MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

March 21, 2023 7:00 p.m. Town Hall

Present:	Jonathan Sahrbeck, Chair	Matthew Caton
	Andrew Gilbert	Derek LaVallee
	Alton Palmer	Daniel Bodenski

Absent: James Huebener

Also present was Maureen O'Meara, Town Planner and Lucy Bauer, Minutes Secretary

CALL TO ORDER

Mr. Sahrbeck called the hybrid meeting (in-person and virtual) to order at 7:00p.m. Mr Sahrbeck reviewed the rules for remote participation noting that, in the event of technical difficulties, the meeting would continue. Following the review of rules, Mr. Sahrbeck called for approval of both the minutes of January 17, 2023 and the minutes of the partial workshop on 2/7/2023. Regarding the minutes of 1/17/2023, Mr. LaVallee motioned to approve the minutes, seconded by Mr. Gilbert. The minutes were approved with a vote of 4 in favor, none in opposition, and two abstentions (Mr. Palmer & Mr. Bodenski). Regarding the minutes of the partial workshop on 2/7/2023, Mr. LaVallee motioned to approve, seconded by Mr. Bodenski. The minutes were approved, 5-0.

BUSINESS OF AGENDA

Stormwater Amendments to the Subdivision Ordinance, Zoning Ordinance – Ms. O'Meara summarized the chapters and articles requiring amendment in order to meet the requirements for the General Permit for Stormwater Discharges (2022 MS4 General Permit). Ms. O'Meara noted that the Planning Board's official review is limited to the Zoning and Subdivision Ordinance Amendments. The members of the Planning Board have reviewed all amendments and have made extensive comments.

Mr. Sahrbeck opened the meeting to public comment. No one in attendance offered comment. No one attending virtually offered comment. Mr. Sahrbeck closed the public hearing.

Mr. LaVallee thanked Mr. Caton for his editorial expertise on the amendments. Mr. Sahrbeck also offered thanks.

Mr. LaVallee made the following motion, seconded by Mr. Bodenski:

BE IT ORDERED that, based on the draft amendments and the information presented, the Planning Board recommends the Stormwater Amendments to the Town Council for Consideration.

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

Carr Woods Major Subdivision and Resource Protection Permit - Carr Woods, located on Deep Brook Rd., is requesting an extension to submit the Final Subdivision application to the June 2023 meeting with a submission deadline of June 2, 2023. Planning Board member Andrew Gilbert recused himself from the discussion and vote.

<u>Mr. Sahrbeck opened the meeting to public comment:</u>

Attorney Gordon Smith of Verrill informed the Board that he assumed the project in December, 2022 from prior Counsel who has retired. Counselor Smith informed the Planning Board that the original purchaser and developer for Carr Woods has withdrawn from the project. Mr. Carr and a new developer have come to terms and are working on an agreement to present the final submission to the Planning Board for the project. Board member Alton Palmer addressed Mr. Smith and stated that during the preliminary review of the project, there was no discussion of an additional developer, and that the original application does not include a co-applicant.

Mr. Palmer questioned whether the addition of a second applicant represents a change to the established process for approval. Ms. O'Meara stated that changes to an application, to include adding applicants, could be expected during an approval process. Changes in the application would provide clarity on who is developing and financing the project.

Lise Pratt of 32 Wood Rd, abutter to the project, referenced a letter sent by herself and David Pratt to the Planning Board on 3/21/2023 expressing concerns related to the prolonged length of the approval process, the turnover in members of the Planning Board during this time, and the multiple revisions and addendums that appear to have been submitted piecemeal. Ms. Pratt asked the Board to ensure that the final submission of plans is complete with no references to other submissions. Ms. Pratt asked the Board to place a deadline on the process, as the unbounded passage of time has created concern about the continuity of the process. Ms. Pratt asked if a site walk would be conducted before the final plan is approved.

Erik Johansson of 2 Rocky Hill Rd asked if "there was a deal or [if Mr. Carr] is still negotiating." Mr. Johansson requested that the Board deny the application citing multiple extensions and the lack of a complete application. Mr. Johansson suggested that denying the application at this point in time is not necessarily saying that the project can never go forward.

In response to Mr. Johansson's comments, Gordon Smith of Verrill requested the opportunity to offer clarification on the applicant's intentions and stated that, while no Purchase & Sale Agreement has been executed, the terms have been agreed upon in principle. He stated that, if the Board allows the extension to lapse, the project would return to the preliminary phase of approval which would consume time and resources which might be a waste of time.

Sheila Wellehan of 24 Rocky Hill Rd encouraged the Board to create a hard deadline for the application, citing a lack of documentation demonstrating financial capability. Ms. Wellehan stated that Cape Elizabeth may support an applicant's privacy, but no one knows where the money is coming from. She expressed concern that developers from all over the country may attempt to move into the market in Southern Maine, and she requested greater transparency.

With no virtual participants, Mr. Sahrbeck closed the public comment.

Further Discussion

Mr. LaVallee asked Counselor Smith if the final submission will include changes to the original plan and if the changes are solely financial. Mr. Smith stated that the final submission will include a developer, that Mr. Carr is the landowner.

Mr. Palmer referenced a letter regarding financial capacity and stated that the Board had the impression that Mr. Carr was the sole applicant. Mr. Palmer suggested that the initial application lacked transparency to which Counselor Smith replied, "I was not involved at that time."

Mr. Caton requested clarification on the phrase, "good cause" as the phrase applies to the request for an extension. Counselor Gordon stated that "good cause" represents something outside of the applicant's control. Relative to the Carr Woods project, the original buyer abandoned the project, and the request for an extension is not the result of neglect on the part of the applicant.

Mr Sahrbeck acknowledged Counselor Smith's point regarding the time that would be needed to revisit the project if the extension were denied. Noting that the final submission will include changes to the plan, Mr. Sahrbeck stated that the public will want to understand how the project will evolve. The final plan will need to comply with all ordinances, and Mr. Sahrbeck suggested that an extension include language stating, "no further continuances" after June 2023.

Mr. LaVallee asked if there is precedent for denying applications.

Mr. Sahrbeck stated that the Board has the authority to deny the application because the process has exceeded a six-month timeline.

Ms. O'Meara stated that there is precedent for projects to be delayed and denied. Ms. O'Meara suggested that, in the current case, the developer is on notice that an approval to extend the application could be the final one.

Mr. Caton stated he had no issue, conceptually, with the request for an extension, however, expressed uncertainty that the applicant has provided "good cause." Mr. Caton acknowledged that he joined the Board after the initial submission of application. He recommended that any motion should include language that includes a time condition.

Mr. Bodenski stated that he was in favor of language limiting additional continuances.

Mr. Caton made a motion to extend the application "with no further continuances." Mr. Bodenski seconded.

Mr. Lavallee expressed feeling torn about language that would not allow the Board to consider extenuating circumstances. He suggested additional language around the applicant's need to demonstrate unforeseen circumstances.

Mr. Caton stated that the concept of "good cause" is a jurisdictional gateway. He asked the Board to consider what might constitute a failure to meet "good cause," for example, another developer.

Mr. Sahrbeck suggested that additional language to the motion should go beyond the concept of "good cause." He motioned for a "friendly amendment" to include the language "without exceptional circumstances presented by the applicant." Mr. Bodenski seconded.

BE IT ORDERED that based on the request submitted and the facts provided, the Planning Board grants to Carr Woods an extension to submit the final subdivision review application that excludes exceptional circumstances to the June 20, 2023 meeting with a submission deadline of June 2, 2023.

With no further discussion, the amended motion passed, 4-1 with Mr. Palmer opposing.

Lumbery Site Plan Amendments- Yam Yams LLC, represented by Michael Friedland, is requesting site plan amendments to change outdoor storage and display for the property located at 287 Ocean House Rd (U22-76), Sec. 19-9, Site Plan Completeness.

Michael Friedland addressed the Planning Board, describing the intention of plans to move the fence from the north side of the property, allowing for improved access to displays, movement for both employees & customers, and flow of vehicular traffic.

Within existing ordinances, outdoor storage is limited to the square footage of a building. The current building is 1962 square feet, and the outdoor area is 1960 square feet, therefore within the limit defined within existing ordinances.

Definitions of "storage" and "display" were reviewed. The site plan amendments include space for items for sale, therefore, display.

Mr. Sahrbeck focused the conversation on the issue of site plan completeness, specifically, whether or not the current submission is complete.

The Town Engineer has reviewed the plan submitted by Mr. Friedland and suggested revisions. Suggestions for amendments to the plan include increasing the scale of the drawing, clarifying details on new outdoor display areas including the square footage of these; clarifying flow of foot traffic by specifying footpaths into and between the displays; the addition of a rope gate detail, and posts that will be holding display pads. Mr. Friedland described his intention to minimize soil disruption on the site. There will be no increase in lighting on the site.

Mr. O'Meara requested addition of detail specific to trash containers.

Mr. Sahrbeck asked for questions from Planning Board members.

Mr. Palmer stated that the plan does not include parking calculations. He asked if the increase in outdoor display area that is intended for retail purposes would have an impact on parking. He stated that the parking calculation should be revised and, in the absence of the calculation, the Planning Board should not take any action.

Mr. Sahrbeck opened the meeting to public comment on the completeness of the plan. No one in attendance offered comment. No one attending virtually offered comment. Mr. Sahrbeck closed the public comment period.

Further Discussion:

Mr. Sahrbeck concurred that a parking calculation should be completed. Mr. Friedland asked for the detail on the code. Ms. O'Meara stated that the requirement is 4 spaces per 1000 square feet of retail area.

Mr. Gilbert asked if the amended plan needs to be stamped. Ms. O'Meara clarified that the issue at hand involves whether the Planning Board has the documentation necessary for approval. Mr. Sahrbeck stated that the Planning Board needs amendments to approve the plan and cautioned against competing site plans.

Mr. Sahrbeck asked Mr. Friedland if he has any photos of the proposed display racks. Mr. Friedland stated that the goal is one of a muted appearance and offered to provide a rendering. Mr. Sahrbeck asked if the display racks would have covers or tarps since they will be outside. Mr. Friedland stated that he would provide a rendering of the racks with covers. He also clarified that, with the large eave on the main building, some of the lumber could remain outside and would not need a cover.

Mr. Sahrbeck asked for clarification on the forklift, to include measures to ensure safety when the forklift is being operated and where the forklift would be stored when not in use. Mr. Friedland stated that the forklift would not be operated when customers were present.

Mr. Sahrbeck referenced the need for plan to be complete with regard to parking and appearance of the display racks.

Mr. Caton noted that the site plan submitted by Mr. Friedland is not certified by an engineer and asked if this is necessary. Mr. Caton noted that the plan is a rendering and, therefore, incomplete. He referenced Mr. Palmer's concerns regarding a parking calculation and noted that this element is incomplete. He noted that, without details on the appearance of the racks, the plan is incomplete. He asked if the Town of Cape Elizabeth has rules regarding fencing. On the last, Mr Sahrbeck stated that storage areas require fencing while display areas do not.

Mr. Friedland asked if his plan requires an engineer's stamp. Mr. Caton replied that a stamp would be beneficial and suggested that, with a stamped plan, Mr. Friedland could then overlay his changes. Mr. Friedland responded that he would prefer to overlay changes to the initial plan.

Mr. Gilbert stated that the Planning Board needs a reasonable flow of notes and documents so that the evolution of the project is clear from original to finished plan, with notes. Mr. Palmer agreed and added that the scope of the project requires continuity in the changes. He suggested that Mr. Friedland work with the town engineer to ensure that the amended site plan is clear about the evolution of the plan from original to final. He agreed that parking needs, to include the outdoor retail space, be included in the final plan.

Mr. Bodenski requested detail on the height of the display racks.

Mr. Sahrbeck noted that the plan does not appear to be complete, requested more detail on the display racks and covers and stated that a site walk would be helpful. Ms O'Meara stated that site walks are usually done only when a plan is complete. Other members of the Planning Board expressed interest in a site walk.

Mr. Caton stated that, while the Planning Board understands both Mr. Friedland's intentions for the plan and the length of the process in relation to the needs of Mr. Friedland's business, the Board cannot grant conditional approval. He asked if Board should consider a motion to table the application.

Mr. Palmer asked if the requested amendments to the plan can be expedited. Mr. O'Meara stated that the process could be expedited with a communication of completeness and a public hearing, however, this would sacrifice a site walk. Ms. O'Meara stated that, in the past, the public has expressed unhappiness with the lack of an opportunity to "use" their public hearing without a complete plan available for review. If plan is deemed incomplete, Mr. Friedland has a deadline of 4 months to resubmit plans with no additional fee. Mr. Caton stated that a site walk was important given concerns for safety, the central location of the business in town, and the need to see amendments to the plan.

Mr. Sahrbeck requested more detail on how the displays would interface with parking to understand safety considerations.

Mr. Bodenski agreed with the need for a site walk to assess safety concerns.

Mr. LaVallee made a motion, seconded by Mr. Palmer.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Michael Friedland/Yam Yams LLC for amendments to the previously approved site plan for the Lumbery, located at 287 Ocean House Rd., to change the exterior storage and display area be deemed incomplete.

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

Mr. Sahrbeck advised Mr. Friedland to consider the recommendations made by the Planning Board, add notes to the plan, include detail on parking, and include new renderings. The Board would like to understand what the site will look like when the fence is removed and what the display rack covers will look like.

Mr. Palmer asked for detail on the area adjacent to the building and how foot traffic will flow in that area. He wondered if the sidewalk is too restrictive and suggested that the Board understand the codes related to the sidewalk. He also asked about the donation bin that currently exists on the property and advised that this be included in the amended site plan if the bin will remain on the property.

A site walk will occur once the plan is deemed complete. The next Planning Board meeting is scheduled for April 18, 2023 with a submission deadline of March 31, 2023.

Mr. Sahrbeck called for any remaining public comment. With no one in attendance, either in-person or virtually, Mr. Sahrbeck closed the floor for public comment.

Mr. LaVallee motioned to adjourn the meeting. Mr. Bodenski seconded.

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

The meeting adjourned at 8:42p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary