

TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING

October 15, 2002

7 P.M., TOWN HALL

Present: David Griffin, Chair
John Ciraldo
Andrew Charles
Peter Cotter
Karen Lowell
Barbara Schenkel
David Sherman

Also present was Maureen O'Meara, Town Planner

Chair David Griffin opened the meeting and asked for a short delay in order to review correspondence. He then requested action on the minutes of the previous meeting. With no amendments requested, Mr. Sherman made a motion to accept the minutes. Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed.

Mr. Griffin reviewed correspondence and proceeded to the next order of business.

CONSENT AGENDA

Cross Hill Lot 55 Subdivision Amendment - Request by Cross Hill LLC, represented by Stephen Parkhurst, for an amendment to the previously approved Cross Hill Subdivision to replace lot 55 as a designated affordable lot with lot 71, Sec. 16-2-5, Amendments to Previously approved subdivisions.

David Sherman felt that the submission was a reasonable request. He noted that both lots bordered on the open space and had similar attributes.

Mr. Sherman made a motion for the Board to consider:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephen Parkhurst, on behalf of the Cross Hill L.L.C. for an amendment to the previously approved Cross Hill Subdivision to change the designated affordable housing lot from lot 55 to lot 71 be approved.

Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed.

OLD BUSINESS

Flocatoulas Private Accessway Permit - Request by Costas and Lisa Flocatoulas for a Private Accessway Permit to create a second lot located at 142 Mitchell Rd (U34-18), Sec. 19-7-9, Private Accessway Permit Public Hearing.

Bob Metcalf of Mitchell & Associates, and representing Mr. And Mrs. Flocatoulas, presented the Board with the following changes made to the site plan:

1. A stamped survey signature has been added to the existing conditions plan and the site plan for the proposed accessway.
2. A site detail for sewer cleanup and sewer connection was added to sheet #3 of the submission package.
3. Drainage along Mitchell Road was clarified with regard to the drainage plan proposed for the Blueberry Ridge subdivision.
4. Detail was added regarding the location of a fire hydrant.
5. The first 50' of paving from the edge of Mitchell Road has been depicted on the plan.
6. A landscaping detail was not provided on the plan, although a vegetation buffer will be instated between the two lots. A determination of that planting had not been decided.
7. Radii on all radius locations have been added to the plans.
8. A note was added to the plan regarding the location of a temporary construction access.
9. The name Delphi Road has been added to the plan.
10. Additional buffering with 11 hemlock trees has been added along the rear of the lot adjacent to the Blueberry Ridge Subdivision road.
11. A Declaration of Covenants with respect to road maintenance had been submitted to the Town Planner.

Mr. Griffin opened the meeting to a public hearing. With no persons coming forward, Mr. Griffin closed the public portion of the meeting and opened discussion to the Board.

Mr. Ciraldo was concerned that no plan detail had been submitted for buffering. He understood the applicant's reasons for not submitting a decisive plan, but was opposed to granting approval without a guarantee that a landscape buffer would be provided.

Ms. O'Meara noted that the submission plan depicts a row of 11 Canadian hemlocks running along the rear of the house. She suggested the Board use the detail as an acceptable buffer to reference in their condition of approval.

Mr. Sherman asked about buffering along the other side of the lot. Mr. Metcalf pointed out that there is pre-existing buffering provided by the Blueberry Ridge easement.

Mr. Charles asked whether Ms. O'Meara had received any comments from the public. She responded that she had not.

Mr. Ciraldo felt that the application met the private accessway standards and made the following motion for the Board to consider:

Findings of Fact

1. Costas and Lisa Flocatoulas are proposing to create a second lot located at 142 Mitchell Rd, which requires review under Sec. 19-7-9, Private Accessway Standards.
2. The Maintenance Agreement which runs with the land is required to provide for long-term maintenance of the accessway.
3. The accessway will serve two lots and therefore needs to be named to comply with the Addressing Ordinance.
4. The application substantially complies with Sec. 19-7-9, Private Accessways, and Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted on October 15, 2002, and the facts presented, the application of Costas and Lisa Flocatoulas for a Private Accessway Permit to create a second lot located at 142 Mitchell Rd (U34-18) be approved, subject to the following conditions:

1. That the maintenance agreement be signed and recorded;
2. That there be no issuance of a building permit or recording of the approval until the above conditions have been met.

Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed.

Blueberry Ridge Subdivision and Resource Protection Permit - Request by Joe Frustaci for Subdivision Review and a Resource Protection Permit for Blueberry Ridge, a 19-lot subdivision located off Mitchell Rd (U34-22-4/17), Sec. 16-2-4, Final Subdivision Review and Sec. 19-8-3, Resource Protection Permit.

Dave Kamila, a civil engineer with Land Use Consultants, stepped forward to update the Board on changes made to the subdivision plans. He also introduced Richard Manthorne, the original surveyor and engineer on the project, who would also respond to any questions from the Board.

Mr. Kamila reviewed the following additions to the plans and addressed issues raised by the Town Engineer and Town Planner.

1. A standard note is on the plans regarding the sale of lots or construction on the lots prior to the performance guarantee being filed. The applicant has asked that the performance guarantee be waived until the time of actual construction. The project would likely be delayed until spring and the ninety-day time limits of the performance guarantee would run out if filed at the same time the plan is recorded. A note has also been added with regard to the responsibility of the applicant or the lot owner to install either the vegetation buffer or the fence.

2. Further surveying in the Charlotte Street area had been conducted with regard to drainage. The applicant has agreed to implement a one-foot earthen berm at the end of Charlotte Street to redirect any potential runoff into South Portland. An additional inlet to the storm drain system will be placed between lots 12 and 13. A rerun of the storm water calculations showed an increase of water going into the storm water system, but standards would still be met.
3. Sweet Assoc. did additional soil test pits to determine if the detention basin would pose any impact on the wetlands. A recommendation was made and accepted to implement a clay lining on the detention basin to prevent any ground water from seeping in from the wetlands and lowering their water table.
4. A storm drain profile of the storm drain in Mitchell Road has been provided.
5. A provision has been made to connect with an existing culvert in Mitchell Road.
6. Sweet and Assoc. has rewalked and reverified the accuracy of the wetlands as mapped on the plans.
7. A calculation has been added to the recording plat stating that 86% of the open space is uplands, which exceeds the standard.
8. The wooden boardwalk which leads to the open space is resting on pressure treated timbers.
9. A stop sign will be placed at the intersection of Red Oak Drive and Fernwood Road.
10. The soil in the esplanade will be topsoil suitable for plantings instead of road gravel.
11. The applicant has been communicating with staff at the DEP office. Based on a conversation with Bill Bullock, the project analyst, all technical issues have been resolved and all that remains is for the permit application to go through the signature process with the commissioner and officials.

Mr. Kamila welcomed questions from the Board.

Mr. Charles asked whether or not the permit, which Mr. Kamila expects to receive from the DEP, would cause any changes to the plans submitted for approval. Mr. Kamila responded that the plans submitted to the DEP were identical to those being reviewed by the Board. Mr. Ciraldo asked whether those plans included the berm adjacent to Charlotte Street, and Mr. Kamila confirmed that the berm had been included for DEP review.

Mr. Sherman wanted confirmation from Mr. Kamila that the earthen berm proposed in the area of Charlotte Street would adequately satisfy the drainage concerns. Mr. Kamila replied that the sole purpose of that berm would be to preclude the possibility that any stormwater from the Cape Elizabeth town line site would flow over to South Portland. The inlet proposed between lots 12 and 13 would create a swale to direct water into the drainage system.

Mr. Charles made comment that after examining the project for several months and receiving input from public hearings and in writing, he felt that the Board and the developer had been responsive to

all concerns and suggestions. He asked Chair Griffin that, given no further discussion from the Board, they proceed with consideration and voting on the findings.

Mr. Griffin asked for objections to Mr. Charles suggestion. Hearing none, he elected to proceed.

Mr. Charles offered a motion for the Board to consider:

Findings

1. Joseph Frustaci is requesting approval for Blueberry Ridge, a 19-lot subdivision located off Mitchell Rd, which requires review under Sec. 16-2-4, Major Subdivision Review, and 19-8-3, Resource Protection Standards.

Mr. Charles moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

2. The Planning Board finds that it held one workshop, and 9 regular meetings, including public hearings held on December 18, 2001 and on July 16, 2002.

Mr. Charles moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

3. The Planning Board finds that the Zoning Board of Appeals, at its meeting on October 23, 2001, did reduce the side yard setback for lots in the Blueberry Ridge Subdivision to 15' and concurred that other setbacks could be adjusted by the Planning Board as long as the minimum setback of the underlying district is met.

Mr. Griffin made comment on correspondence received from Attorney Robert Crawford stating that the Cape Elizabeth Appeals Board had denied the request to reduce rear yard setbacks for the proposed Blueberry Ridge Subdivision. For clarification, Maureen O'Meara deferred to Durward Parkinson who was in attendance. Mr. Parkinson, representing the Town, had attended that Zoning Board meeting and had advised the Board on the setback issue. The Board determined that it was not within their jurisdiction to rule on matters regarding distances from building envelopes, but was rather the responsibility of the Planning Board in consideration of the Open Space Provisions.

Mr. Charles moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

4. The applicant has opted to design the subdivision in accordance with the Open Space Zoning provisions, Sec. 19-7-2, which provides for development standards in the RC District that promotes compact neighborhood development in conjunction with a substantial area set aside as permanently protected open space.

Mr. Ciraldo stated that he considered the Blueberry Ridge Subdivision very consistent with the ordinance and represented what the Town and Planning Board had strived to promote within the RC District. Mr. Charles concurred and said that the development was tailor made to preserve open land for the use of all Townspeople while utilizing cluster housing to best suit the landscape.

Mr. Sherman moved to accept the finding as written. Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed.

5. The Board finds that, under Sec. 19-7-2(A)(2) and consistent with the advice of legal counsel in letters from Michael Hill dated 8/11/00 and from Durward Parkinson dated 9/19/01 and 2/7/02, Open Space Zoning dimensional standards can be modified by the Planning Board as long as the minimum dimensional standards in the RC District are met.

Mrs. Schenkel quoted from the ordinance Sec. 19-7-2 and the specific provision regarding open space zoning which allows for modification of setbacks for building envelopes. Ms. O'Meara confirmed that, based on the advise of Town Attorneys, the Planning Board does have the authority to adjust the building envelope setback so long as the decrease does not go below the underlying setback determined for the RC District.

Mr. Sherman moved to accept the finding noting the date revision cited by Ms. O'Meara. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed.

6. Based on Sec. 16-2-4(c)(8) of the Subdivision Ordinance and the long standing practice of the Planning Board with prior subdivision approvals, the Planning Board finds that it may grant a conditional approval subject to the submission of written evidence of state approvals and final revisions to plans. In the case where a conditional approval is granted, no construction of the Subdivision is permitted until the conditions have been satisfied.

Mr. Sherman and Mr. Cotter both held that the practice stated in the finding was very common. For clarification, Mr. Charles noted that with regard to the DEP permit pending submission, should a modification result on the plan, the applicant would have to return to the Board for revision.

Mr. Sherman moved to accept the finding as written. Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed.

7. The Board makes the following findings in accordance with the Subdivision Review Standards in Sec. 16-3-1.

- a. The Board finds that the proposed roads are designed in accordance with the Subdivision Road standards, which were developed to promote roads with a neighborhood character consistent with the Comprehensive Plan.

The Board finds that Red Oak Drive should be extended to the neighboring Boulos and Brown properties, creating public road access to these existing lots in Cape Elizabeth.

Mr. Charles asked Ms. O'Meara to comment on the ownership of the last fifty feet of easement where Red Oak Drive connects to the vacated end of Edgewood Road. Ms. O'Meara explained that the Town requires a turnaround at a dead-end road in any subdivision to accommodate emergency vehicles and traffic flow. Although Red Oak Drive is a dead-end, there is a pre-existing private easement owned by the Town.

Ms. Lowell moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

- b. The road design incorporates the construction of grassed esplanades planted with street trees separating the sidewalk from the road. The Board finds that this design will promote slow travel speeds appropriate to a safe neighborhood.

Based on the applicant's professional traffic engineer estimate of 8 cut-through trips during peak hour and the subdivision road design, the Board finds that the road design discourages cut through traffic.

The Board finds that the addition of this subdivision's traffic to Mitchell Rd, which is the only public right-of-way access point, will not result in a decrease in level of service to Mitchell Rd or an increase in the accident rate.

The Board finds that public access to Edgewood Rd has been legally extinguished by the City of South Portland by City Council Order #85-00/01 dated December 18, 2000. The Board further finds that a requirement to install a barrier in the area of Edgewood Rd at the municipal boundary line could violate the private access easements rights conveyed by the City of South Portland to the Boulos and Brown properties.

Mr. Ciraldo stated that he was satisfied with the findings on the traffic issue concerning Edgewood Road. There had been sufficient information from engineers. He did not support placing a barrier at the end of Edgewood Road, citing an impact on legal rights of the property owners at the end of that road.

Ms. Lowell agreed with Mr. Ciraldo and stated that a barrier could also pose a problem with fire emergency vehicles coming from the So. Portland fire station which is closest to the subdivision. She also referenced a letter from Attorney Crawford asserting that the traffic analysis for the subdivision did not address the issue of through traffic from Red Oak Drive to Cottage Road in So. Portland. Ms. O'Meara produced a letter dated 2/3/02 from Bill Bray who conducted the traffic study, which dealt specifically with through traffic between the development and the accessways off Mitchell Road and So. Portland.

Mr. Griffin commented that in his opinion, So. Portland will never open their accessway to the subdivision even though the traffic study was adequate to allay any concerns in that regard. Ms. O'Meara produced a further letter from Mr. Bray dated 2/10/02, which confirmed the unlikelihood of vehicles using the subdivision as an alternative route to access So. Portland.

Ms. Lowell moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

- c. The Board finds that the combination of vegetative plantings and wood fence buffer provides an adequate buffer that reduces noise and lighting, separates the subdivision from abutting properties and enhances the subdivision.

In particular, the Board finds that the combination of a berm and fencing along the perimeter of the subdivision abutting the Charlotte Rd properties is appropriate to protect the subdivision lots from headlight wash and delineate the separation between the subdivision and the abutting properties and former road right-of-way of Charlotte Rd.

Mrs. Schenkel felt that Mr. Frustaci had made a good faith effort in trying to satisfy the concerns raised with regard to a landscape buffer.

Ms. Lowell moved to accept the finding as written. Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed.

d. The Board finds that no disposal or storage areas are proposed.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

e. The Board finds that the street layout has, within the limits of the access to the property, avoided any alteration of wetlands to the greatest possible extent. The placement of the roads has also avoided cutting off the proposed open space from an existing protected open space, resulting in a more valuable open space area.

The Board finds that the vacation of a portion of Charlotte Rd and Edgewood Rd by the South Portland City Council Order #85-00/01 dated December 18, 2000 has limited the developer's opportunities to make the amenities and livability of the subdivision accessible to the adjoining South Portland neighborhoods.

Mr. Sherman noted that the plan is positive in that it connects open space with an existing track thereby allowing a larger contiguous area for public use.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

f. The Board finds that the majority of the roads are oriented east/west, facilitating access to sunlight for the homes to be built on the site.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mrs. Lowell and carried 7 in favor and 0 opposed.

g. The Board finds that block lengths do not exceed 1,000'.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

h. The Board finds that street names have been approved by the Police Chief for conformance with E911 policies.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

i. The Board finds that the subdivision is designed to conform with the Storm Water Control Ordinance.

The Board finds that the developer has provided drainage easements and stormwater detention basins adequate to channel stormwater and to hold post-development flows at or below pre-development levels.

The Board finds that the berm and drainage easements designed adjacent to the Charlotte Rd area will result in no stormwater from Drainage Area A (Sheet 10) flowing into South Portland.

Mr. Ciraldo noted that the Board has reviewed considerable information regarding the stormwater plan and addressed extensive questions and issues which have resulted in revisions and further study. He found the drainage plan acceptable to the Board standards and adequate to meet the stormwater requirements within the site. Mrs. Schenkel shared that opinion and noted that the developer had submitted a current wetland survey to supplement the plan.

Mr. Cotter moved to accept the finding noting a revision requested from Mr. Charles. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed.

- j. The Board finds that the pedestrian easements located on lots 5 and 6, combined with the open space frontage on Blueberry Rd, provide adequate access to the open space.

Mr. Sherman noted that a boardwalk will be constructed to provide pedestrian access to the open space from Blueberry Road.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Ciraldo and carried 7 in favor and 0 opposed.

- k. The Board finds that the area and width of proposed lots is in conformance with the Open Space Zoning Standards for the RC District, Sec. 19-7-2(C). The Board finds that side lot lines are substantially at right angles or radial to road lines.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed.

- l. The Board finds that each lot is connected to a proposed public road.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

- m. The Board finds that the application of the Open Space Zoning Standards, Sec. 19-7-2, is appropriate for the design of the Blueberry Ridge Subdivision, resulting in a compact neighborhood design compatible with the abutting properties and preservation of an open space area contiguous to existing preserved open space. The average lot size of the proposed subdivision is 8,800 sq. ft. and the average size of the abutting South Portland lots is 7,318 sq. ft.

The Board finds that over 40% of the gross area of the subdivision is set aside as permanently protected open space due to the application of the Open Space Zoning Standards and that at least one-third of that open space is not wetland. The Board finds that the location of the open space is consistent with protection of wetlands, maintaining open

space in large contiguous areas and connecting open space to other open space areas, in this case the preserved open space adjacent to Rosewood Drive.

The Board finds that, in order to create building envelopes of a size able to accommodate contemporary homes and design a compact neighborhood consistent with the recommendations of the Comprehensive Plan to promote cluster development, and consistent with Sec. 19-7-2 (A)(2) of the Zoning Ordinance, the building envelope setback of 50' and the right-of-way setback of 75' provided for in the Open Space Zoning provisions may be reduced to the minimum side and rear yard setbacks allowed in the RC District.

The Planning Board finds that the creation of building envelopes in an abutting community does not prohibit the Planning Board from reducing the 50' building envelope setback as long as the setbacks of the underlying RC District are met. The Planning Board further notes that the definition of and restrictions imposed by a building envelope in the Blueberry Ridge Subdivision may be more restrictive than the application of any newly created building envelopes in South Portland.

Mr. Charles noted that the lots proposed in the subdivision are larger than the lots of the abutting So. Portland properties and the amount of open space allotted exceeds the requirements of the ordinance. In his opinion it was consistent and appropriate to take the creative approach of applying the underlying district setbacks instead of adhering to open space zoning setbacks in the development of the project. Mr. Charles noted that the concentration of homes and open space satisfied the best use of the land for development and his inclinations for approval were driven by those standards and not the financial implications to the developer. Mrs. Schenkel and Mr. Griffin concurred with those comments.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed.

- n. The Board finds that sidewalks proposed on one side of the street, separated from the roads with a grassed esplanade which will be planted with street trees is necessary for public safety.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

- o. The Board finds the applicant has, when practical, preserved natural features and trees and that the Subdivision Ordinance does not preclude the removal of trees for development.

Mr. Ciraldo stated that given the requirements of having to satisfy buffering and also provide adequate stormwater drainage, the applicant had made an effort to balance both concerns. He maintained that they have been competing issues, but based on the amount of information and input the Board had reviewed, Mr. Ciraldo was satisfied with the findings.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Ciraldo and carried 7 in favor and 0 opposed.

- p. The Board finds that the site is not located in a vista or view corridor as identified in the Visual Impact Study conducted by the town. The Board further finds that the anticipated homes, estimated at an average size of 2,000 sq. ft., will be of a general size and bulk compatible with the abutting neighborhood, where the average home size is 1,569 sq. ft.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

- q. The Board finds that the applicant has proposed to preserve over 40% of the land area as open space which complies with the Open Space Impact Fee standard.

Mr. Charles stated once again that he felt the development was a good example of the open space standard by applying cluster housing and the preservation of open land.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed.

- r. The Board finds that the applicant has submitted deeds conveying the open space to the Town of Cape Elizabeth, which entity shall be responsible for maintenance.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed.

- s. The Board finds that the subdivision will be connected to the public sewer system in accordance with the Town Sewer Ordinance.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

- t. The Board finds that the subdivision is not located in the floodplain.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed.

- u. The Board finds that the subdivision has met the standards for issuance of a Resource Protection Permit to alter wetlands in accordance with Sec. 19-8-3 of the Zoning Ordinance.

Durward Parkinson interjected to advise that the voting on finding u. should be deferred until after the Board has moved on the findings inclusive of Sec. 19-8-3(B) Resource Protection Permit Standards. The finding was tabled.

- v. The Board finds that no significant wildlife habitats have been identified on the site. The Board further finds that locating the proposed open space adjacent to existing preserved open space will enhance the value of both open space areas as wildlife habitat.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed.

w. The Board finds that the individual homes will be numbered in accordance with the Town Street Addressing Ordinance.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed.

x. The Board finds that the subdivision will provide public water, and electricity.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed.

y. The Board finds that, based on a memorandum from Town Manager Michael McGovern dated December 5, 2001 asserting financial capability, and the construction of the Rosewood Subdivision in Cape Elizabeth, the applicant has demonstrated adequate financial resources and technical capability to complete the project.

Mr. Cotter moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed

Resource Protection Permit Standards (Sec.19-8-3(B))

1. The Board finds that the wetland alterations will not obstruct the flow of surface waters and subsurface alterations are not proposed.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed

2. The Board finds that no impoundment of surface waters in the wetland area is proposed.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed

3. The Board finds that disturbed areas will be revegetated and the additional impervious surface created by the boardwalk is not large enough to increase surface water flows.

Mr. Charles commented that the boardwalk was a beneficial addition to provide access to the open space and that he was satisfied that the impact on the wetlands had been minimal.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

4. The Board finds that the wetland alteration will not damage habitat.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

5. The Board finds that the only structure in the wetland will be the boardwalk, which is designed for use in a wetland.

Mr. Charles asked whether a fence shown at the boundary of Lot #1 to delineate the wetland was considered a structure. Ms. O'Meara replied no.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Ms. Lowell and carried 7 in favor and 0 opposed

6. The Board finds that the amount of wetland alteration will not be detrimental to aquifer recharge or groundwater.

Mr. Charles felt that it was important to note that there had been adequate, professional information provided to qualify the Board's findings.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

7. The Board finds that no dunes are located in the subdivision.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

8. The Board finds that the amount of wetland alteration will be minimal and will not detract from the aesthetics of the area.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

9. The Board finds that no buffer is needed as the alteration, by its nature, will be located entirely in the wetland area. Except for the proposed alterations, the remainder of the wetland is incorporated into the protected open space.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed

10. The Board finds that the applicant has submitted an Erosion Control plan that includes protection during construction and revegetation of disturbed areas upon completion of construction.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed

11. The Board finds that no discharge of wastewater is proposed as part of the project scope.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Sherman and carried 7 in favor and 0 opposed

12. The Board finds that no floodplains are located in the project area.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mr. Charles and carried 7 in favor and 0 opposed

7. Subdivision Review Standards in Sec.16-3-1

- u. The Board finds that the subdivision has met the standards for issuance of a Resource Protection Permit to alter wetlands in accordance with Sec. 19-8-3 of the Zoning Ordinance.

Mr. Ciraldo echoed Mr. Charles comments. He cited a significant amount of information provided by experts with regard to the Resource Protection Permit which requires specific considerations for any alteration of wetlands. Mr. Ciraldo felt that the standards were very clear and that they had been clearly met. Mr. Griffin and Mr. Cotter concurred with those statements and stated that they were very comfortable voting on those findings.

Mr. Ciraldo moved to accept the finding as written. Motion was seconded by Mrs. Schenkel and carried 7 in favor and 0 opposed

Mrs. Schenkel made the following motion for the Board to consider:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joseph Frustaci for Final Subdivision Approval and a Resource Protection Permit for Blueberry Ridge, a 19-lot subdivision located off of Mitchell Rd, be approved subject to the following conditions:

1. That the plans be revised to reflect the comments of the Town Engineer in his letter dated 10/8/02 and the Police Chief's comments in his memorandum dated 10/1/02;
2. That written evidence of issuance of a Stormwater Permit from the Department of Environmental Protection for the Blueberry Ridge Subdivision be submitted;
3. That there be no recording of the subdivision plat until the above conditions have been met by submission of revised plans and information to the Town Planner;
3. That there be no alteration of the site nor sale of lots nor issuance of a building permit until the applicant has submitted a Performance Guarantee in an amount acceptable to the Town Engineer, in a form acceptable to the Town Attorney, and approved by the Town Manager and has submitted executed deeds for the dedicated open space and pedestrian easements in a form acceptable to the Town Attorney.

Mr. Charles said that he was aware that the approval of the subdivision would not stand well with all parties involved. He maintained that the Board and the applicant had been conscientious and responsive to all concerns and issues brought forward and as a result, incorporated many changes into the plans. He hoped that long term the neighborhoods could reach some harmony.

Mr. Sherman voiced appreciation to the So. Portland neighbors for their input and stated that their views and concerns held equal weight with his decisions.

Mr. Ciraldo was satisfied that the Board had made an effort to address all suggestions and issues placed before them and they had also examined all standards and regulations to assure that they were adequately met.

Mr. Griffin concurred with Mr. Ciraldo. He stated that many suggestions and concerns of the abutting neighborhoods aided in the development of a worthwhile project.

Motion was seconded by Mr. Cotter and carried 7 in favor and 0 opposed.

Mr. Frustaci stepped forward to thank the Board for their deliberation and patience. He acknowledged that the ordinance was a relatively new concept for the Board to work through but felt that the development would be a very acceptable and welcome addition to the town.

Motion for adjournment was made by Mr. Sherman and seconded by Mr. Cotter. Motion carried 7 in favor and 0 opposed.

Meeting adjourned at 8:50PM.

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary