

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

July 19, 2022

7:00 p.m.

Town Hall

Present: James Huebener, Chair Matthew Caton
 Derek LaValle
 Andrew Gilbert Alton Palmer
 Jonathan Sahrbeck

Absent: Daniel Bodenski

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of June 21, 2022. The minutes were amended for typos and approved 6-0.

OLD BUSINESS

7 Scott Dyer Rd Site Plan Amendments – Greg Shinberg, representing Dr. Myerowitz, is requesting miscellaneous Site Plan amendments to the previously approved 7 Scott Dyer Rd mixed use building (U22-74-3), Site Plan Public Hearing.

Greg Shinberg of Shinberg Consulting spoke about the project. He showed the plan. They have added solar panels to the roof, and a window has been added. They have changed the stone retaining wall, and there will only be one screened porch and it will be in the back. He spoke about a chimney on the back of the house, and said it is just a gas chimney. The solar company changed the location of the solar panels to maximize their effectiveness.

Mr. Huebener opened the public hearing. No one came to speak, so the public hearing was closed.

Mr. Palmer is concerned that they have installed the solar panels before they have approval. He also said the architectural details are not in compliance with the plan. There is no trim above the windows. The plan is not very detailed. His major issue is the applicant not complying with the process. He will vote against approval.

Mr. Shinberg said the rooflines over the windows are not completed yet. This is an approximate drawing and he does not think it's reasonable to say you have to do it exactly to this plan. As to the solar panels, the Ordinance is silent about this Board's need to review solar panels.

Mr. Sahrbeck said the applicant has been coming to the Town Planner when they have made changes and the Planner has been coming to the Board Chair to approve the de minimis changes. He will support the approval.

In response to a question, Ms. O'Meara confirmed that solar panels need approval in the Town Center District. There are design standards and they change the exterior materials and change the roof line.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Dr. Zev Myerowitz is requesting miscellaneous amendments to the previously approved site plan for a mixed use building located at 7 Scott Dyer Rd, which requires review for compliance with Sec. 19-9, Site Plan Regulations.
2. The 7 Scott Dyer Road mixed use building has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan Regulations, and the findings and decisions of that approval which are not altered by the proposed amendments remain in effect.
3. The development will be provided with access to utilities.
4. The application substantially complies with the Site Plan Regulations, Sec. 19-9.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. Zev Myerowitz for miscellaneous amendments to the previously approved site plan for a mixed use building located at 7 Scott Dyer Rd be approved.

Mr. Gilbert seconded the motion and it passed, 5-1.2

Carr Woods Condominium Development - Andrew Carr is requesting Preliminary Major Subdivision Review for creation of a single family lot and 18 condominiums and a Resource Protection Permit for alteration of 11,449 sq. ft. of wetland on combined lots located in the vicinity of 10 Deep Brook Rd (U6-91, 91A, 92, 94A, 95), Sec. 16-2-4, Major Subdivision and Sec. 19-8-3, Resource .

Mr. Gilbert recused himself.

Jim Fisher of Northeast Civil Solutions said they are here for preliminary approval. He said Bill Gerrish of Northeast Civil Solutions is here and Chris Cioppi of Cioppi Environmental and David Sherman, attorney. He said there are a few issues and Mr. Gerrish will address those.

Mr. Gerrish showed an updated plan of the open space. He said there are three underground soil filters in the open space. The embankment slopes are 3:1 and will be fully vegetated. The stormwater features are in the open space and they want to keep them there. There is also detention basin 1 and a 12 in. culvert. It slows down the drainage. In the area behind the retaining wall he was showing the grading limits. It is a 3:1 slope, that will get landscaping. He then showed the landscaping plan. They will put trees along the boundary line.

Mr. Gerrish said if they exclude the impoundment areas there would still have 49.44% open space. He spoke about the seasonal high groundwater and bedrock areas and said they will design the drains with filter materials. The updated traffic report showed the site distance of 400 ft. to the right and 250 ft to the left. Wetlands are well below the threshold.

Dave Sherman represents the applicants. He spoke about what could and could not be included in the open space. We need to follow the Cape Elizabeth open space requirements, not the DEP regulations for stormwater when evaluating open space. Open space may not necessarily be returned to its pre development state. He urged the Board to focus on what the open space will look like when the project is complete.

Jim Logan provided a peer review of the project, particularly the wetlands and the soil mapping. He reviewed his credentials as a wetland scientist and a certified soil scientist. He found minor inconsistencies in the peer review. He could not agree with the abutters' submissions, and cited the steps he took to verify his findings. They did soil borings in certain locations.

Mr. Huebener opened the public comment period. The entire comment will be limited to 15 minutes and each speaker will be limited to 3 minutes.

Brandon Mazer of Perkins Thompson represents the Johanssons. He said the open space needs to exclude the developed area including the stormwater structures and the retaining walls. They have calculated the open space to be closer to 41%, not the required 45%.

Attorney Andre Duchette is here on behalf of Sheila Wellehan of 24 Rocky Hill Road. His concern is the size of the project on a narrow strip of land. There is also the open space with isolated portions that are cut off from the main

portions. Portions of the site are regularly inundated with water. He wants the Board to scrutinize the calculations of the open space.

Lise Pratt of 32 Wood Road questioned if the required setback behind unit 16 is being met. She also questioned the open space. Should the required setback be included in the open space. There is more than 9% bedrock here. There is no walking trail in the open space and it is in segregated blocks.

Sheila Wellehan of 24 Rocky Hill Road wants the Board to think about sustainability. The open space is a place to walk. It has a function in our environment. You are setting a precedent. About the stormwater management being included in the open space, is it too much. What percent of the open space is in stormwater management.

Richard Blake of 2 Ivie Road cited the traffic study. He read that 800,000 people visit Fort Williams every year. It's getting very hard to get onto Shore Road from our neighborhood. Someone said there is no substantial wildlife there. The boundary line is not accurate. Did the peer reviewer walk the entire site.

Mr. Logan said he walked the entire project.

Nat Jordan 6 Robinhood Road is concerned about the slow rate of growth in the town. He thinks they put every project through the wringer. He thinks the applicant has met the requirements for preliminary approval. The traffic study is fine and the open space is over 45%. He wants the Board to approve the project. If we don't have multiplex housing, we will get single family housing.

Mr. Huebener closed the public comment.

Mr. Fisher said it is not a tough site. He defended the open space calculations and said there is a trail in the open space. The site will not be clear cut.

Mr. Gerrish showed photos of stormwater facilities that are mowed or inundated.

Ms. O'Meara reviewed the de minimis change requirements in the ordinance, which are extremely limited. She also spoke about open space. 1/3 of the open space must be useable space, and 2/3 can be wetlands or wildlife habitat. She read the criteria for priorities of the open space.

Mr. Caton asked the applicant about the open space. Is the retaining wall part of the open space, is the rip rap a part?

Mr. Fisher replied that they are not part of the open space.

Mr. Gerrish clarified that there are spillways in the open space.

Mr. Caton asked why the Andrew Carr lot is excluded from the open space.

Mr. Gerrish said it is excluded because the only open space in that lot is a space that is less than 50 ft. wide.

Mr. Sahrbeck asked if we have ever had a legal case that defined the open space.

Ms. O'Meara said there was never a definition in court. The Future Open Space Preservation Committee gave guidance, but no definition. She referred the Board to sec. 19-7-2 for guidance.

Mr. Palmer thinks it comes down to the quality of the open space. Slopes that cannot be traversed should not be included. 3:1 slopes should not be included. The spaces should be contiguous. He thinks the area is below 40% and should be addressed. It does not meet the standard.

Other members of the Board agreed with Mr. Palmer and would like to see revised calculations of the open space, with the stormwater facilities excluded.

Mr. Palmer also said the Carr lot is privatizing the majority of the open space.

Mr. Sherman asked if the open space is the only issue for the next meeting.

The answer is yes, that is the only issue.

Mr. Caton spoke about the idea that the open space is the only issue. But we will need to see what changes they make and whether other issues may arise from their changes.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that based upon the plans and materials submitted and the facts presented, the application of the Carr Woods Condominium and single family lot be tabled to the regular August 16, 2022 meeting.

Mr. Palmer seconded the motion and it was passed, 5-0.

NEW BUSINESS

Gull Crest Temporary Ice Rink Site Plan Amendment – The Cape Community Arena Group is requesting a Site plan amendment to the Gull Crest Site plan to

construct a Temporary Ice Rink adjacent to the athletic fields parking lot (R05-10), Sec. 19-9, Site Plan Completeness.

Mr. Gilbert returned.

Michael Tadema-Wielandt of Terradyn Consultants presented the proposal. He showed the plan for the temporary ice rink at Gull Crest. They propose the rink to be 200' X 85'. There will be a 200 ton chiller on a gravel pad and an enclosure for the Zamboni. The Zamboni has to be in a heated space. They are proposing to rent a storage container to house the Zamboni. There will be a changing tent. It will be a temporary tent with walls and separate sections for males and females. There will be 2 portable toilets, portable bleachers and rubber mats for access for the skaters.

Mr. Tadema-Wielandt said they are proposing lights for use when it gets dark. The power to the chiller and lights will be on a pole and overhead. Water to fill the rink will be in layers from an existing garden hose over several days. The Zamboni needs 180 gal. of water 3-5 times a day. They have a donor who has funded the whole thing.

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

Mr. Gilbert said they have not addressed buffering. There is a concern about noise for the Public Works offices. He is also concerned about the stormwater from large rain events.

Mr. Tadema-Wielandt said that over time the ice gets thicker. The Zamboni scrapes some of the ice off. Snow will be plowed off the rink.

Mr. Gilbert said he is concerned about the larger storm events. How do you deal with the runoff.

Julie Furt said a rink can hold up to 12 in. of water, and the professional kit should be able to hold more than 8-12 in. of water.

Mr. Sahrbeck wants to see a maintenance agreement.

Mr. Tadema-Wielandt said there will be a third party management agreement. He also addressed the parking by saying there are 49 spaces here and overflow parking in another lot.

Mr. Palmer asked if there will be open skate times when the public can come on weekends.

Mr. Gilbert noted that the area is used for cross country skiing and snowshoeing too.

Mr. Tadema-Wielandt said there will be open skate periods on weekends. He also said no games are proposed. This is a temporary project and they expect to learn a lot from this year.

Ms. O'Meara reviewed the concerns she raised in her memo of July 19, 2022. She said those issues have not yet been settled.

Mr. Tadema-Wielandt addressed the concerns and said he will correct the issues raised and plans to meet with the Public Works Director.

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 Community Arena Group for an amendment to the previously approved site plan for Gull Crest to construct a temporary ice rink adjacent to the athletic fields parking lot located on Gull Crest Drive be deemed complete.

Mr. Palmer seconded the motion and it passed, 6-0.

The Board scheduled the site walk for July 23, 2022.

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 Community Arena Group for an amendment to the previously approved site plan for Gull Crest to construct a temporary ice rink adjacent to the athletic fields parking lot located on Gull Crest Drive be tabled to the regular August 16, 2022 meeting at which time a public hearing will be held.

Mr. LaValle seconded the motion and it was approved 6-0.

OTHER BUSINESS

Food Truck Amendments – The Town Council has referred to the Planning Board review of proposed amendments to regulate food trucks, Sec. 19-10-3 Zoning Amendments, Public Hearing.

Ms. O'Meara gave a brief summary of the amendments. There are two categories of uses, one is an accessory food truck. There is a food truck special permit. In response to a question, she said they have had two workshops on

this topic, one of which included meeting with Penny Jordan of the Ordinance Committee.

Mr. Huebener opened the public hearing. No one came to speak, so the public hearing was closed.

Mr. Gilbert made the following motion:

BE IT ORDERED that, based on the plans and materials provided and the facts presented, the Planning Board recommends the Food Truck Amendments to the Town Council for consideration.

Mr. Sahrbeck seconded the motion and it passed, 6-0.

The Board voted unanimously to adjourn at 9:40 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary