

These meeting minutes were prepared as a reasonable summary of the essential content of the meeting, not a transcription. In the event that there is a question or dispute about the specifics of this meeting, the official video and/or audio recordings of this meeting shall govern.

Town Hall

Jim Huebener
Matthew Caton
Natalie Burns

Also present: Benjamin McDougal, Code Enforcement Officer

Mr. Gilbert called the hybrid meeting (in person and virtual) to order at 7:00 p.m., reviewed the procedures for remote participation, and established a quorum.

Mr. Gilbert called for approval of the minutes of the March 18, 2025 Planning Board meeting. Mr. Caton noted that Findings of Fact, #8 on p. 4, should include the word, “not.” The sentence, as amended, will be, “The development will not substantially increase noise levels and cause human discomfort.” Mr. Huebener noted that, for the section labeled “Public Comment” on p. 4, the record should reflect that Mr. Gilbert opened the floor (not Mr. Huebener).

Mr. Huebener made a motion to approve the minutes as amended and Ms. Burns seconded. With no further discussion, the minutes were approved, 6 in favor and none opposed.

Cape Elizabeth Basketball Court Site Plan Amendment. The Town of Cape Elizabeth is requesting a Site Plan amendment to construct an outdoor basketball court adjacent to the Spurwink School building, located at 6 Scott Dyer Road (U21-10), Site Plan Review, Sec. 19-9, Public Hearing.

Steve Harding, Town Engineer for Cape Elizabeth, addressed the Board as a representative of the Town and in partnership with Cape Hoops, represented by Meredith Beaureguard. Mr. Harding summarized changes to the project plans.

Mr. Gilbert opened the floor for public comment on the project.

Dave Andrews of 15 Grover Road addressed the Board. He asked if the plans were considered within the scope of the proposed school renovation plans completed by Harriman Architects.

Kyle Brackman of 1235 Shore Rd addressed the Board and voiced support for the project.

Mr. Harding clarified that the project would not be impacted by the proposed school renovation.

Mr. Caton suggested that both the placement of the access doors and hinges be reviewed for both optimal pedestrian traffic flow and preservation of the rain garden.

Mr. Harding clarified that chain link fencing will surround the court.

Mr. Huebener made a motion for the Board to consider.

Findings of Fact

1. The Applicant is requesting Site Plan approval for the proposed construction of a basketball court adjacent to the existing Spurwink School building, which requires a review under the Town's Zoning Ordinance Sec. 19-9;
2. The application was deemed complete on March 18, 2025 and a public hearing was held on April 15, 2025;
3. The plan for the development reflects the natural capabilities of the site to support development;
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 plan does provide for a system of pedestrian ways within the development;
6. The plan does provide for adequate collection and discharge of stormwater;
7. The development will not cause soil erosion, based on the erosion plan submitted;
8. The development will not be provided with an adequate quantity and quality of potable water, and none is required. The development will not provide for adequate sewage disposal, because none is required. The development will be provided with access to utilities. The development will provide for adequate disposal of solid wastes through carry in/carry out policy;
9. The development will not adversely affect the water quality or shoreline of any adjacent water body;

10. The development will provide a vegetative buffer throughout and around the site and screening as needed;
11. Adequate exterior lighting is not provided for this project, and none is required;
12. Signs will meet the requirements of the Sign Ordinance;
13. The development will not substantially increase noise levels and cause human discomfort;
14. Storage of exterior materials will not occur on the site; and,
15. The applicant has demonstrated adequate technical and financial capability to complete the project.

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 a Site Plan Amendment application to construct a basketball court adjacent to the Spurwink School, located at 6 Scott Dyer Road (U21-10), be approved subject to the following conditions:

1. That the plans be revised to address the recommendations from the acting Town Engineer's letter dated April 4, 2025;
2. That the plans be revised to delete the porta potty. A note should be added to the plans that a seasonal porta potty may be installed at the site at the discretion of the Public Works Director; and
3. The final plans be revised and submitted to the Town Planner for review and approval prior to finalizing the site plan.

Ms. Burns seconded the motion. With no further discussion, the motion was approved, 6 in favor and none opposed.

NEW BUSINESS

Old Mill Road Subdivision Amendments. Brendan and Sarah Ready are requesting amendments to the previously approved Old Mill Road Subdivision, located on Old Mill Rd (R2-16-3, 16-4, 16-5) to merge lots 2, 3 and 4 into a single lot, Sec. 16-2-5, Subdivision Amendment completeness and public hearing.

Bob Metcalf of Mitchell Associates addressed the Board, representing the applicant and summarized the project.

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

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

With no further discussion, Mr. Palmer made a motion to deem the application complete. Mr. Huebener seconded. With no further discussion, the motion was approved, 6 in favor and none opposed.

Mr. Gilbert opened the floor for public comment on the merits of the application. With no comment, either virtually or in person, Mr. Gilbert closed the floor.

Ms. Burns noted that, because the application is proposing to merge two lots, none of the previously approved conditions of the subdivision are under review for change.

Ms. Burns made a Motion for Approval.

Findings of Fact:

1. The Applicants, Brendan and Sarah Ready, are requesting Minor Subdivision Amendment approval to merge two (2) existing lots of record, one (1) lot that is undeveloped and one (1) lot that contains a single-family residence, located within the Old Mill Road Subdivision, which requires review under Sec. 16-2-3 and Sec. 16-3-1 of the Town's Subdivision Ordinance;
2. The subdivision application was deemed complete on April 15, 2025 and a public hearing was held on April 15, 2025;
3. The subdivision will not result in undue water pollution. The subdivision is located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project;
4. The subdivision will have a sufficient quantity and quality of potable water;
5. The subdivision will not cause soil erosion, based on the erosion control plan provided as part of the revision of the subdivision approval;
6. The subdivision will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The subdivision provides for road network connectivity while discouraging through traffic. Roads are laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. Roads are designed to meet town standards;
7. The subdivision will provide for adequate sewage disposal;

8. The subdivision will provide for adequate solid waste disposal;
9. The subdivision will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline;
10. The subdivision is compatible with the applicable provisions of the Comprehensive Plan and town ordinances;
11. The applicant has demonstrated adequate technical and financial capability to complete the project;
12. The subdivision will not adversely impact surface water quality;
13. The subdivision will not adversely impact the quality or quantity of ground water;
14. The subdivision will comply with the Floodplain Regulations, Chapter 6;
15. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance;
16. The subdivision will provide for adequate stormwater management;
17. The subdivision will not unreasonably increase the phosphorus concentration of Great Pond;
18. The subdivision is not located in more than one municipality;
19. The subdivision is not located on land where liquidation harvesting was conducted;
20. The subdivision does provide for access to direct sunlight;
21. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed;
22. The subdivision will comply with the open space impact fee that has already been provided to the town;
23. The subdivision lots will be provided with access to utilities; and
24. The subdivision plan does not include a phasing plan that provides for emergency access during all phases of construction as it will not be built in phases.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Brendan and Sarah Ready for Minor Subdivision Amendment approval to join two (2) existing lots of record within the Old Mill Road Subdivision, subject to the following conditions:

1. The Applicant present sufficient right, title, or interest documentation from the individual owners of record within the existing subdivision; and
2. The final plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

Mr. Huebener seconded the motion. With no further discussion, the motion was approved, 6 in favor and none opposed.

7 Scott Dyer Rd Subdivision and Site Plan Amendments. Zev Myerowitz is requesting an amendment to the previously approved Tarbox Triangle Subdivision to shift the lot 2 and lot 3 common boundary line and amend the site plan located at 7 Scott Dyer Rd (U22-74, 74-3), Sec. 16-2-5, Subdivision Amendment completeness, and Sec. 19-9, Site Plan Completeness.

Greg Shinberg of Shinberg Consulting addressed the Board representing the applicant as an owner's representative. Mr. Shinberg summarized the project.

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

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

With no further discussion, Ms. Burns made a motion to deem the application complete. Mr. LaVallee seconded. With no further discussion, the motion was approved, 6 in favor and none opposed.

Mr. Gilbert opened the floor for public comment on the merits of the application. With no comment, either virtually or in person, Mr. Gilbert closed the floor.

Mr. Palmer requested clarification on Town Center District zoning rules regarding the restriction of projects to no more than 70% coverage on a lot. He noted that the project plans do not confirm that this requirement is met.

Mr. Caton noted that an earlier application included a waiver for technical and financial capability. He questioned whether evidence of technical and financial capability should be a condition of approval. Discussion ensued.

Mr. Caton made a motion for the Board to consider.

Findings of Fact

1. The Applicant, Dr. Zev Myerowitz, is requesting Site Plan and Minor Subdivision Amendment approval for the proposed construction of a hot tub/swim spa and to adjust the common boundary line along two (2) existing lots of record located within the Tarbox Triangle Subdivision, which requires a review under the Town's Zoning Ordinance Sec. 19-9 and the Town's Subdivision Ordinance Sec. 16-3-1;
2. The subdivision application was deemed complete on April 15, 2025 and a public hearing was held on April 15, 2025;
3. The subdivision will not result in undue water pollution. The subdivision is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project;
4. The subdivision will have a sufficient quantity and quality of potable water;
5. The subdivision will not cause soil erosion, based on the erosion control plan provided;
6. The subdivision will not cause unreasonable road congestion or unsafe vehicle and pedestrian traffic. The subdivision provides for road network connectivity while discouraging through traffic. Roads are laid out to conform to existing topography as much as is feasible. All lots are provided with vehicle access. Roads are designed to meet town standards;
7. The subdivision will provide for adequate sewage disposal;
8. The subdivision will provide for adequate solid waste disposal;
9. The subdivision will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline;
10. The subdivision is compatible with the applicable provisions of the Comprehensive Plan and town ordinances;
11. The applicant has not demonstrated adequate technical and financial capability to complete the project, which may be subject to a condition below;
12. The subdivision will not adversely impact surface water quality;
13. The subdivision will not adversely impact the quality or quantity of ground water;
14. The subdivision will comply with the Floodplain Regulations, Chapter 6;
15. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance;

16. The subdivision will provide for adequate stormwater management;
17. The subdivision will not unreasonably increase the phosphorus concentration of Great Pond;
18. The subdivision is not located in more than one municipality;
19. The subdivision is not located on land where liquidation harvesting was conducted;
20. The subdivision does provide for access to direct sunlight;
21. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed;
22. The subdivision will comply with the open space impact fee, which has been previously submitted;
23. The subdivision lots will be provided with access to utilities; and
24. The subdivision plan includes a phasing plan that provides for emergency access during all phases of construction.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. Zev Myerowitz for Site Plan and Minor Subdivision Amendment approval for the proposed construction of a hot tub/swim spa and to shift the lot lines, as shown on the plans submitted, subject to the following conditions:

1. The Applicant submits a waiver request or submits adequate technical and financial capacity documentation to satisfy the requirements as defined within the Subdivision Ordinance and Zoning Ordinance;
2. The Applicant bears all responsibility for researching, and updating, if necessary, all existing and recorded easements, including but not limited to, the sanitary sewer easement, multi-use easement, and any other existing easements on site, such that the determination of the fifty (50) ft. right-of-way does not conflict with any of the existing and recorded easements; and
3. The final plans developed be revised to include lot calculation for lot 2 and submitted to the Town Planner for review and approval prior to recording the subdivision plat, alteration of the site or issuance of a building permit.

Mr. Palmer seconded the motion. With no further discussion, the motion was approved, 6 in favor and none opposed.

OTHER BUSINESS

Contract Zoning Amendment. The Cape Elizabeth Town Council has referred to the Planning Board amendments to the Zoning Ordinance to establish Contract Zoning, Zoning Ordinance Amendment Sec. 19-10-3, Public hearing.

Mr. Gilbert summarized the agenda item and opened the floor for public comment.

Dave Andrews of 15 Grover Rd addressed the Board. He expressed concern that the proposed amendments go too far, departing from the original intention of the Town Council. He stated that contract zoning should be limited to the Town Center District. He noted the provision for public benefit in the amendments and expressed concern that the public benefit provisions do not include 55+ housing.

Tom Dunham of 11 Becky's Cove Lane addressed the Board. He expressed concern for the expansiveness of the proposed amendments and stated his opinion that contract zoning should be limited to the Town Center.

Tim Reiniger of 40 Bellfield Rd addressed the Board. He stated that he does not support the version of the amendments under consideration at tonight's meeting. He specifically expressed concern for the inclusion of public benefit provisions. He suggested that creation of a Village Green subdistrict would offer a better option for promoting development in the Town Center.

With no further comment, either in person or virtually, Mr. Gilbert closed the floor.

Discussion ensued regarding public benefit provisions.

Mr. Caton noted that public comments, including emails, have been unsupportive of the amendments. It was subsequently noted that, overall, the Board has received very little comment on the issue.

Ms. Burns clarified that she had suggested that the proposed contract zoning changes apply to the entire Town. She cited her experience as a land use attorney and stated that many municipalities have adopted contract zoning without limiting the zoning to one district. She clarified that zoning changes require a legislative decision by the Town Council. An application involving contract zoning would require both review by the Planning Board and a legislative decision by the Town Council.

Discussion ensued.

Mr. Palmer made a motion for the Board to consider.

BE IT ORDERED that, based on the draft amendments and facts presented, the Planning Board recommends the Contract Zoning Amendments to the Town Council.

Mr. Huebener seconded.

With no further discussion, the motion passed with four (4) in favor and two (2) opposed (Caton, Gilbert).

Public Comment

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

Mr. Huebener made a motion to adjourn the meeting. Mr. LaVallee seconded. With no further discussion, the motion passed, 6 in favor and none opposed.

The meeting was adjourned at approximately 8:52 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary