

TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING

June 17, 2003

7 P.M., TOWN HALL

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

Also present was Maureen O'Meara, Town Planner

Chair John Ciraldo reviewed items on the agenda and asked for action on the minutes of the previous meeting. With no amendments requested, Mr. Griffin made a motion to accept the minutes. Motion was seconded by Mr. Sherman and carried 6 in favor and 0 opposed. (Mr. Cotter arrived after the vote.)

Mr. Ciraldo reviewed correspondence and proceeded to old business.

OLD BUSINESS

Karu Subdivision - Request by Candace Karu for Minor Subdivision Review of a 3-lot subdivision located at 246 Ocean House Rd (U23-1), Sec. 16-2-3, Minor Subdivision Public Hearing.

John Mitchell, of Mitchell & Assoc. and representing the applicants, reviewed the existing characteristics of the proposed development and addressed the issues raised by the Town Engineer and Town Planner. He presented the following with respect to the plans:

1. A conservation and trail easement draft has been submitted to incorporate the common open space and allow for a trail to be constructed should a connection come about between Ocean House Road and Robinson's Woods. The applicant's attorney and the Town Attorney have been working with the language of the draft.
2. With regard to stormwater management, the site lends itself to infiltration drainage and satisfies the approach encouraged by the State and Town Ordinance standards.
3. A 4" water line will service the subdivision and a 6" sewer line. Utilities will run underground.

Mr. Mitchell reviewed the waivers requested of the application.

1. A reduction of the 75' setback on Lot #1 to 50'. Mr. Mitchell stated that he understood that the Planning Board had the authority to grant such a waiver given that the setback

would still meet the standard for the underlying zone. A note will be added to the plat plan preserving the existing vegetation in that area.

2. An increase of the percent grade for the first ten feet of the entrance of the roadway from 3% to 5%. A culvert newly installed by the State would have too little coverage if the 3% standard had to be met. A large oak tree at the entrance of the road would also suffer as a result of the lesser grading.
3. A reduction of the required 20' road width to 18'. Two-foot grass/gravel shoulders would run along each side of the road, and the total width should prove adequate for maintenance and emergency vehicles. The road would be private and serve only three lots. Property owners would maintain the road. The reduction of road pavement would maintain the rural character of the subdivision, reduce speeds and lessen the impact on existing mature trees.

Mr. Mitchell stated that all of the technical issues raised by the Town Engineer had been addressed. Two minor labels will be added to the detail sheet.

With regard to the Planner's memo, Mr. Mitchell said that he was at issue with a condition restricting activities outside the building envelopes. He was concerned that the condition would impact the smaller lot #3 with respect to grading necessary for construction.

Mr. Ciraldo opened the public hearing.

Eric Cianchette, 2 Canter Lane, would abut the third and farthest lot in the subdivision. He felt that the layout of the lots did not lend themselves to a cluster setting. He thought the third lot could be placed closer to the road front and in better line with the other homes. He was not opposed to the development but had reservations about a spec house being constructed approximate to his property. He questioned that the amount of existing road frontage would satisfy the requirements for a development.

Mr. Mitchell consulted Maureen O'Meara on the standard for required road front. She confirmed that the Ordinance required 125' of frontage in the RA District and the requirements for cluster housing can go as low as 50 feet. Mr. Mitchell said that the developers had examined the possibility of placing the third lot in closer proximity to the existing lots, but the building envelope, given the setbacks implemented, would not accommodate a reasonably sized home. The developers felt also that the visual impact from Ocean House Road would have been compromised. Mr. Mitchell added that a considerable amount of buffer existed with regard to the area abutting the third lot, and the intent was to preserve that vegetation.

Mr. Charles asked of the status of the conservation easement draft and Mr. Mitchell said that the applicant's attorney and Mike Hill had agreed on the changes necessary to adopt the language. It was determined that a condition of the approval would specify the Town Attorney's acceptance of the document.

Mr. Charles asked for the applicant's response should a condition be made regarding the proposed road. He requested that should the Board grant the waiver allowing a reduced road width, the Ordinance standard must be met should the road at some point be adopted by the Town. Mr. Mitchell agreed to that condition.

Mr. Charles considered a condition relative to preservation of vegetation currently existing in buffering areas important and felt that the applicant and the Board could create some language, which might satisfy both parties.

Mr. Sherman was satisfied to restrict specific areas and not necessarily all regions outside the building envelopes.

Maureen O'Meara explained that there is no specific definition of "building envelope" in the Town Ordinance, but that, historically, restrictions have been set forth in their regard. The problem lies in the Code Enforcement Officer being able to interpret how to enforce those restrictions. She stated that the smaller lots of a cluster type development are challenging because there is often grading necessary and vegetation impacted beyond the building envelope. She suggested placing specific restrictions on sensitive areas of the subdivision and more general terms for the building envelopes. Building envelopes, she stated, can be crafted and tailored to each subdivision, and language within the conditions of approval can define their embodiment relative to the subdivision.

Mr. Hatem asked Mr. Mitchell to explain specifically what was at issue with the condition of restriction. Mr. Mitchell explained that grading and clearing would be necessary outside the building envelope of lot #3, and he found the language too restrictive for property owners with regard to the vegetation of the other lots. He offered to add a note on the plans with specific restrictions in the area on the east side of lot#3, the south side of lot #2, and the front side of lot #1.

Mr. Ciraldo voiced concern over vegetation existing within the buffered areas of the lots. He wanted language to protect that vegetation in the future. Mr. Mitchell replied that the applicants were dedicated to maintaining the existing character of the land. Mr. Ciraldo responded that the applicants might not always own these properties and future owners might not guarantee the preservation of existing buffers. He noted that the Board commonly placed restrictions with regard to some activities within new developments.

Mr. Mitchell felt that the common area between lots #1 and #2 provided plenty of buffer.

Mr. Cotter presented an amended version of condition #2 outlining restrictions in the areas designated by Mr. Mitchell. Board members discussed the merits of the new language but wanted additional conditions relative to the buffered areas between the respective lots and the replacement of any vegetation removed.

Mr. Sherman addressed the waiver of the road standard. He agreed to the waiver with the understanding that he was doing so in a concerted effort to save the mature trees which would be impacted by a widening of the impervious surface. He wanted some assurance that should the subdivision grow or change, the road would be upgraded to meet Town standards. Ms. O'Meara stated that a note with that stipulation could be added on the plan.

Mr. Ciraldo summarized the various provisions put forth by Board members relative to conditions of approval. Ms. O'Meara asked Mr. Mitchell whether it was his expectation that his clients would agree to enlist a landscape plan in the event that they replace or remove any vegetation. Her intent was to lend some assurance to the Code Enforcement Officer that he would not have to interpret the terms "alter or repair" with regard to a landscape alteration. She

suggested that a landscape plan would present an equivalent amount of vegetation. Mr. Mitchell was acceptable to the request.

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

Findings of Fact

1. Candace Karu is requesting Minor Subdivision Review of a 3-lot subdivision located at 246 Ocean House Rd, which requires review under Sec. 16-2-3 of the Subdivision Ordinance.
2. The Town Engineer is recommending minor revisions to the plans to bring the subdivision design into compliance with town standards.
3. Preservation of landscaping should be incorporated into the development of the lots.
4. The subdivision plan includes conservation of open space which will be preserved through an easement deed.
5. The Planning Board, by this vote, grants waivers to road design standards to permit the construction of the subdivision road as depicted on the plans.
6. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Candace Karu for Minor Subdivision Review of a 3-lot subdivision located at 246 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated 6/10/03, with the exception of paragraph 2 of the Town Engineer's letter.
2. That any removal of vegetation outside the building envelope in the area east of lot #3 and along the Rt. 77 frontage of lot #1 be prohibited, and that any other vegetation removal within ten feet of the lot boundary lines shall be accompanied by a landscaping replanting plan of an amount equivalent to the vegetation removed. Such plan to be submitted to the Town's Code Enforcement Officer for prior approval.
3. That the conservation easement be approved in form by the Town Attorney and signed by the applicant;
4. That the road will be upgraded to Town and local road standards if the road is offered to the Town for acceptance.
5. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

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

NEW BUSINESS

Gull Crest Trails Resource Protection Permit – Request by the Town of Cape Elizabeth for a Resource Protection and RP3 Permit to construct trails in wetland areas and a bridge across the Spurwink River on the Gull Crest property located on Spurwink Ave and Fowler Road (R6-1/1A, R5-10, U45-9, U44-31), Sec. 19-8-3, Resource Protection Permit Completeness.

Steve Harding, the Town Engineer and with Oest Assoc., stated that his firm has worked with the Town developing the Gull Crest location from the time it was purchased by the Town in 1997. The parcel consists of the Public Works Department, two recreation fields and parking lot, and a large passive recreation area. In conjunction with the Master Plan being developed with the Conservation Commission for a trails network in this area, he is requesting a Resource Protection Permit for improvements on those trails which will impact wetland areas. Mr. Harding presented a site plan depicting an overview and orientation of the Gull Crest parcel and outlining both existing and new trails. Three basic designs of boardwalks are planned; rustic with log sleepers, 18” elevated on relatively firm ground, and a more elevated anchor system type for the wet areas. Boardwalk widths will range from 4-6 feet depending on the activities most associated with certain trails. A 20-foot bridge is proposed across a section of the Spurwink River to connect with an existing trail to the Town Center area. The Land Trust has granted permission for the construction of the bridge over their parcel. Mr. Harding reviewed several waivers which are requested.

1. Reduce the scale of the plan so that the entire parcel can be inclusive of one map.
2. A waiver of the topographic mappings since no changes in grading or contours will be necessary with any of the improvements proposed.
3. Waiver of the soils mapping. The measures undertaken are a direct improvement of those conditions.
4. Waiver of delineation of the wetlands. Those measures have already been extensively done in conjunction with the project.
5. Waiver of a study of the hydrology and stormwater runoff of the area. All the Boardwalks will be elevated and therefore not affect any of the hydrology of the area.

Mr. Harding stated that the Nordic Skiing enthusiasts have requested consideration with regards to trail widths. Currently there are no plans to increase the general 6’ width of the trails, but Mr. Harding expressed a desire to one day have the ability to satisfy those requests. He calculated that those measures would impact about 3650 sq. ft. of trail if implemented in prescribed areas and conservatively a 25% reduction of vegetation in those trail areas.

Mr. Harding stated that the total impact of vegetation resulting from the boardwalks and bridges and proposed trail widening would be 10,820 sq. ft. He explained that the improvements would effectually be an alteration.

Mr. Ciraldo asked for discussion or a motion for completeness.

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 the Town of Cape Elizabeth for a Resource Protection Permit to construct trails and make trail improvements including bridges and boardwalks on the Gull Crest property located on Spurwink Ave. be deemed complete.

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

Although Ms. O'Meara had received no communication in opposition to the Gull Crest application, Mrs. Schenkel felt the Board would be remiss in not holding a public hearing. Board members agreed, but ruled against the necessity of a site walk.

Mr. Charles asked whether the proposed widening of the trails at some future point would also involve a widening of the bridges and boardwalks inclusive of the current application.

Mr. Harding replied that the widening would only impact specific areas of trails, and the conservation commission would be very much involved to assure preservation of vegetation.

Mr. Charles made the following motion:

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

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

Spurwink River Boat Dock –Request by the Sprague Corporation for Site Plan Review to construct a boat dock on the Spurwink River (R8-1), Sec. 19-9, Site Plan Review Completeness and Public Hearing and Sec. 19-8-2, Shoreland Zoning Performance Standards.

John Green, representing the Sprague Corporation, reviewed the proposal before the Board. The Sprague Corporation wishes to construct a wooden dock on the Spurwink River. The dock would consist of a 90' pier, six feet wide, and set on pilings, and an aluminum ramp, 3 feet wide by 50 feet long. The ramp will connect the pier to a 10' x 20' float. The project requires, along with Town and Shoreland standards, a Permit by Rule from the DEP. Mr. Green had met the DEP representative on site in early May and the permit had been granted. He provided a copy for the Board.

Mr. Green stated that the dock would be seasonal and therefore removed each year from approximately October 15th through April 15th. The location of the dock is a common area designated on the 1999 Sprague Family Land Use Plan, where there is also a boat launch and an operational point for a local lobsterman.

Mr. Ciraldo asked the Board for a consideration of completeness.

Mr. Sherman commented that there was a request for a waiver regarding lot line dimensions and he agreed that the project submission was adequate to comply. Mr. Ciraldo agreed that all the waivers on the Site Plan Review checklist were logical.

Mrs. Schenkel 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 the Sprague Corporation to construct a boat dock on the Spurwink River be deemed complete.

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

Mr. Charles submitted that given the completeness of the application and the location of the project which is totally surrounded by the Sprague Family, no public hearing would seem necessary. He noted that the Town Planner had received no communications with regard to the proposal and was satisfied that the Board could grant an approval. Mr. Ciraldo agreed.

Mr. Sherman requested that the dimensional notations on the plan be enlarged. Mr. Green agreed.

Mrs. Schenkel made the following motion for approval:

Findings of Fact

1. The Sprague Corporation is requesting Site Plan Review and review for compliance with Shoreland Zoning Standards of a proposed boat dock to be placed on the Spurwink River, which requires review under Sec. 19-9, Site Plan Regulations and Sec. 19-8-2, Shoreland Zoning Performance Standards.
2. The project also requires a permit from the DEP.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations, and Sec. 19-8-2, Shoreland Zoning Performance Standards.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the application of the Sprague Corporation to construct a boat dock on the Spurwink River be approved subject to the following condition:

1. That there be no alteration of the site nor issuance of a building permit until written evidence of the DEP permit has been provided to the Town Planner.

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

Leighton Farms Subdivision Amendment – Request by Wyley Enterprises for an amendment to the previously approved Leighton Subdivision, located off Wells Rd (R5-30/32), to adjust the property line, Sec. 16-2-5, Amendment to a Previously Approved Subdivision.

Owens McCullough, a civil engineer with Sebago Technics and representing Wyley Enterprises LLC, reviewed the request for Site Plan Amendment. He explained that Mr. Jordan, who would be selling a parcel of land to Joel Fitzpatrick for the Leighton Farm Subdivision, had requested a boundary line change for the land being transferred. The change would not alter the open space consideration for the area and involves the same net square footage. The new boundary line configuration would better square off the two properties. An amended site plan has been submitted with a note designating that the plan was revised and the date of the revision.

Mr. Charles asked that Mr. McCullough qualify that the open space configuration would remain unaltered with regard to the buffering for the Cross Hill Development which abuts the Leighton Farm parcel. Mr. McCullough reviewed the alteration on the site plan which showed that only Town owned open space stood adjacent to the parcel and no direct land abutters.

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

Findings of Fact

1. Wyley Enterprises, LLC is requesting an amendment to the previously approved Leighton Farms Subdivision to adjust the boundary line of the donated open space, which requires review under Sec. 16-2-5, Amendments to Previously Approved Subdivision Plans.
2. Subdivision amendments must include book and page recording information from the original subdivision approval.
3. The plan substantially complies with Sec. 16-2-5, Amendments to Previously Approved Subdivision Plans.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted, and the facts presented, the application of Wyley Enterprises, LLC for an amendment to the previously approved Leighton Farms Subdivision, located off Wells Rd, to adjust the boundary line of the donated open space be approved, subject to the following condition.

1. That the book and page recording information for the original Leighton Farms Subdivision approval be added to the amended plan before the plan is signed and recorded.

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

McFarland Private Access Waiver – Request by Peter and Jennifer McFarland for a Private Accessway Permit for lot U19-29 located off Gladys Rd, Sec. 19-7-9, Private Accessway Permit.

Bob Metcalf of Mitchell & Assoc. and representing the applicants, reviewed the proposed driveway proposed for the parcel and its location within a 50' ROW which was a paper street portion of Hampton Road. The applicants adopted the road layout in order to avoid any impact on existing wetlands and other drainage issues. The building parcel consists of mature wooded cover with very little understory. The plan is designed with the intent to preserve as much vegetation as possible and the location of the house is situated with consideration of RP2 wetlands existing on the property. Grading is necessary but will be moderate respective to the wetlands adjacent to the driveway and building location.

Mr. Ciraldo asked the Board to address the issue of completeness.

Mr. Sherman asked whether the items noted in the Town Planner's memo had been addressed by the applicant. Mr. Metcalf replied that the following items were addressed:

1. A note on the grading plan specifies the location of a fire hydrant within 1000' on Hampton Road, but not in the immediate area.

2. The Fire Chief has accepted Merrill Street as the name for the proposed road.
3. The final plan will be stamped by a surveyor.

Mr. Charles stated that although he recognized that certain issues would further need to be addressed along with any public comment, he was satisfied to submit a motion for completeness. He 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 Peter and Jennifer McFarland for a Private Accessway Permit for a lot located off Gladys Rd (U19-29) be deemed complete.

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

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

Mr. Ciraldo made comment on the issue surrounding the placement of the drive within the ROW. Ms. O'Meara explained that the current placement of the driveway is well off center of the ROW and would not lend itself to the necessary improvements should additional homes be serviced by it at some future point. She also commented that the wetland area is more of a long, drainage swale, which could benefit from a well planned design. Mr. Ciraldo felt that the Board could give the applicant a directive as to their opinion with respect to the driveway placement so they might anticipate any changes to their next submission. Mrs. Schenkel requested a site walk prior to making any determinations of the area. Mr. Hatem agreed.

Mr. Ciraldo was in favor of a site walk but explained that the pertinent issue with regard to the applicant was the additional process necessary should the Board make the determination that the placement of the road was undesirable. The applicant would need to submit an application for a Resource Protection Permit, which could then be considered at the same time as the permit for the Private Accessway.

Mr. Metcalf stated that the DEP still had to interpret the type of wetland located within the parcel. He had some concern for the impact of those wetlands should the Board direct him to alter the current placement of the drive. He explained that redesigning the plan and applying for additional permits would also extend the timeframe for the project. With that in mind, Board members scheduled a site walk for the following Thursday, June 17th, after which, a timely determination could be made with respect to the placement of the roadway.

With no further business, Mr. Cotter made a motion for adjournment. Motion was seconded by Mr. Hatem and carried 7 in favor and 0 opposed.

Meeting adjourned at 9:15 PM.

Respectfully Submitted,

Barbara H. Lamson, Minutes Secretary

