

**Minutes of the Chebeague Island Planning Board  
April 14<sup>th</sup> 2008 Chebeague Methodist Church Parish Hall**

The meeting was called to order at 7:23

Members present: Beth Howe, Jane Frizzell, Tad Runge, Mabel Doughty, Ernie Burgess, Sam Birkett

Absent: Tom Adams.

Others present: Donna Colbeth, Ken Pelton (who was also representing the Gallaghers), Stuart Franke, Richard Sweet,

**Minutes**

*Mabel Doughty moved to accept the minutes from March 20, Jane Frizzell seconded, and the motion was approved unanimously.*

**Public hearing on an amendment to the 1972 subdivision plan for Cart Road Acres, Old Cart Road, tax assessor map 107, lot 45, island residential, Richard Sweet Site Evaluator and Representative, Stuart Franke, applicant and owner.**

Background: In 1972 this lot was designated as not suitable for subsurface waste disposal, and therefore not developable, but was otherwise approved as a lot of record. This proposal is an amendment to the original subdivision proposal, removing the words “not suitable for subsurface waste disposal” from the plans due to changes in plumbing code and septic systems since 1972. Dick Sweet said that no one is completely sure of the reason why the wording was originally put on the plan. The early version of the plan had no such wording on this lot, but it was added to later versions. The current State plumbing code was adopted in 1974. In 1972 an evaluator would still have had to use a percolation test to determine whether a leach field was possible, and the ability to build would have been determined by the ability of the soil to percolate. The soil guide used at that time had lists of soils and their suitability for different purposes. The guide said that the type of soil found on this lot was severely limited for use for subsurface disposal. In 1974 a new test was developed which involved drilling holes, and examining soil texture, the water table and the coloration of soil. This lot has a high water table, The water table would have needed to be at least 15 inches beneath the surface under the 1974 code, and this particular lot had too high of a water table. Until 1980 it would have been possible to build a house with a holding tank, and until 1979 or 1980 it would have been possible to use a non discharge system (drained into a bed of sand and stone lined with plastic and evaporated), but this system did not work very well and was no longer used after 79-80. So during the time period from 1979-80 to 1995 the lot could not be built on. However in 1995 the plumbing code changed to a twelve inch minimum depth to the water table when not in the shoreland zone, and in the upper part of this lot the water table is somewhere between 12 and 15 inches from the surface. Dick Sweet provided plans for an up to date septic system, and erosion control system, and showed a diagram of a tentative site plan, in which waste would be pumped up to a septic tank and leach field.

Donna Colbeth said that she wanted to ensure that the right of way to the shore would remain. Stuart Franke replied that it is in place in the plan. Jane Frizzell noted that

the access was noted: “private right of way,” which means it was only deeded to lot owners of Old Cart Road. Ken Pelton wanted to know if Stuart Franke had actual plans to build on the lot. Stuart Franke said that he was unsure, but the lot was for sale right now. Ken asked if any building would have to come to the Planning Board again. Beth Howe replied that the plans would instead go to the Code Enforcement Officer because lot was already approved in original subdivision, except for the wording about no subsurface disposal being allowed. Because the lot is greater than an acre and a half, it would not be covered under the lots of record provision for lots created before 1975 and would have to meet current setback requirements. These would define the required width of the lot. Ken said that there was concern from others in Cart Road that the view is not obstructed, Donna Colbeth wants to emphasize the importance of continued access to the shore.

Beth closed the public hearing and suggested reading through a draft of the findings of fact

Stuart Franke requested a waiver for the surface drainage and stormwater management plan. The subdivision had met stormwater requirements in 1972, and a stormwater study is quite elaborate and would be expensive to complete.

Jane Frizzell asked if this would set a precedent in other subdivisions. Beth said that perhaps it would for lot 7 in this subdivision, but not necessarily for other subdivisions.

Ken Pelton asked where the stormwater would travel. Dick Sweet said the plan would extend existing culverts to avoid the new driveway and the water would then continue to flow across lot 8.

*Tad moved to accept the waiver, Mabel seconded. Jane wanted to emphasize that she did not want to set a precedent for lax stormwater regulation, but is in favor if it will not. Beth called for a vote on the waiver, and it was approved unanimously.*

*Findings of fact: Jane made a motion to approve the findings of fact, Ernie seconded and it was approved unanimously.*

*Conditions of approval: Ernie moved to approve the plan with the proposed conditions, Sam seconded, and it was approved unanimously.*

The members of the planning board signed the mylars of the site plan.

### **Discussion of changes to the zoning ordinance.**

An attached memo that Beth handed out summarized the previous discussion on zoning amendments: accepting a number of very minor changes and a wording changes for fuel tanks. Beth said that Susan Campbell needs to send the Town Meeting warrant out on the 19<sup>th</sup> or 20<sup>th</sup> of May, and the Planning Board would need to hold a public hearing before that. Thea would be responsible for notice on the meeting which would probably be held on the 15<sup>th</sup> of May. Tad will not be able to attend that meeting.

There are three different issues that would be possible to address for the upcoming town meeting, the issue of conflicting standards for subdivision lots, the requirement that wheelchair ramps go before the Board of Appeals, and the issue of number of workers allowed in a home occupations.

Conflicting standards for subdivision lots, especially lot frontage: Currently if a lot was approved by the Planning Board in a subdivision but never built on, it is unclear what the current building requirements are. Beth and Paul had looked at p. 44, lot regulations, which covers regulations for lots of record. Section 205.4 states *that lots of at least 20,000 square feet in approved subdivisions, irrespective of whether the lot was in separate or distinct ownership from adjacent lots, can be built on if they meet certain conditions. They must meet the width, frontage and yard requirements of the Town of Chebeague Island Zoning Ordinance which was in effect immediately prior to the adoption of this ordinance.* This is difficult to interpret since the Town of Chebeague never had such an ordinance, and it was unknown what prior Cumberland ordinance was being referred to. In this section, it seemed that lots were supposed to meet lot frontage of Cumberland ordinance, and Beth Howe and Paul White made the finding that Stuart Francke's lot in the Cart Road Acres Subdivision did not meet frontage requirements, so he would have to go to the Board of Appeals for a variance. However, the lawyer working for Stuart Francke looked at p.34. sections 204.1, C, D, E, which has no frontage requirement for lots created before 1975. This section, grandfathering small lots created before 1975 was adopted relatively recently. At the time this amendment was adopted, it is likely that no one thought about language in 205.4. 205.3 states that if two substandard lots are owned by the same person they are not allowed to be sold separately but must be combined into a single lot. Section 205.4 says that sub-standard lots in an approved subdivision can be sold separately. *Beth suggested leaving section 201 and 204 as they were, and to reword 205.4 "In the island residential and island business district, notwithstanding limitations imposed by other provisions of this ordinance, a lot containing at least 20,000 sq ft as shown on a plan of a subdivision duly approved in the Cumberland County Registry of Deeds on or before July 31 1975, and irrespective of whether said lot was in separate and distinct ownership from adjacent lots as of said date, may be built upon subject to the conditions in section 204.1 C, D and E or section 204.3 C,D, and E"* Sam made a motion to bring Beth's suggestion to leave 201 and 204 and change section 205 according to Beth's suggestion and to bring this to public hearing. Tad seconded, and it was approved unanimously.

### **Disability Variance**

The Disability Variance would allow variances for ramps in violation of setback requirements to go to Code Enforcement Officer instead of board of appeals, saving a \$100 application fee. The legality of this variance would have to go to the town attorney. If it passes a legal test might be worth doing. *Sam made a motion to send this ordinance change on to town attorney, and on to a public hearing if approved. Jane seconded and the motion was approved unanimously.*

There are two ordinance changes which have been brought up by the Calders, who wish to expand their business in 2 ways, having a lunch wagon and hiring more employees, but are finding challenges in the zoning.

### **Section 415.1.b- home occupations**

Current regulation states that if the occupation is owned and operated by member of family residing in dwelling unit, no more than 2 employees who are not family members are allowed. The Calders would like to have more than 2 non-family employees. The issues are as follows: Is it just an arbitrary number? Does this regulation matter and make sense on Chebeague? The logic behind the ordinance is that neighbors would be concerned about additional traffic and parking. Beth said however, on Chebeague most businesses are in people's homes, making the situation somewhat different than that of Cumberland. It would be possible for the Town to either remove the limit on the number of employees, or make a make larger limit. Sam brought up the issue of parking, that the issue is less about people in the home but about parking. More employees would generate more traffic and increase numbers, but if there only two there at a given time, it would make little difference. In the ordinance a distinction is made between a home occupation which can only have two employees vs. a home based business, which allows only two employees at the home at any one time. Mabel suggested that if employees could park on the business' lot and not the road, it could be possible to allow more employees. Beth brought up that another option is to extend business zone. Sam made a motion to take the rewording: *"In the case of a home occupation, no more than two employees who are not members of the family may be employed at any given time in the operation," to the town lawyer and public hearing, and the motion was approved unanimously.*

### **Part B: Lunch Wagons**

Tad brought up the question of whether it has to be all or nothing, since the laws about mobile service establishments are much different than lunch wagon. Paul's original idea was that food carts would be a special exception in both zoning districts, subject to approval by Board of Appeals. The problem is that the example zoning wording from Grey refers to their victualers ordinance. And the language Beth got from Falmouth is part of their victualers ordinance, which does not have to do with land use at all. Sam asked what other islands do. Beth said that it may make more sense to regulate food carts under a victualer's license. Current regulations from Cumberland do not allow food carts, but allow ice cream trucks. This ordinance was however never adopted by the Town of Chebeague. Ernie suggested talking to John Roy, who travels with foods to places with many employees, said he would talk to him for background. This issue has both Landuse and Victualers elements. *Mabel made a motion to take no action pending more information. Approved unanimously.*

### **Adjourn.**

Respectfully Submitted,  
Thea Youngs