

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

February 20, 2024

7:00 p.m.

Town Hall

Present: Jonathan Sahrbeck, Chair
Dan Bodenski
Alton Palmer

Derek LaVallee
Andrew Gilbert (virtual)

Absent: Matthew Caton, Jim Huebener

Also present: Maureen O'Meara, Town Planner

CALL TO ORDER

Mr. Sahrbeck called the hybrid meeting (in-person and virtual) to order at 7:00 p.m.

Mr. Sahrbeck called for approval of the minutes of the December 19, 2023 Planning Board meeting. Mr. LaVallee moved to approve the minutes, and Mr. Bodenski seconded. With no further discussion, the minutes were approved by a vote of 5 in favor (including Mr. Gilbert virtually) and none opposed.

Mr. Sahrbeck stated that the second order of business is the election of officers for calendar year 2024 and noted both that he was not in attendance at the January workshop and cannot speak to the slate of candidates. Mr. LaVallee nominated Mr. Sahrbeck for Chair and Mr. Gilbert for Vice Chair. Mr. Bodenski seconded. With no further discussion, the members voted unanimously for candidates Sahrbeck and Gilbert with a vote of 5 in favor (including Mr. Gilbert virtually) and none opposed.

NEW BUSINESS

1230 Shore Rd Garage Site Plan Amendment. L.P. Murray & Sons are requesting a Site Plan Amendment to add a 40' x 60' garage to the existing garage site located at 1230 Shore Rd. The application requires review under Sec. 19-9, Site Plan Review. Mr. Sahrbeck requested confirmation of the Workshop on the application held in January.

Mr. Robert Metcalf of Mitchell Associates addressed the Board, representing the applicant. Mr. Metcalf described both the boundaries for and structures occupying the 1.11 acre parcel for the L.P. Murray & Sons business which has occupied the site for 78 years. He stated that the purpose of the addition to the maintenance building is related to the negotiation for plowing and emergency maintenance requirements for the Town of Cape Elizabeth. L.P. Murray has the equipment and staffing to meet the Town's needs and is centrally located. The addition to the maintenance building will allow the business to meet the Town's need for plowing and emergency maintenance services.

Mr. Metcalf reviewed the proposed improvements to the site, to include improvements to the gravel parking lot and the garage. Mr. Metcalf clarified that the new addition will not have a floor drain because there is no plumbing or water use in this area. He stated that a second means of egress has been added to the backside of the addition in response to a recommendation by the Town Fire Chief. The site plan has been revised to address comments by Town Engineer regarding water service to the

proposed addition and sanitary waste. Mr. Metcalf addressed comments from the Town Public Works Director regarding spill prevention, verifying the presence of a double-walled containment unit for diesel fuel. Mr. Metcalf provided an overview of the stormwater management systems which will include the addition of a rain garden. He stated that there is no proposal for additional lighting other than what is on the existing maintenance building.

Mr. Metcalf addressed the remaining comments from Town staff. He reviewed the architectural design for the proposed addition. The renderings provide an illustration of the building. He stated that a statement verifying that the owner and the applicant are the same will be added to the plan. He stated that details of the location of utilities and spill containment have been added to the plan. Regarding traffic management, there will not be any additional trucks or employees added as a result of the construction; therefore, the applicant has requested a waiver of the need to conduct a traffic study. Mr. Metcalf stated that details related to stormwater drainage have been added to the plan. Details related to water and sanitary waste have been added to the plan. He noted that the shed located on the southeasterly corner of the parcel will be removed from the site. He noted that an ADA-compliant parking space and an unloading zone have been added to the plan. He stated that an erosion control berm in the southeasterly corner has not yet been added to the plan. The plan includes illustrations of an existing 8-inch drainage pipe, the rim elevation of the catch basin, and the inverts for the pipe. The plan has been amended to illustrate that the width of the rain garden is uniform. The plan has been amended to reflect the recommendations of the Town Engineer for the elevations of the downgradient and upgradient berms for drainage. Recommendations for the illustration of small stone riprap on the inlet side slope of the rain garden have not yet been added to the plan. Illustration of the gradation/size of stone and geotextile fabric for the drip edge on the west side of the building have yet to be added to the plan. Mr. Metcalf stated that perimeter drains will not be required for the garage. The soils in the area are gravel with varying depths of ledge; these conditions will adequately capture runoff within the drip edge surface. Details on loaming and seeding have yet to be added to the plan. Regarding noise, the maintenance garage will have soundproofing; there is no proposed increase in activity at the site. All the described information will be included in the next submission.

Mr. Sahrbeck opened the floor for public comment on the issue of completeness of the application. With no comments, either in person or virtually, Mr. Sahrbeck closed the floor for comment.

With no further comments or questions from the Board on the issue of completeness, Mr. LaVallee made a motion for completeness.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of L.P. Murray and Sons for a Site Plan Amendment to add a 40' by 60' garage to the existing garage site located at 1230 Shore Road be deemed complete. A finding of completeness includes a waiver from providing a traffic study.

Mr. Bodenski seconded the motion. With no further discussion, the motion passed, 5-0.

Discussion ensued about scheduling a site walk. The site walk was scheduled for February 27, 2024 at 4:45 p.m. The Town Planner will send notice of the site walk.

With no further discussion, Mr. Bodenski made a motion to table (with public hearing).

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of L.P. Murray and Sons for a Site Plan Amendment to add a 40' by 60' garage to the existing garage site located at 1230 Shore Road be tabled to the March 19, 2024 meeting of the Planning Board at which time a public hearing will be held.

Mr. LaVallee seconded the motion. With no further discussion, the motion passed 5-0.

Good Table Seating Site Plan Amendment. 527 Ocean Holdings LLC is requesting an amendment to the previously approved site plan for the Good Table, located at 527 Ocean House Rd, to expand the seating allowed from 75 to 100 seats. No exterior changes to the site are proposed. The application will be reviewed for compliance with Sec. 19-9, Site Plan Regulations.

Mr. Palmer disclosed that his firm has done work in the past for LLCs that include the applicant. Mr. Palmer's firm has no current, active projects involving the applicant. He stated that he feels he can be fair and impartial in reviewing the application. No concerns regarding a conflict of interest for Mr. Palmer's participation were expressed.

Casey Prentice, one of the members and manager of 527 Ocean Holdings LLC, addressed the Board. He noted that the project was presented at the Planning Board Workshop held on January 2, 2024. He stated that the LLC purchased the Good Table in November of 2023. The restaurant is currently closed and undergoing renovations with the intention of reopening in March of 2024. At the January workshop, there was discussion regarding the location of additional, offsite parking. Mr. Prentice stated that the LLC has an agreement with an adjacent business, Tammaro Landscaping, to accommodate some offsite parking. The applicant contacted a second adjacent business, Roots Academy, but did not receive a response from them. At the Workshop, concerns were raised regarding the darkness of the walkway from Roots Academy to the Good Table.

Mr. Sahrbeck opened the floor for public comment on the issue of completeness of the application.

Paul Woods of both 517 Ocean House Rd and 316 Ocean House Rd addressed the Board. He introduced himself as the owner of the commercial property operated as Tacos & Tequila, a restaurant adjacent to the Good Table. He stated that the Good Table is a positive business and that Casey Prentice and the corporate entity of 527 Ocean Holdings LLC is a positive operator. Mr. Woods stated his position that the request to increase the seating at the Good Table deserves further scrutiny. He stated that he asked the Board and Town Planner to collaborate with the Scarborough Planning Board and Counsel to understand the implications of parking at the Nonesuch Brewery on Gorham Rd. Mr. Woods stated his position that the increase in seating at the Good Table is not supported by the existing parking lot. The parking lot at Tammaro Landscaping is at least a tenth of a mile from the Good Table, therefore, a distance of two tenths, back and forth.

Regarding the completeness of the application, Mr. Woods stated that there was no provision for a sidewalk within the site plan. He referenced past projects at both the property operated by Tacos & Tequila and Tammaro Landscaping that included the addition of sidewalks to the site plans. Mr. Woods reiterated his position that the Prentice group and the Good Table are positive entities; however, an increase in seating that is not supported by parking and may create a public safety issue for the Town.

With no further comments, either in person or virtually, Mr. Sahrbeck closed the floor for comment.

Mr. Gilbert requested clarification from the applicant about the need for additional parking. Mr. Prentice addressed the Board and stated that, per the Cape Elizabeth Zoning rules, to accommodate 100 patrons, including staff, a total of 35 parking spaces would be required. The current parking lot includes 33 spaces, therefore, a shortfall of two spaces. The additional parking at the Tammaro Landscaping lot would be reserved for employees. Mr. Prentice stated that there are no concerns that members of the public would not be able to park on site.

Mr. Palmer asked the Town Planner for clarification on the wording within the Planning Board Memo for the application, p. 1, second sentence, within the section labelled, "Summary of Completeness." Ms. O'Meara explained that the sentence, "No items appear complete" includes a typo with the omission of "in-" to the word, "complete." The correct sentence is, "No items appear incomplete."

Mr. Sahrbeck acknowledged the concern expressed during public comment regarding the issue of a sidewalk. He stated that the information provided in the application meets the standard for the issue of completeness.

Ms. O'Meara stated that the Town Standards call for sidewalks in both the Town Center and the Business A district. She acknowledged that many property owners are reluctant to include sidewalks in site plans because of the expense involved. Ms. O'Meara stated that sidewalks are not imposed lightly. She then provided historical context for the sidewalks required for both the Tammaro and Tacos & Tequila properties. In the case before the Board, there are no exterior changes, and there is a small increase in the number of seats. The Board could require that a sidewalk be built; however, the site plan change is relatively small. The final decision on the addition of a sidewalk to the site plan rests with the Board.

Mr. LaVallee made a motion for completeness.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 527 Ocean Holdings LLC for an amendment to the previously approved site plan for the Good Table, located at 527 Ocean House Rd, to expand the seating allowed from 75 to 100 seats be deemed complete. The determination of completeness includes waivers from providing additional information on sanitary wastewater utilities and technical and financial information.

Mr. Bodenski seconded. With no further discussion, the motion passed, 5-0.

Mr. Sahrbeck stated that the next issue is the merit of the application, noting that the applicant has submitted a site plan amendment to a previously approved plan. The issue for the amendment is the request for an increase in parking.

With no further comment from the applicant, Mr. Sahrbeck opened the floor for public comments on the merits of the application.

Paul Woods of both 517 Ocean House Rd and 316 Ocean House Rd addressed the Board. Mr. Woods emphasized that he supports the applicant and the Good Table, stating that both add value to the community. He asked that both the Board and Town Planner be scrupulous in applying the standard of review that was applied to Mr. Woods's site plan application for the property currently occupied by Tacos & Tequila. He stated that the sidewalk was a huge part of the review. He further stated that, at

the time, the Town Planner suggested that sidewalks could be installed in segments, by individual developers. Mr. Woods requested that the current applicant be held to the same standard. He asked that the current application include engineering drawings. In addition, Mr. Woods asked the Board to be scrupulous in being realistic about the parking for the Good Table site. An increase in seats from 75 to 100 needs to be supported by parking. Mr. Woods asked the Board to consider a realistic view of what Route 77 would look like when people park there. He stated that the road will look significantly different. He reiterated that he would like the Board and Town Planner to be consistent in applying the standard for a sidewalk to the current application. An exception should not be granted in order to push the application through.

Mr. LaVallee asked Mr. Woods if he believes a sidewalk needs to be part of the plan independently of the fact that his plan required one. Mr. Woods replied that there are no sidewalks on Route 77; he stated that the Town Planner was adamant that a sidewalk was needed in his site plan for purposes of looking to the future. He stated that the Planner articulated a vision of connecting sidewalks as part of the development of individual properties. Mr. Woods stated that the cost of installing the sidewalk on his property was a burden; however, it was a non-negotiable requirement at the time. He feels that a double standard is being applied to the application before the Board.

Mr. Palmer asked Mr. Woods if he knew the number of seats at Tacos & Tequila. Mr. Woods replied that he believes the restaurant has approximately 75 seats. He also stated that there is barely enough parking when the restaurant is full. At the Good Table, under the prior owners and with a capacity of 75 seats, there were times when people were parking on Route 77. He expressed concern that, with an increase to 100 seats, there will be an extensive amount of parking on Route 77. He reiterated his previously stated concern about the distance to the Tamaro parking lot and suggested that this solution will lead to an increase in parking on Route 77. He referenced the parking issue at Nonesuch Brewery in Scarborough, stating that an extra lot needed to be purchased because the roadside parking became burdensome. He summarized his position by stating that the plan before the Board requires further scrutiny.

With no further comments from the public, Mr. Sahrbeck closed the floor for comment.

Mr. Gilbert stated that the issue of overflow parking at the Good Table under the prior owners was discussed in the Workshop. Also discussed in the Workshop were both the proposal to use the Tamaro lot for employee parking, and proposed improvements to the onsite parking. Mr. Gilbert questioned both whether the seating capacity at the Good Table under the prior owners was enforced, and whether the parking estimates for the seating capacity are accurate.

Mr. Sahrbeck reminded Mr. Gilbert that the Town Council creates the ordinances defining the amount of parking required for the number of seats in an establishment.

Ms. O'Meara explained that, at one point in the past, the Good Table indicated a desire to increase seating capacity to 100 seats. The owners started a review process but never completed it. There may have been more than 75 seats in the restaurant, but these were never officially counted. Ms. O'Meara also stated that the current application includes 10 parking spaces in the Tamaro lot, bringing the total parking capacity to 43 spaces. The new owners will need to require their employees to park offsite, approximately 373 feet away from the restaurant. Ms. O'Meara stated that the requirement for parking is difficult because additional parking requires vegetated areas to be denuded and increases stormwater

treatment requirements. Ultimately, decisions on parking involve striking a balance. Ms. O'Meara pointed out that Route 77 offers the widest right-of-way in the Town. Mr. Gilbert acknowledged the safety concerns raised over parking on Route 77 with an understanding of the need to strike a reasonable balance in making a final decision.

Mr. Sahrbeck cautioned that speculation over the previous owners' adherence to their site plan should be avoided.

Mr. Prentice addressed the Board and clarified both that Mr. Tammaro has been good to work with, and that the parking issue involves a deficit of two parking spaces. In addition, the Tammaro site includes additional capacity should the need arise.

Mr. Sahrbeck asked Mr. Prentice to confirm that his employees would be expected to park in the Tammaro lot and walk along the breakdown lane of Route 77. Mr. Prentice replied in the affirmative, adding that there is a footpath to the restaurant in addition to the breakdown lane. Mr. Sahrbeck asked Mr. Prentice if he has looked into whether there is enough room to install a sidewalk while maintaining the current parking capacity onsite. Mr. Prentice replied in the negative, stating that the cost of a sidewalk for two parking spaces would not be justified. He also stated that, in the future, if a more major alteration of the site were to be made, both an increase in parking and the installation of a sidewalk would be supported by the owners.

Mr. Palmer offered comments related to the Nonesuch Brewery parking issues. He stated that there are differences between the Scarborough and Cape Elizabeth ordinances for parking. The Scarborough ordinance requires one parking space for every two employees. The Cape Elizabeth ordinance requires a parking space for every employee. He acknowledged that the parking at the Good Table is only two spaces short for the increase to 100 seats. He stated his opinion that the applicant's plan for parking is workable and can be monitored by the applicant.

Mr. Sahrbeck asked if anyone knew if there had been any agreement between the former owners of the Good Table and either Tammaro, St. Bartholomew's Church, or Tacos & Tequila for parking. Mr. Prentice stated that he thought there may have been some sort of agreement with Tammaro that involved baked goods.

Mr. Bodenski asked Ms. O'Meara to explain the conditions during the site walk for Tammaro. Ms. O'Meara replied that sidewalk requirements are in the zoning ordinance. She further stated that she makes no apologies for previously appearing adamant for adherence to the zoning ordinances. Regarding the site walk for the Tammaro site plan, Ms. O'Meara stated that Tammaro allowed the site plan that included the sidewalk to expire; they installed their sidewalk on their own initiative.

Mr. Bodenski asked the applicant if there was a way to prevent customers from parking along Route 77, for example, with signage. Mr. Prentice replied that he would need to understand the Town requirements for signage and indicated that he would not be opposed to posting notice asking customers not to park on Route 77.

Mr. Palmer stated that, according to Google Earth, there are No Parking signs already in place along the frontage of the Good Table. Mr. Sahrbeck offered that, given these signs, parking on Route 77 would represent an enforcement issue. Mr. Gilbert suggested that the owners might remind customers not to park on the street, especially when the restaurant is busy.

Mr. Sahrbeck acknowledged the concerns raised in public comment. He stated that the issue in front of the Board involves a site plan amendment addressing the issue of parking. He stated that the applicant has completed due diligence on both the parking requirements and the concern for safety. Employee parking will become a management issue for the restaurant. In his opinion, the applicant has addressed the issues.

Mr. Gilbert asked for clarification on whether the discussion represents an expedited review given that a site walk has not been completed. Mr. Sahrbeck acknowledged Mr. Gilbert's comments and asked if there was interest in a site walk. Mr. Sahrbeck clarified that site walks are not required and noted a consensus that a site walk is not necessary. Mr. Palmer reminded the Board that the question of a site walk was raised at the January Workshop. At that time, with both Mr. Huebener and Mr. Caton present, the Board indicated that they were comfortable allowing the application to proceed without a site walk.

With no further comments or questions, Mr. LaVallee made a motion for approval based on the Findings of Fact.

Findings of Fact:

1. 527 Ocean Holdings LLC is requesting an amendment to the previously approved site plan for the Good Table, located at 527 Ocean House Rd, to expand the seating allowed from 75 to 100 seats, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Good Table 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 amendment remain in effect.
3. The application was deemed complete at the February 20, 2024 meeting.
4. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
5. The development will provide for adequate sewage disposal. The development will be provided with access to utilities.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 527 Ocean Holdings LLC for an amendment to the previously approved site plan for the Good Table, located at 527 Ocean House Rd, to expand the seating allowed from 75 to 100 seats be approved.

Mr. Bodenski seconded the motion. With no further discussion, the motion passed, 5-0.

OTHER BUSINESS

Public Comment

Mr. Sahrbeck opened the floor for public comment. With no comment, either in person or virtually, Mr. Sahrbeck closed the public comment.

Mr. Palmer made a motion to adjourn. Mr. LaVallee seconded. With no further discussion, the motion passed with 5 in favor, and none opposed.

The meeting adjourned at approximately 8:13 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary