
Town of Cape Elizabeth

Memorandum

To: Town Council

From: Matthew E. Sturgis, Town Manager

CC: File

As the level of interest in the enforcement action regarding 287 Ocean House Road, The Lumbery, is sincere and substantial, I thought it would be critical to provide a detailed listing of the activities undertaken by staff since December 2018. One unfortunate misconception is that the Town has not provided assistance or communications to assist the property over the past four plus years. It is the desire of this memo to provide a comprehensive list.

The origins of the project began with Mr. Friedland discussing the possible purchase of 287 Ocean House Road with Ben McDougal, Code Enforcement Officer, where Ben McDougal advised that to move forward with any project, Site Plan Review will be required.

The original meeting was followed by a meeting on February 5, 2019 with the Town Planner and Code Enforcement Officer, where it was confirmed that Site Plan Review by the Planning Board is required. On February 12, 2019 Mr. Friedland submitted an application to be on a workshop with the Planning Board. On February 13, 2019 confirmation is received by the Planning Department that Mr. Friedland has a purchase and sale agreement for 287 Ocean House Road.

On February 21, 2019 the Town Planner met with Mr. Friedland and his consultant Joe Hemes to review site plan review requirements. On February 27, 2019 the Town advertises that 287 Ocean House Road will be on the March 5th Planning Board workshop. On March 1, 2019, Mr. Friedland's attorney withdraws the application for the Planning Board workshop, and challenges the determination that site plan review is required, and appeal is made to the Zoning Board of Appeals.

On March 29, Town Attorney John Wall provides written notice that site plan review is required.

On April 23, 2019 the Zoning Board of Appeals denies the administrative appeal that site plan review is not required.

On May 7, 2019, Mr. Friedland presents at the Planning Board workshop, and at the workshop asks for a quick approval. The Planning Board confirms they will conduct site plan review in accordance with the ordinance. Mr. Friedland rescinds his application.

On November 14, 2019 Mr. Friedland emails the Code Enforcement Officer to begin work on 287 Ocean House Road. The Code Officer responds by stating "You can get the doors to close and lock, get the electrical activated, get the heating system working, remove the coolers, but you can't do anything that triggers a building permit such as new walls. A building permit requires a formal use to be declared and formal plans that coincide with the use. What is your schedule to go to the Planning Board? Hopefully you can be at the Planning Board in December to get this moving."

On December 11, 2019 the Town Planner meets with Jim Fisher on behalf of Mr. Friedland regarding site plan review application.

On December 27, 2019 Mr. Friedland submits application to appear on Planning Board workshop.

On January 7, 2020 Planning Board workshop, Mr. Friedland and Mr. Fisher present, presenting on 5 uses proposed for the site.

On February 24, 2020 Planning Board meeting, site plan review is begun, with the application being deemed incomplete.

On March 5, 2020, a Stop Work Order is issued by the Code Officer for removal of exterior shingles, after the Code Officer advised that no exterior changes are allowed without site plan review.

On April 21, 2020 Planning Board meeting, site plan review is begun, and Mr. Friedland's application is deemed complete.

On May 19, 2020 Planning Board meeting, public hearing on the project is held, and the application is tabled.

On May 26, 2020 the Planning Board holds a site visit.

On June 16, 2020 Planning Board meeting, the application is tabled.

On July 21, 2020 Planning Board meeting the application is approved with conditions.

On August 14, 2020 the Planning Board conditions are satisfied, and a performance guarantee and inspection fee account are established.

On August 28, 2020 Mr. Friedland requests de minimis site plan changes to the original approval, and they are approved by the Planning Board chair.

On October 5, 2020 a second de minimis site plan amendment is requested by Mr. Friedland and is approved by the Planning Board chair.

On November 10, 2020 the conditional Certificate of Occupancy is issued by the Code Officer.

On April 6, 2021, Planning Board workshop is held where Mr. Friedland presents an application to amend the site plan, including adding food truck service.

On May 18, 2021 Planning Board meeting, Mr. Friedland's site plan amendment application is deemed complete, and tabled to a public hearing.

On June 15, 2021 Planning Board meeting the public hearing is held and the application is tabled.

On July 20, 2021 Planning Board meeting the amendment is approved with conditions.

On May 3, and May 10 Code Enforcement corresponds by email with Mr. Friedland notifying him that there are items out of compliance with the approved site plan, and no corrective actions are taken to remedy the violation.

On May 27, 2022 Code Enforcement provides a formal notice of violation identifying violations of the vehicle and pedestrian circulation standards along with buffering requirements from the approved plan. These are violations of the Zoning Ordinance section 19-9-6. The notice also advises of a day to cure by and the potential of fines up to \$25,000 based on State law MRSA Title 30-A section 4452.

Summer of 2022, multiple notifications of violations provided by the Code Officer due to non-compliance with the approved site plan.

On October 13, 2022 Land Use Citation and Complaint filed in District Court regarding the noted violations and no progress on compliance with the approved site plan. This complaint was paused for action subject to Mr. Friedland coming into compliance with the approved site plan and his pursuit of another amendment to the site plan approved by the Planning Board.

On December 6, 2022 Planning Board workshop, Mr. Friedland presents a new amendment to the site plan.

On January 17, 2023 Planning Board meeting, the request for amendment was withdrawn by Mr. Friedland.

On February 7, 2023 Planning Board workshop, Mr. Friedland presents desired amendments to the site plan.

On March 21, 2023 Planning Board meeting, application for amendment was deemed incomplete, and Mr. Friedland commits to submitting application for the April 18th Planning Board meeting. No submission is made.

Spring of 2023, due to non-compliance with approved site plan and no active pursuit of amendment to the approved site plan, action on Land Use Citation and Complaint reinstated. Action on the formal complaint with District Court is postponed until October 2023 due to changes in legal representation of Mr. Friedland and the Town.

Of note in this entire four plus years of activity is that after the original approval by the Planning Board in July of 2020, there have been two de minimis site plan changes requested and approved and one larger site plan amendment approved, and one final amendment applied for and then withdrawn.

The history of actions taken by the Town over the four plus years are to grant the requests for amendment to the original site plan, while over the past two and half years the property has been out of compliance with the approvals and out of compliance with the amendments requested by the owner.

It is the hope that this document provides the historical background of activities related to 287 Ocean House Road from December 2018 to the present day.