

TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING

July 15, 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 the items on the agenda and asked for action on the minutes of the previous meeting. With no amendments requested, Mrs. Schenkel made a motion to accept the minutes. Motion was seconded by Mr. Griffin and carried 6 in favor and 0 opposed. (Mr. Hatem was not present for the vote.)

CONSENT AGENDA

Accent Dry Cleaners Site Plan Change of Use - Ingrid and Nils Noren are requesting an amendment to the previously approved Site Plan for 303 Ocean House Rd (U21-9) to change the use from Category 2, Business Office to Category 3, Personal Services in the Town Center District, Sec. 19-9-6, Site Plan Amendments.

Mr. Ciraldo reminded Board members that in order to hear from the applicant or have a substantive discussion on any consent agenda item, a motion must be made. He asked whether any Board member wanted to have the item removed from the consent agenda. With no comments coming forward, Mr. Ciraldo asked for a motion.

Mr. Griffin made the following motion:

Findings of Fact

1. Ingrid and Nils Noren are requesting an amendment to the previously approved Site Plan for 303 Ocean House Rd (U21-9) to change the use from Category 2, Business Office, to Category 3, Personal Services to open a pick up/drop off center for Accent Dry Cleaners, which requires review under Sec. 19-9, Site Plan Regulations.
2. No exterior changes to the building are proposed.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Ingrid and Nils Noren for an amendment to the previously approved Site Plan for 303 Ocean House Rd (U21-9) to change the use from

Category 2, Business Office, to Category 3, Personal Services to open a pick up/drop off center for Accent Dry Cleaners be approved.

Motion was seconded by Mr. Cotter and carried 6 in favor and 0 opposed. (Mr. Hatem arrived after the vote.)

Mr. Ciraldo introduced the second consent agenda item.

Hamlin Street Resource Protection Permit - Request by Joseph Frustaci for an amendment to the previously approved Resource Protection Permit for (U29-50) to expand the building envelope, Sec. 19-8-3, Resource Protection Permit.

Mr. Ciraldo asked whether any Board member wished to have the item removed from the consent agenda. Hearing no comment, Mr. Ciraldo asked for a motion.

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

Findings of Fact

1. Joseph Frustaci is requesting an amendment to the recently granted Resource Protection Permit for lot U29-50 to expand the building envelope by adding the approved lot to an adjoining grandfathered lot, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. No change to the previously approved Resource Protection area alterations is proposed.
3. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plan and materials submitted and the facts presented, the application of Joseph Frustaci for an amendment to the recently granted Resource Protection Permit for lot U29-50 to expand the building envelope by adding the approved lot to an adjoining grandfathered lot be approved.

Motion was seconded by Mr. Griffin and carried 6 in favor and 0 opposed. (Mr. Hatem was not present for the vote.)

OLD 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 Rd (R6-1/1A, R5-10, U45-9, U44-31), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Steve Harding, the Town Engineer and of Oest Assoc., gave an overview of the plan. He summarized that the Town is seeking an RP1 and RP2 wetland approval and an RP3 floodplain approval for improvements proposed for the Gull Crest trails. The improvements constitute the third phase of the Gull Crest Master Plan development and would involve construction and improvements to boardwalks and bridges in the Gull Crest trail systems and create links to other

existing trails in the area and in town. Also proposed is a widening of some trails to accommodate Nordic skiers who have voiced an interest in using the area. Mr. Harding stated that the total impact would amount to 10, 850 sq/ft of vegetation. He also reviewed the waivers which had been outlined at the previous meeting.

Mr. Ciraldo opened the public hearing.

Jonah Rosenfield, 243 Spurwink Ave., introduced himself as a representative of the Conservation Commission of the Town and stated that the Commission lent its full support to the improvements and changes proposed.

Muzzy Barton, 3 Gordon's Lane, stated that he has been involved in the Cape Nordic Cross Country ski program and a volunteer coach and voiced his support for the trail system plan. He wanted to make a plea for the 10-12' trails to accommodate high school and middle school training programs as well as the entire community. He referenced a Cumberland facility which is successfully utilized on several recreation levels and hoped the Town might consider the same approach to the Gull crest property. Mr. Barton also mentioned a commitment from the Boosters Club to research equipment for grooming of trails.

Robbie Yokabaskas, 45 Hannaford Cove Road, stated that he has also been involved with the Cape Schools Nordic skiing program which use the Cumberland facility. He supports a widening of the Gull Crest trails suitable for grooming and training purposes.

Millie Vetterlein, 29 Westminster Terrace, is opposed to the grooming of the trails. She feels that grooming would encourage snowmobiling which she considers incompatible to the passive recreational activities that also make use of the trails. She would prefer that energies go into improvements for all season access of areas, specifically the meadow. She cited incidents with snowmobiles which she felt had the potential for great liability for the Town and felt that other areas lent themselves to that sport. Ms. Vetterlein was also concerned for the winter habitat should grooming encourage less passive activities.

Marilyn Sherry, 19 Starboard Drive, stated that she understood the Gull Crest proposal would make improvements to boardwalks and bridges, but did not consider a widening of trails an improvement. She was concerned for the loss of habitat and the impact of non-passive activities which could be pursued in better suited areas. Mrs. Sherry said that her quality of life has already been impacted by activities associated with the area and cautioned that the request to widen trails is out of proportion to the need.

Carol Fournier, 7 Starboard Drive, expressed support for the Spurwink River Bridge. She held the same reservations as her neighbors with regard to increased activity by snowmobiles and wanted restrictions and safeguards put in place. Mrs. Fournier was also concerned that trails would become exclusive to the Nordic skiers.

Gerald Sherry, 19 Starboard Drive, complained that the marsh, which abuts his property, is disappearing because of encroachment from adjacent lawn debris, and he feared that the widening of trails in Gull Crest would further destroy wildlife areas. He said there were too many incongruities with the proposal regarding the trails and the 12-foot proposed widening. Mr. Sherry said that he was selfish for his wife, his neighbors, and the Town with regard to preserving the marsh.

Mussey Barton approached the Board to explain that the Nordic skiers had no intention of optimizing the trails for their use. He encouraged the improvements for the benefit of every use, but suggested that some restrictions may be necessary. Mr. Barton again referenced the Cumberland facility at Twin Brook, and suggested that anyone visit that facility to visualize the width of the trails. He wanted the improvements to accommodate a variety of all season uses and did not anticipate a conflict with the snowmobiling community.

Gerald Sherry expressed concern with regard to restricting users. He urged the Board to not cater to a small minority of the community and disallow snowmobiles on the trails.

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

Mr. Griffin asked Mr. Harding to recap the areas being considered for widening. Mr. Harding reviewed the proposals for the Outer Loop Trail, the Fowler Road connection, and the Knoll Trail through the marsh area which will be restricted to snowmobiles. He also mentioned a proposal, as part of the Master Plan, for an outer loop trail section between the transfer station and the water treatment plant, and the Spurwink Crossing Trail which would serve as a connector from the Gull Crest area to the Town Center trails. Mr. Harding explained that the application was to provide a blanket approval for the Master Plan so that as the capability for improvements presented itself, the Town Council could make decisions on those projects without each time approaching the Planning Board. He explained that no specific plans were being presented, but an approval by the Board would open the way for the Town Council to pursue development of the trails with considerations for various recreations.

Mr. Ciraldo was concerned with the granting of an approval for a Resource Protection permit without a definite plan. Mr. Harding replied that the Conservation Commission had researched and drafted a Master Plan which had been accepted by the Town Council. Mrs. Schenkel agreed with Mr. Ciraldo that the proposal was too nebulous and too many factors warranted consideration.

Mr. Charles recognized the concerns raised by Mrs. Schenkel but felt that by granting the approval the Board would not be setting policy. He was in favor of the Resource Protection Permit which he considered would establish a parameter under which the Town Council could work with the community to determine policy. Mr. Charles opted to move forward with the application and noted that any issues with regard to specific improvements, recreational uses and restrictions would be addressed and handled at the Council level.

Mr. Sherman agreed and noted that the Board had requested a master plan in order to avoid multiple applications at each stage of the Gull Crest development. He thought the accepted Master Plan was excellent and considered that any determinations of use could be settled in the future.

Mr. Hatem was also in favor of the permit, again citing the fact that policy was not being set, but rather a framework for moving forward. He urged the community to become involved and interact with the Council in making the decisions relative to their various interests.

Mrs. Schenkel asked for a clarification of the total square footage impacted relative to the application. Mr. Harding replied that a total of 10,850 sq/ft would be involved and

would include wetland areas impacted by trail widenings of 10-12' in specific areas.

Mr. Ciraldo made note that the role of the Planning Board was not to implement restrictions or determine uses within the Gull Crest Property. That, he said, was a matter for the Town Council. He would consider an approval for the specific improvements proposed in the application, but he was hesitant to also grant a pre-approval for changes to the plan in areas that had not yet been defined. He wanted the option of reviewing future proposals when more specific parameters would be applied.

Mr. Sherman wanted to clarify whether an approval would grant not only the improvements specified by Mr. Harding, but also the option of widening any trails within the Gull Crest property in the future. Ms. O'Meara replied in the affirmative.

Although Mr. Ciraldo still voiced opposition to the pre-approval aspect of the application, Mr. Sherman and Mr. Charles were in favor of the proposals. Mr. Charles commented on the fact that the Master Plan for the Gull Crest property was already in place and therefore, the Conservation Commission and Town Council had the authority to widen any trails which were not in a resource protection area. He considered that an approval would grant the ability to move forward with discretionary improvements. Mr. Harding interjected that it has always been the policy of the Conservation Commission to make field measured determinations of any impact on vegetation with regard to changes on the trails.

Mrs. Schenkel asked Mr. Harding whether the 7170 sq/ft of improvements to boardwalks and bridges constituted a firm figure relative to the work which is proposed at this time. He replied that that square footage was determined by calculating together the lengths and widths of the boardwalks and bridges involved. He stated that not all of the trails would be widened because some lent themselves to the proposed width and others were restricted by boardwalks. A DEP permit has also been submitted and requires an avoidance and minimization step which determines restrictions on certain areas of boardwalks.

Mr. Rosenfield interjected to ascertain that the Conservation Commission has no current preference as to what trails are widened and to what extent. He stated that they simply are in favor of having the option available for the future.

Mr. Griffin presented figures relative to the proposed widening in order to put some perspective on the square footage proposed. He did not consider that an approval would grant a carte blanche to open every trail up to twelve feet, but rather the option to adjust the width of trails in some RP2 wetlands.

Mr. Ciraldo asked Mr. Harding whether 3600 sq/ft was the total figure considered for future changes. Mr. Harding outlined the specific area considered and explained that the figure determined for impact represented 25% additional vegetation removal.

With no further discussion, Mr. Ciraldo asked for a motion.

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

Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit and RP3 Permit to construct trails and trail improvements including bridges and boardwalks on the Gull Crest facility located off Spurwink Ave, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, 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 and RP3 Permit to construct trails and trail improvements including bridges and boardwalks on the Gull Crest facility located off Spurwink Ave be approved.

Motion was seconded by Mr. Charles.

Before a vote was taken, Mr. Ciraldo stated that he would vote against the motion because he would rather approve a specific plan and not because he was against the proposal.

Motion carried 5 in favor and 2 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 Public Hearing.

Bob Metcalf, of Mitchell & Assoc. and representing the applicants, reviewed the following changes to the plans and submissions.

1. The accessway was repositioned to the center of the 50' ROW, which is the paper street portion of Hampton Road, and will be designed per the recommendations of the Town Engineer.
2. As a result of the repositioning, RP2 wetlands will be impacted and the DEP was consulted. An on-site evaluation determined that the area was basically a drainage ditch and not a stream. Fill necessary for drainage and grading would impact about 1000 sq. ft. of wetland.
3. A waiver has been requested with regard to the width of the emergency turnaround relative to the roadway. The modified design has been approved by the Fire Chief.
4. The water service main has been extended. A 4" line will accommodate a future lot if proposed.
5. Power will be serviced to a pole and then run underground.
6. At the Town Engineer's request, a pipe on the plan has been identified and materials specified for a connection to the cross culvert under the access drive.
7. The building envelope has been defined relative to the required setbacks and the setbacks designated for the wetlands.

8. The roadway has been named Penny Lane and accepted by the Police Chief.

Mr. Ciraldo opened the public hearing. With no persons coming forward, the public hearing was closed and Mr. Ciraldo opened discussion to the Board.

Mr. Charles questioned the need for the Resource Protection Permit. Ms. O'Meara replied that by repositioning the accessway to the center of the 50' ROW, wetlands would be impacted and the permit required.

Board members, in turn, applauded the applicant for the thorough response to comments and considerations raised at the site walk.

Mr. Griffin requested a letter from the Fire Chief with regard to the approval of the modified turnaround.

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

Findings of Fact

1. Peter and Jennifer McFarland are requesting a Private Accessway Permit to construct a driveway for a lot located off Gladys Rd. (U19-29), which requires review under Sec. 19-7-9, Private Accessway Permit and Sec. 19-8-3, Resource Protection Regulations..
2. The plan depicts a building envelope which needs to be defined.
3. 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 and the facts presented, the application of Peter and Jennifer McFarland for a Private Accessway Permit and a Resource Protection Permit to construct a driveway for a lot located off Gladys Rd. (U-19-29) be approved with the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated 7/3/2003, paragraphs 4, 5, and 6: and
2. that a note be added to the plan that no structures will be located outside the building envelope and that the wetland located outside the building envelope will not be altered.

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

OTHER BUSINESS

Mr. Ciraldo announced that the items listed for other business would be tabled until the August meeting, but asked if anyone present had intended to come forward for the public hearing which was scheduled.

No persons came forward and Mr. Ciraldo asked for a motion to table the items.

Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the materials and facts presented, the draft Miscellaneous Amendments to the Sewer, Subdivision, Road and Zoning Ordinances be tabled to the regular August 19, 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. Sherman made the following motion:

BE IT ORDERED that, based on the materials and the facts presented, the draft Fort Williams Master Plan is tabled to the regular August 19, 2003 meeting of the Planning Board, at which time a public hearing will be held.

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

Mr. Charles stated that he would not be in attendance for the August meeting, but wanted to make positive comment on the language of the amendments. He considered them well thought out, thoroughly researched and appropriate. Mrs. Schenkel stated that she would also be absent for the August meeting and that she concurred with Mr. Charles' comments.

With no further business, Mr. Ciraldo asked for a motion to adjourn.

Motion to adjourn was made by Mr. Griffin and seconded by Mr. Cotter. Motion carried 7 in favor and 0 opposed.

Meeting adjourned at 8:30PM

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary