

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

December 21, 2010

7:00 p.m. Town Hall

Present: Peter Hatem, Chair  
Elaine Falender  
Barbara Schenkel  
James Huebener  
Carol Anne Jordan  
Liza Quinn  
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

After a small change in the minutes of the November 16, 2010 minutes, Mrs. Schenkel moved to accept them as amended. Ms. Jordan seconded and the motion passed 7-0.

OLD BUSINESS

**Inn by the Sea 600 Cottages Site Plan Amendment** - The Inn by the Sea is requesting an amendment to the previously approved Site Plan for the Inn by the Sea, located at 40 Bowery Beach Rd, to demolish the "600" cottages and build a new building for 10 hotel units, Sec. 19-9, Site Plan Amendment Public Hearing.

Steve Bradstreet of Oak Engineers, the engineering representative for this project spoke to address the issues that had been raised at the last Planning Board meeting. He said they had attended a workshop meeting two weeks ago in order to facilitate the process. The primary things they were concerned with were the decibel levels of the air conditioning units, the sight lines and the septic field.

He said there is letter from Al Frick in the packet that says they have corrected the septic piping to deal with the grease trap.

The manufacturer of the air conditioning units claims the decibel level of an unscreened unit a foot from the base of the unit is 62 decibels. the distance from the unit to the nearest property line of an abutter is 62 ft. There is a formula to calculate the decibel level at the distance of 62 ft. Unscreened the level is 26.5 decibels at the property line. They are providing a fenced in area and landscaping for further screening.

The sight view from an abutter was addressed. The existing deck is farther out now than the new building will be, and the second floor will be stepped back.

Mr. Hatem opened the public hearing. Since no one came forward to speak, the public hearing was closed.

Mrs. Volent asked why the numbers on the plans that refer to the existing structure have changed from November to December.

Mr. Bradstreet responded that there was a misinterpretation on their part of the numbers. Mr. Smith has set them straight. Their calculations in November were based on their understanding of what is square footage, what is volume and what is impervious area. Their interpretation of the ordinance was wrong, and they have corrected it and Mr. Smith has approved their new calculations.

Ms. Volent asked if they have gotten an approval letter from Mr. Smith.

Mr. Bradstreet said they have received the letter as an email.

Ms. Falender noted that since there were email exchanges about the calculations, the entire Board needs to be copied on all that correspondence.

Ms. Quinn made the following motion:

#### Findings of Fact

1. The Inn by the Sea LLC is requesting Site Plan Review to demolish and rebuild the "600 cottage," located at 40 Bowery Beach Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer is recommending revisions to the plans.
3. 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 Inn by the Sea LLC, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 cottage" be approved, subject to the following conditions:

1. That the plans be revised per the Town Engineer's comments dated December 15, 2010 and submitted to the Town Planner for review; and
2. That there be no issuance of a building permit, nor alteration of the site until the above condition has been met.

Mrs. Schenkel seconded the motion and it was approved, 7-0.

## NEW BUSINESS

**Shore Road Path Site Plan Amendments** - The Town of Cape Elizabeth is requesting amendments to the previously approved site plan for the Shore Road Path to replace proposed boardwalk with a solid surface and retaining wall located across from Delano Park Entrance #4 and across from the Shore Rd pond, Sec. 19-9, Site Plan Amendments.

### Public Comment

Claude Gammon a Civil Engineer with AMEC presented the project to the Board. He said there are two small revisions proposed to the previously approved plan. The first is across from Delano Park entrance #4. They want to replace a 6 ft. wide 170 ft. long boardwalk with a 5 ft. wide bituminous sidewalk with a retaining wall. The reason for the proposed change is cost and ease of maintaining the culverts.

The second area is also a small boardwalk, 40 ft. long, adjacent to the Tide's Edge Road, which will be replaced by a 5 ft. by 8 ft. precast concrete structure. It will be easier to maintain and the cost now and in the future will be less.

All the runoff and drainage will still be the same in both areas, so they deem them minor changes.

Ms. O'Meara said she wanted to correct the record that the second project is across from Tide's Edge road, not adjacent to it.

Mr. Hatem opened the public hearing. Since no one wished to speak, the public hearing was closed.

Ms. Quinn questioned the height of the retaining wall as opposed to the boardwalk.

The response was that the homeowner will not notice much difference because it is across the street from the nearest home.

Ms. Jordan asked if this makes things easier for Public Works.

Mr. Gammon replied that not only was it less expensive, but maintenance would be easier to access. No change is proposed in the culvert or drainage.

Ms. Quinn asked about the difference in drainage from the boardwalk to the more solid surface.

Mr. Gammon said the amount of flow will be the same, but the flow path will be different. the same amount of water will end up in the culvert.

Mrs. Schenkel asked if the water will flow along the retaining wall.

The response was that the flow will be along the curb line.

Ms. Quinn was concerned about the drop off. It seems significant at 3 1/2 ft.

She was told there will be a hand rail in place.

Ms. Falender asked if there had been notice to the abutters.

Mr. Gammon said they had been given notice and packages.

Mr. Huebener made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting revisions to the previously approved Site Plan for the Shore Road Path to convert two areas from boardwalk to fill/solid surface with a retaining wall.
2. The application complies with the standards of Sec. 19-9-5, Site Plan Approval 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 revisions to the previously approved Site Plan for the Shore Road Path to convert two areas from boardwalk to fill/solid surface with a retaining wall be approved.

Ms. Falender seconded the motion and it passed 7-0.

**Portland Dry Cleaners Site Plan Amendment** - Duk Hee Cha of Portland Dry Cleaners is requesting an amendment to the previously approved Site Plan for the Pond Cove Shopping Center, located at 329 Ocean House Rd, to open a dry cleaners pick-up/drop off establishment in the space previously occupied by Bank of America, Sec. 19-9, Site Plan Amendment.

#### Public Comment

Peter Jellison, property manager for the Pond Cove Shopping Center presented on behalf of the applicants. He said they are a new tenant in the shopping

center to occupy unit 7, the former Bank of America space. The landlord has spent a lot of money to update this site plan. This will be a dry cleaning operation, strictly a pick up and drop off. No changes to the exterior are being proposed, but interior renovations will be done. They will have two employees and be open from 7 am. to 7 pm.

The public hearing on completeness was opened. There was no comment so the public hearing was closed.

Ms. Falender noted that there is no information on lighting or signage included.

Mr. Jellison said the lighting and signage would be in accordance with the Town Ordinance. The sign would be on the building and on the common board out in front of the center.

Ms. Falender wanted to know if there is a back door.

There is a door in the back, but the customers will use the front door and the deliveries will come into the back door.

Mrs Schenkel made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Duk Hee Cha of Portland Dry Cleaners for an amendment to the previously approved Site Plan for the Pond Cove Shopping Center, located at 327 Ocean House Rd, to open a dry cleaners pick-up/drop off establishment in the space previously occupied by Bank of America be deemed complete.

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

Mrs. Schenkel then made a motion for approval.

Mr. Hatem opened the public hearing and then closed it when no one chose to speak.

Ms. Falender made several amendments to the original motion and the motion became:

#### Findings of Fact

1. Duk Hee Cha of Portland Dry Cleaners is requesting an amendment to the previously approved Site Plan for the Pond Cove Shopping Center, located at 327 Ocean House Rd, to open a dry cleaners pick-up/drop off

establishment in Unit 7, the space previously occupied by Bank of America, which requires review under Sec. 19-9, Site Plan Regulations.

2. The application does not include information regarding lighting and signage.
3. The applicant has proposed to adopt the shared parking arrangement permitted by the Town Center Zoning Ordinance and the parking assessment of the Town Engineer confirms that there is sufficient parking for that purpose.
4. The application substantially complies with Sec. 19-9, Site Plan Regulations, subject to the submission of information referenced in #2 above.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the application of Duk Hee Cha of Portland Dry Cleaners for an amendment to the previously approved Site Plan for the Pond Cove Shopping Center, located at 327 Ocean House Rd, to open a dry cleaners pick-up/drop off establishment in Unit 7, the space previously occupied by Bank of America be approved, subject to the following condition:

1. That information regarding exterior lighting and signage, in compliance with applicable ordinances and regulations, be submitted to the Town Planner prior to the issuance of a building permit or occupancy of the retail space.

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

#### OTHER BUSINESS

**Roosters Zoning Ordinance Amendment** - The Town Council has referred to the Planning Board a request to consider amendments to regulate roosters, Sec. 19-10-2, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara outlined the proposed amendment. She said the proposal to have at least 40,000 sq. ft. of property was meant to allow the owning of a rooster, but to keep roosters out of the densest neighborhoods.

Mr. Hatem opened the public hearing.

Gib Mendelson of 20 Beacon Lane told of being awakened at 3:30 am. by the crowing of a rooster on his neighbor's property. The crowing continued

throughout the morning and into the afternoon. The neighbor's coop is directly across from his bedroom. Fortunately the rooster is no longer living next door to him.

We are a residential community and should be able to have something so basic as the quiet enjoyment of our homes. There is an ordinance about keeping dogs from excessive barking, howling or yelping, but it does not cover the incessant crowing of a rooster.

There is no need to own a rooster unless you are a commercial farmer.

The public hearing was then closed.

Ms. Falender noted that an amendment to the ordinance that concerns disturbing the peace is not under the jurisdiction of the Planning Board.

Ms. Quinn also agreed that lot size is no guarantee that neighbors won't be disrupted. She says 40,000 sq. ft. is not enough. Roosters roam, so 40,000 sq. ft. does not mean that the rooster won't be a nuisance. She is concerned that a coop is not considered a structure for setback purposes.

Mrs. Volent said she wanted the ordinance to limit roosters to a 100,000 sq. ft. lot just as commercial farming is restricted to that size.

Ms. Falender said roosters were previously allowed to be anywhere in Town. The Farm Alliance wants no limit on the lot size to own a rooster. The proposed ordinance is a compromise between the two views.

Mr. Mendelson said there is no point for anyone, except a farmer who does propagation, to own roosters.

Mr. Hatem added that there were two possible approaches. One is to amend the nuisance ordinance, and the other is to ask whether a rooster is even needed in a residential zone, and why?

John Green of the Cape Farm Alliance said he cannot answer that question about the reason to have a rooster. He said the Alliance was hoping to deal with the problem in the disturbing the peace ordinance.

Mr. Hatem believes that land use is not the answer to the problem.

Ms. Volent is not sure the nuisance ordinance will be a solution, but would like to put this matter under the commercial farming portion of the land use ordinance.

After much further discussion including Mr. Mendelson, the Board was still unable to decide whether to keep the ordinance as proposed, to increase the size of the lot to 100,000 sq. ft., to require setbacks for coops, or to recommend that the complainants go to the town Council for an amendment to the nuisance ordinance. They finally agreed that they would recommend the item back to a workshop.

Ms. Falender made the following motion:

BE IT ORDERED that the draft Rooster Amendments to the Zoning Ordinance be tabled to the January 4, 2011 Planning Board workshop.

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

**Flagpole Zoning Ordinance Regulations** - The Town Council referred to the Planning Board a request to consider amendments to regulation flagpoles, Sec. 19-10-2, Zoning Ordinance Amendment Public Hearing.

Ms. O'Meara introduced the matter by saying there were two residents in dispute over the placement of a flagpole. Based on a survey of other towns and a consultation with the Town Attorney the conclusion of the Board is that no further regulation of flagpoles is needed.

Mr. Hatem opened the public hearing.

Bruce Nelson of 890 Shore Road was here because of an incident two years ago. The town Attorney ruled that a flagpole is a structure and should be behind a 20 ft. setback. The neighbor's pole was moved somewhere else. He concurs with the Town staff that any change is not needed and we should keep things as they are.

Mr. Hatem closed the public hearing.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the materials and facts presented, the Planning Board recommends that the Town Council make no change to existing regulation of flagpoles.

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

Public Comment on Items not on the Agenda

Mr. Hatem asked for public comment and since there was none, he added that he wanted to publicly thank Mrs. Schenkel for her years of service.



Mrs. Schenkel also thanked the Board for their level of performance and said that it has been a pleasure to serve.

Mrs. Schenkel then moved to adjourn, seconded by Ms. Quinn. The Board voted 7-0 to adjourn at 8:35 pm.

Respectfully submitted,

Hiromi Dolliver