwalks and bridges in wetlands located on the Pollack Brook Preserve located at 498 Spurwink Ave (U43-8-5) be tabled to the regular October 20, 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.

There was a discussion of the progress at the village green site.

There was a discussion of the Board's role in their review of ordinance amendments.

Ms. O'Meara said 287 Ocean House Road has 3 de minimus changes, They will remove the skylight on the front and leave shingles on the gable. The owner has also asked to change the size of the window on the Scott Dyer Road side and convert the lumber storage rack into a lumber storage shed. These were not approved as de minimus changes.

The Board voted 7-0 to adjourn at 9:55 p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary