

June 19, 2007

Re: Sheepscoot Harbour Village & Resort Site Plans, and compliance with Article V Section 4.8 building separation requirement:

I have reviewed two site plans, the Land Use Ordinance, and Board minutes for 2006 and later, and visited the site as constructed to date.

Short version:

1. In Phases I and IIA there are approximately 13 deviations from the 30 foot separation required by Art. V § 4.8, and one additional deviation in the approved plan for Phase IIB. Appeal periods have all expired, and Phases I and IIA have been permitted with substantial work, ranging from footings and rough plumbing in place to full completion, done on all units in those two phases. The developer has agreed to adjust the one deviation in Phase IIB to comply.
2. There does not appear to be justification for requiring the developer to change any structure that has been started.
3. Additional noted concerns are: lack of appropriate provision for extension of sewer and water to neighboring parcels, use of gravel drives rather than paved, and lack of pedestrian provisions on Eddy Road.
4. Section 4.8 should be amended to separate the lot size and building separation provisions and fix an error in wording, and other amendments considered to address the concerns noted for future projects.

More complete:

“4.8 Lot Size for Multiple Dwelling Units

“The required minimum lot size for all Areas and Districts shall be met for each dwelling unit, with the exception of an accessory apartment, for the respective Area or District. For lots having Town of Edgecomb controlled sewer and water held in single ownership and located only within the Edgecomb Gateway or the Edgecomb Thoroughfare District or the Commercial Growth District upon which multiple dwelling units are proposed, the **maximum** lot size per dwelling unit shall be 1 acre for the first dwelling unit plus one-fourth acre for each additional dwelling unit over one. The required minimum lot sizes for all Shoreland Zones are provided for in Article III, Section 1.9.1.5. There is no density bonus in the Shoreland Zone if sewer and water is connected to a lot within the Shoreland Zones. **Residential Structures must be separated by a minimum of thirty (30) feet.**”

In a Resource-based Subdivision (which this is not) the minimum separation between residential structures would be the height of the tallest structure. [Art.IV §2.4.10.1]

Phase I - Nine single and two duplex units, plus inn and restaurant units. Construction complete or substantially complete. Approved September 15, 2005, subject to submission of erosion control documentation. Cabin refurbishment: in general the 1920's cabins scale more than 30 feet apart. At three points (not counting the duplex cabin) some combination of preexisting separation and permitted expansion result in less than 30 feet of separation.

Phase II (later referred to as **IIA**) - Twenty-four single units. Under construction - all footings placed, some structures complete or substantially complete. Approved January 19, 2006, and recorded August 2006. There are twenty-three units, of which fourteen are within the General Development Shoreland District as delineated. All units are clear of the delineated 75-foot river setback. One unit (501) is 30 feet from the Eddy Road right-of-way, and there is a footnote to "3. Space and bulk criteria: ..." that the Board approved a "front setback" of 15 feet along Eddy. All units take access from internal drives, with varying setbacks. Twelve building separations (including two relative to existing cabins) are less than 30 feet. Other than the boundary and required setbacks, there are no dimensions on the site plan, there being a note that "9. Proposed building locations are approximate and may be adjusted in the field to avoid clearing of significant trees. Final building locations to be shown on the recorded condominium plan." Dimensioning of building separations is not listed in the submittal requirements.

In approving the plan the Board found conformity with Art. III Section 1.9 and positive findings regarding the requirements of Section 1.10.3.

There is provision (Art. IV Section 1.5) for the granting of waivers, by the Board, of (presumably) subdivision regulations upon certain findings, but no indication that any was sought or granted beyond the determination of front setback along Eddy referred to above.

No indication that there was discussion of separation of residential structures could be found. The section referring to the minimum 30 foot separation might be construed as only applying to "multiple dwellings" in the sense of "multi-family dwellings" ("... structure(s) containing three or more dwelling units"—there are separate Land Use Ordinance definitions for single-family, duplex, and multi-family dwellings) per its heading. The 30 feet was in one or more previous versions of the ordinance under the same heading. "**(M)aximum**" (lot size) in the current version of Section 4.8 should be "minimum," and it would be a good idea to split the section, with appropriate headings.

Roof shapes, and orientations of the structures, along with screening trees and significant differences in floor elevations between tiers of homes, appear to minimize impact on views from elsewhere. Timely discovery of the discrepancy might have resulted in respacing and/or combination into several duplexes, or a finding that some specific deviations would enhance the project, likely without further reduction in unit count.

Phase IIB - Twenty single units, plus community center. The plan is not recorded, and building construction not started. The site plan scales building separations of 30 feet or more with one exception, to be fixed with a replotting of one structure by 3 feet. It is understood that this phase is intended for longer term occupancy, by seniors, with most of the units somewhat larger.

A separate letter from Attorney John Shumadine concludes that, absent deviation from the approved plan, the Board has no power to interfere with Phases I and IIA.

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Other observations regarding the project:

Disturbance (removal and/or trimming) of trees (permitted as part of development) is most noticeable due to the scale of the project. The removals and pruning fall short of "clear cutting," but represent a substantial portion of the view of Davis Island from across the river. At this time the most noticeable exposures are of Wiscasset from Eddy Road and fresh siding on the original cottages from Wiscasset.

A major factor in the overall project was the elimination of "overboard discharge" (OBD) of minimally treated waste water (sewage effluent) from the inn and restaurant complex into the Sheepscot River, through construction of a sewer to the Wiscasset plant. OBDs have been identified as a significant source of pollution in Sheepscot bay and estuary, and are perhaps Edgecomb's principal contribution. Several OBDs are near at hand, at homes along Fort Road. It is understood that an agreement between the developer and nearby residents is intended to make future connection of some Davis Island parcels to the public sewer less likely ("unavailable" per DEP Chap.596 §5.A.(1)) and/or much more expensive, a goal contrary to at least two adopted purposes of Edgecomb's subdivision standards: assurance of "the ... health ... of the people ... and to provide for the orderly development of a sound and stable community." [Art. IV § 1.1] The financial burden of such an agreement would fall on other owners, the Town, and/or the State (but there are currently no funds available for most individual systems), not the developer. Owners of OBDs are subject to annual fees for inspection and reevaluation of such systems upon sale or other transfer of ownership (including inheritance). If a "technologically (no reference to financially) feasible" alternative exists then use of such alternative is required.

The concurrent construction of a water line provides domestic water and fire flow for the project. Convenient adjacent access to the fire flow and potable water provided within the project is likewise discouraged by the private agreement. Cessation of groundwater use for the project area may be of some long term benefit to the quality of groundwater being pumped by others, but both quality and quantity are likely to be poor for a very long time. In the meantime, at least one well is "filled" weekly by the Fire Department when the residence served is in use.

It is noted that the driveway to be provided for most of the development is "16' wide gravel," with gravel parking spaces. Unpaved roads have been found to be a major contributor to silt and sand runoff pollution in many communities, and gravel is considered to be impermeable as a road surface material. There is now a high permeability asphalt concrete mix that would be distinctly better than gravel.

It is understood that neighbors insisted that there be no vehicular or pedestrian access to Fort Road from the project, preferring that residents of the project desiring to visit Fort Edgecomb drive there. Eddy Road is not particularly safe to walk on—a sidewalk would enhance safety.

Byron Johnson, Town Planner