

TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING

March 18, 2003

7 P.M., TOWN HALL

Present: John Ciraldo, Chair
Andrew Charles
Peter Cotter
Peter Hatem
Barbara Schenkel
David Sherman

Absent: David Griffin

Also present was Maureen O'Meara, Town Planner

Chair John Ciraldo opened the meeting and asked for 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 6 in favor and 0 opposed.

Mr. Ciraldo reviewed correspondence and proceeded to old business.

OLD BUSINESS

Hamlin St Resource Protection Permit – Request by Joseph Frustaci for a Resource Protection Permit to alter an RP2 wetland to construct a driveway to a lot on Hamlin Rd (U29-50), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Steve Mohr, of Mohr & Seredin, stepped forward to represent Joseph Frustaci and review the project with the Board. He outlined the following revisions and submissions made to the site plans.

1. The Town Engineer had raised concerns that the swale running along the east side of the property was not well enough defined to transport water to and from the designated areas. Mr. Mohr stated that alterations were made and noted on the plans.
2. Steve Harding also raised technical questions regarding total slope, fill, and riprap. Those questions were addressed and duly noted on the plans.
3. The parcel being reviewed for a wetlands permit is the existing culvert which will be upgraded along with alteration and extension of the road.
4. Tree locations were mapped more precisely than previously submitted and marked to indicate which would be preserved or removed.
5. Calculations were submitted regarding impervious surface change and runoff. At the Town Engineer's request, the calculations were formalized with an engineer's stamp. The figures indicate that the impervious structures will not alter the topography or runoff sufficient to create problems with the flow capacity provided by the 18" culvert. Mr. Mohr explained that the peak runoff from the lot will occur prior to runoff received from the upland areas and not increase the chances of flooding.

6. A silt fence and natural buffer has been chartered around the wetlands to prevent any alteration of the area and maintain the standards for that zone.

Mr. Charles asked Mr. Mohr to explain the measures taken to buffer the wetlands in comparison to other properties on the stream. Mr. Mohr replied that previous building projects had engaged the wetland area with fill slopes that terminated at the stream and impacted natural soils. Mr. Sherman asked Mr. Mohr to identify the properties indicated in the comparison. Mr. Mohr stated that the property was owned by Nedwell.

Mrs. Schenkel asked whether Mr. Frustaci intended any blasting. Mr. Frustaci replied that he currently does not anticipate any blasting. He hoped that the design of the house would lend itself to the topography of the lot, and stated that it was his intent and desire to avoid blasting.

Mr. Ciraldo opened the public hearing.

Darlene Nedwell, 3 South Street, is the easterly abutting neighbor. She opposes the project, citing the plans as misleading and out of scale. She is concerned about snow removal and ensuing flooding as a result of changes to the road and impact on the wetland. Mrs. Nedwell feared that too many mature trees would be removed for construction and others would die as a result from root damage. She was concerned for the ecological stability of the wetland and the impact on wildlife which frequents the area. In her opinion, the lot did not provide adequate land for a dwelling. She raised the issue of alterations to the road and impervious surface of the lot with regard to watershed impact and flooding.

Phillip Nedwell, 3 South Street, is a builder and maintains that the setbacks depicted on the applicant's submission plan are not consistent with the actual site. He stated that the house setback from the wetland does not adhere to Town and DEP regulations. He is concerned that street trees mapped to be saved would in fact not be and the alteration of their canopy would create flooding on his lot. He feels that the increase of impervious surfaces and infill would also cause flooding on his property, and considered the runoff calculations inadequate to determine the impact on the neighborhood. Mr. Nedwell stated that he had built three of the houses on the street and was certain that blasting would be required. He maintained that a 25' perimeter for construction was necessary and disavowed the construction buffers represented on the applicant's plan. He urged the Board to consider the well being of the neighborhood before entertaining the greed of the developer.

Holly Clark, 5 Hamlin Street, shared the concerns of the Nedwells. She felt that Mr. Frustaci had demonstrated lack of concern for the neighborhood by burning inappropriate materials on his lot and ignoring clean up of a fallen tree and snow damage to an existing structure. She noted that Mr. Frustaci had still not clearly marked trees as requested by the Board to show his intentions to abutting property owners. Placement of underground utilities and alterations to the road and culvert raised a concern for flooding on her property.

Frank Lyman, 7 Hamlin Street, had concerns that the extension of the culvert would impact his water pipe, which is private and maintained by him. He stated that the current culvert has been sufficient to maintain water flow, but considers that an alteration of the drainage will create flooding problems for his property.

Constance Babcock, 6 Stephenson Street, stated that she has lived in her home for over 33 years and seen changes in the watershed through all of those years. She mentioned several instances of building projects which had impacted drainage and runoff for properties throughout the neighborhood. Her feeling was that every change in the watershed has created problems for someone down the line. She urged the Board to revisit the site and take close consideration of its location respective to the amount of water contained within the landscape.

Russell Tornrose, 5 Hamlin Street, referenced a letter he had sent to the Board on 11/5/02 voicing his concerns regarding the project. Although he is not opposing the project, he wanted to point out considerations, which he felt warranted given his knowledge of the property. He offered the following perspectives:

1. Although he recognized that Mr. Frustaci's submission met the standards for a Resource Protection Permit, Mr. Tornrose advised against accepting an idealized plan which might prove inconsistent with the actual scale of the site.
2. He considered a waiver of a soil test inadvisable given the presence of ledge.
3. He considered a waiver of a runoff pattern inadvisable given the presence of the wetland area. He cautioned against the faulty logic of correlating small wetland area to small impact and indicated the importance of the interaction of the smaller stream area with a larger upland wetland area. He urged the Board to look at the entire surrounding landscape and described the Hamlin Street lot as a connection to two fragile ecosystems, which provide a corridor for wildlife and vegetation.
4. He was concerned that the removal of trees and vegetation would change the canopy and topography of the landscape. Mr. Tornrose did not believe that any of the mature trees would survive the impact of construction.
5. He described the watershed as very volatile and believes that any increase of impervious surface will most certainly increase runoff and flooding.

Mr. Tornrose did not consider the flow data adequate given the unique properties of the lot. He felt that upon further evaluation the area would not meet the standards for a Resource Protection Permit. He was concerned for the wildlife and vegetation sustained within the area and feared for its ecological balance.

With no further persons coming forward, Mr. Ciraldo closed the public hearing.

Mr. Mohr responded to concerns for removal of trees. He recognized the fact that some trees may succumb to the impact of construction or infill, but held that the intent was to preserve a significant amount of trees. He noted that the dwelling structure would compensate for a lessening of the canopy and provide shade to the wetland area.

He explained that approximately 8" of fill would be added to Hamlin Street, but would be tapered back to prevent water from entering into a driveway on the west side. Utilities will be snaked in under ground and will require some work. The enhancement of the culvert would not impact Mr. Layman's water line or interrupt his service.

Mr. Mohr reiterated the fact that the Resource Protection Permit was requested only with regard to the culvert and road extension. Data submitted was respective to that area. There would be no alteration of the stream and a Resource Protection Permit was not requested for that area.

Mr. Charles asked about the size of the existing culvert and whether or not Mr. Lyman's water line had been factored into the proposed alterations. Mr. Mohr replied that the culvert was 18" and would remain so, and that the Lyman water line would not be impacted by the culvert extension.

Mr. Charles asked for clarification of scale discrepancies regarding the site plan. Mr. Mohr explained that the Hamlin lot was located by an instrument survey and the trees were located by tape measurement. The abutting building corners were picked off an aerial survey and should be within 3-5 feet of actual positioning.

Mr. Charles addressed the construction buffer proposed on the site plan and issues raised regarding construction impact. Mr. Mohr explained that the area had been carefully considered for specific equipment corridors to assure that those buffers could be maintained. Mr. Frustaci interjected that the building envelope allowed for 40 feet and the structure measured 36 feet, allowing for an even broader buffer area. He noted that the building permit was already issued and not subject to Planning Board approval. He responded that the issue before the Board was the road improvements, which he was doing as a good neighbor effort.

Mr. Ciraldo asked regarding the DEP permit. Mr. Mohr responded that a permit had been approved by the DEP based on the plan submitted to the Board. In response to further questions, Mr. Mohr stated that critical nesting sites had been researched to determine any impact on wildlife in the wetland, and that comments from the Town Engineer regarding riprap around the culvert had been addressed and noted on the plans. He noted also that a proposed footpath and bridge had been removed from the plan.

Mr. Ciraldo asked Mr. Mohr to review the runoff flow through the culvert. Mr. Mohr explained that the study concentrated on the uniqueness of the site but also its interaction within the context of the total watershed. By analyzing the size, pitch and flow of the culvert, at 17.5 cubic ft./sec, a determination was made respective to volume of water at the site and peak flow from the upland watershed. The data substantiates that water from the lot will have passed sufficiently through the culvert prior to its receiving flows from the upland watershed and therefore incurring no increase of flooding.

Mrs. Schenkel asked whether or not the removal of trees would increase the runoff calculations. Mr. Mohr replied that no change would occur.

Mrs. Schenkel asked how the alterations to the road would affect runoff. Mr. Mohr explained that the road is not currently crowned and water pools in the center. The improvements would keep the road drier and better direct drainage. He also explained that the road is private and maintenance would have to be undertaken by the neighborhood.

Mr. Cotter commented that given the criteria of the Ordinance for granting the application, he would have to move for approval; however, he held strong personal opinions against any rulings regarding alterations to watersheds. In his experience, engineer studies and formulated findings supplied little assurances to the facts with regard to the character of water. He stated that he was uncomfortable with the application, but within the guidelines of the Zoning Ordinances and the scope of what was being reviewed for approval, he was bound to ruling outside his personal judgement.

Mrs. Schenkel echoed Mr. Cotter's sentiments and expressed her sympathy with the neighbor's concerns. Mr. Sherman concurred and thanked the abutting neighbors for their input. Mr. Ciraldo stated that the Board was limited to reviewing the alterations to the road and culvert and could not address the issues of the construction of the dwelling. The building permit was already issued for the lot, and the application met the standards necessary for a Resource Protection Permit. Mr. Charles agreed with the neighbor's concerns but also was appreciative of the consideration given the plans for a construction buffer, building envelope and wetlands barrier.

Mr. Charles made the following motion for the Board to consider:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joseph Frustaci for a Resource Protection Permit to widen Hamlin Street and related culvert improvements for a lot located off Hamlin Street (U29-50) be approved with the following condition:

1. That a note be added to the plans that the building footprint is illustrative and any structure must be located within the building envelope; and
2. That the plans be revised per the Town Engineer's letter dated 3/10/03.
3. That all references on the plans to the culvert extension be revised to reflect the pipe diameter that matches the existing culvert.

Motion was seconded by Mr. Sherman and carried 6 in favor and 0 opposed.

Leighton Farms Subdivision – Request by Joel Fitzpatrick of Wyley Enterprises. LLC for Preliminary Subdivision Review and a Resource Protection Permit for Leighton Farms, a 16-lot subdivision located off Wells Rd (R5-32), Sec. 16-2-4, Major Subdivision Review and Sec. 19-8-3, Resource Protection Permit.

Owens McCullough of Sebago Technics summarized the revisions made to the plans for the proposed subdivision. He addressed the following changes:

1. The lots on the coversheet were renumbered in order to match the assessor's requirements.
2. Oest Assoc. had requested that the granite monument be located in the center of the cul-de-sac and that change was represented on the plans.
3. The location of the footpath had been added on the plan.
4. The affordable housing lots had been designated on the plan
5. Supplemental detail had been added to the grading plan with regard to the culvert which runs underneath Wells Road. The size was increased from 24" to 30". A drainage easement was also being drafted for property across Wells Road.
6. Modifications were made at the farm pond to increase the capacity of the outlet.
7. A light pole had been relocated from the sidewalk area.

8. A 12' wide gravel surface will be provided to the area of the sewer easement to facilitate maintenance vehicles. The surface will be revegetated but will also provide a stable surface in the event of bringing in equipment. Landscaping will provide a buffer up to the abutting property line.
9. Road plan detail and a storm drain profile had been added to the plans.
10. The grade level in the esplanade will be kept at 2% and consistent with the sidewalks. A note will be made on the plans to prevent road gravel from occurring in the esplanade.
11. A Storm Water Permit application had been filed with the DEP and is currently under review.
12. A riprap swale exists at the outlet of the farm pond to protect against erosion. Additional tree plantings are proposed to make the area more appealing.
13. Trails on the plan will be designated with Greenbelt signage.

Mrs. Schenkel addressed concerns by the abutters in Cross Hill regarding the grading proposed for the subdivision. Mr. McCullough stated that the average slopes within the land area are 8-12% with some isolated pockets of up to 25% but those are not contiguous.

Mr. Ciraldo asked about a preservation plan for trees in the area. Mr. McCullough pointed out that the development is surrounded by open space particularly in the Cross Hill Area. A thirty five foot natural buffer exists which widens to 100 feet at certain points. Within the individual lots, the developer proposes to match the house to the landscape and take advantage of naturally existing buffers. The developer is also required to plant street trees at intervals along the esplanade and roadway. A stipulation has been added that the open space area shall remain undisturbed with the exception of the conservation trails and the sewer easement, and modifications to the farm pond. With regard to the sewer easement, Mr. McCullough explained that a 30' wide area would be cleared in the area of least impact on what was potentially a road set aside for the subdivision. Blasting may be required but all precautions would be taken along with pre-blast surveys and blasting protocol.

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 Wyley Enterprises LLC for Major Subdivision Review and a Resource Protection Permit to construct Leighton Farms, a 16-lot subdivision located off Wells Rd, be approved with the following conditions:

1. That a note be added to the plan that the esplanade be filled with in-situ material or a substitute that can support tree growth. A maximum grade for the esplanade shall also be added to the plans suitable to promote tree growth;
2. That the applicant add trees to the plans that will serve to soften the view of the riprap areas from Leighton Farms Rd and Wells Rd;
3. That the trails note be expanded to include the placement of greenbelt signage by the applicant at the direction of the Conservation Commission;

4. That the plans be revised to reflect the comments of the Town Engineer in his letter dated 3/11/03; and
5. That the plans submitted for Final Subdivision Review reflect these conditions.

Motion was seconded by Mrs. Schenkel and carried 6 in favor and 0 opposed.

NEW BUSINESS

Pillsbury Private Accessway Permit – Request by Marshall and Suzanne Pillsbury for a Private Accessway Permit for a lot located at 78 Two Lights Rd (U39-4-2), Private Accessway Permit Completeness, Sec. 19-7-9.

Marshall Pillsbury introduced himself and reviewed the application with the Board. He explained that the proposed lot currently does not have frontage on Two Lights Road but that his brother, Graham Pillsbury, would be granting a 35' easement along his property for access to the lot. He did not yet have a legal document prepared for that easement.

Mr. Pillsbury presented a wastewater disposal application which he had not enclosed in the initial application packet and introduced Jim Mullen of Sebago Technics to present a revised site plan. Mr. Mullen reviewed the following changes to the plans:

1. The width of the drive has been changed to a standard 18'.
2. Invert elevations have been added to the plan for a proposed culvert under the driveway.
3. Details regarding a proposed silt fence were added to the plans.
4. Radii data is shown for the turnaround at the end of the accessway.
5. Detail regarding the stabilization during construction at the entrance to the driveway had been addressed.
6. The applicant had asked for a waiver from providing a stormwater report. The 10" culvert proposed at the driveway along with a neighboring culvert measuring 18" is considered sufficient to manage the amount of drainage. Both culverts direct water into an adequately sized pond on the property of Graham Pillsbury. Alterations to the lot would create no impact to drainage.
7. The locations of the proposed utilities were added to the plan along with the septic location and building envelope with required setbacks.

Mrs. Schenkel asked whether or not the first 50' of driveway would be paved. Mr. Pillsbury stated that he had requested a reduction to 25' but was not sure if the request was granted. Maureen O'Meara responded that the Planning Board has the authority to grant a reduction, but the Public Works Director prefers the 50' standard. Mr. Ciraldo replied that the Board would defer to Mr. Malley's preferences.

In review of the requirements for completeness, Mr. Mullen stated that a note on the plan conveyed the responsibility of maintenance of the road to the property owner. He also stated that Mark Hampton had provided the wetland delineation but no plan was provided. The delineation was determined by soils tests. Mr. Ciraldo asked that a letter be submitted by Mr. Hampton to support the findings. The applicant agreed.

Mr. Sherman had an issue with the absence of the easement and the legal documentation to convey the property. Mr. Hatem agreed. Mr. Ciraldo felt that a condition could be written into the motion hinging on the receipt of the legal documentation.

Mr. Charles was uncomfortable that the plans submitted that evening had not been reviewed by the Town Engineer or other Town Staff. Mr. Mullen explained that he'd had a conversation with Steve Harding and Mr. Harding was not opposed to foregoing the stormwater report.

Mr. Ciraldo remarked on the specific information not provided, but allowed that a determination of completeness could be made, given the outstanding documents would be forthcoming. Because the applicant's family members were primarily involved, Mr. Ciraldo was comfortable that the necessary submissions would be received.

Mr. Sherman asked what impact further delay would have on the project. Mr. Pillsbury was anxious to move ahead and start the project by summer. Mr. Charles was inclined to move forward with approval as long as the applicant worked diligently with the Town Engineer and Town Planner to resolve any outstanding issues or requirements before the next meeting.

Mr. Sherman made the following for the board to consider:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Marshall and Suzanne Pillsbury for a Private Accessway Permit and a Resource Protection Permit for a driveway to access a lot located at 78 Two Lights Rd be deemed complete.

Motion was seconded by Mr. Cotter and carried 6 in favor and 0 opposed.

Board members deemed a site walk unnecessary, but agreed to hold a public hearing and consider approval at the next meeting. Mr. Charles made the following motion:

BE IT ORDERED that the above plan be tabled to the regular April 15, 2003 meeting of the Planning Board, at which time a public hearing shall be held.

Motion was seconded by Mr. Sherman and carried 6 in favor and 0 opposed.

Mr. Ciraldo asked for a motion to adjourn.

Mr. Hatem made a motion to adjourn. Motion was seconded by Mrs. Schenkel and carried 6 in favor and 0 opposed.

Meeting adjourned at 9:30PM.

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary