

TOWN OF CAPE ELIZABETH, MAINE
MINUTES OF PLANNING BOARD MEETING

DECEMBER 16, 2003

7P.M., TOWN HALL

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

Absent: John Ciraldo

Also present was Maureen O'Meara, Town Planner.

Mr. Charles opened the meeting by reviewing the agenda for the meeting. The first item on the agenda was to approve the minutes from the previous meeting. Mr. Charles asked for corrections to minutes. Mr. Sherman stated that he did not make the motion to adjourn. Mr. Charles stated that he did. Mr. Ciraldo asked for a motion to the minutes as amended. Motion was made by Mr. Griffin and seconded by Mrs. Schenkel. Motion was carried 6 in favor and 0 opposed.

Mr. Charles reviewed the correspondence that had been distributed to the Board that evening. Mr. Charles proceeded to the first item on the agenda, which was to be Golden Ridge Lane.

Mr. Sherman made a motion that the Board reverse the order of the agenda, as the 2nd applicant item would be brief. Mr. Hatem seconded that motion and was carried 6 in favor and 0 opposed.

NEW BUSINESS

Karu Subdivision Amendment- Candace Karu is requesting an amendment to the Karu Subdivision, located at 246 Ocean House Rd, to phase the construction of Arlington Lane and to convey 3,300 sq. ft. of land to an abutter. The subdivision was previously approved by the Planning Board in June and this amendment will be reviewed under Sec. 16-2-5, Amendment to a Previously Approved Subdivision.

Mr. John Mitchell of Mitchell & Associates, representing Candace Karu, introduced himself. Mr. Mitchell described the 2 amendments that they were looking for approval. Phase 1 will consist of construction of the front portion of Arlington Lane with turnaround and utilities, which would service lot 1 and existing house. The balance of utilities would be constructed upon issuance of a building permit for Phase 2. The second amendment request is a land conveyance with the abutter for a strip of land on the eastern boundary of the subdivision that is approximately 3,300 sq. ft. that will keep a pond

wholly on the abutters land. It will reduce the amount of open space from 53.3% to 52.3%, which is within the minimum of 40% required by ordinance.

Mr. Charles reminded the board that this is an approved subdivision and completeness is not required, just evaluating the modification presented.

Mr. Griffin asked Ms. O'Meara if there had been any calls or correspondence from the public and she replied no. Mr. Griffin stated he didn't see any need for a site walk.

Mr. Charles verified with Mr. Mitchell that the actual layout of the subdivision would not change and the layout would stay as approved.

Mr. Mitchell stated that lot 3 was unlikely to be developed as it was sold to the abutter to maintain a buffer.

Mr. Sherman asked if the strip of land, including the portion of the pond would remain subject to the conservation easement and Mr. Mitchell affirmed that.

Mr. Charles asked for any questions. Hearing none, he asked for a motion.

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

Findings of Fact

1. Candace Karu is requesting changes to the subdivision located at 246 Ocean House Rd to phase the construction and convey 3,300 sq. ft. to an abutter, which requires review under Sec. 16-2-5, Amendment to a Previously Approved Subdivision.
2. The application substantially complies with Sec. 16-2-5 of the Subdivision Ordinance.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Candace Karu for amendments to the previously approved Karu Subdivision, located at 246 Ocean House Rd, to phase the subdivision and convey 3,300 sq. ft. of land to an abutter be approved.

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

Mr. Charles introduced the next item on the agenda being Golden Ridge Subdivision.

Golden Ridge Lane Minor Subdivision Review- K & K Realty is requesting Minor Subdivision Review of a 3-lot subdivision located on Golden Ridge Lane. The application will be reviewed for compliance with Sec. 16-2-3, Minor Subdivision Review.

Mr. Fisher, representing K & K Realty, gave an overview of the project. Included in this was improving Golden Ridge Lane to the Town's standards, proposed trail relocation, and the engineering specifications.

Mr. Fisher discussed the easement that currently exists between the Haggmanns and the Powells that connects to the Great Pond Trail. Their proposal is to laterally move the 18 ft. easement to coincide with Golden Ridge Lane in the Right of Way. They are also moving the street sign on other side of roadway and adding a greenbelt sign to delineate the entrance. Mr. Kennedy is creating a 4' wide path on the easement and a chipped wood base, which will proceed 500' to the turnout on the lane.

Mr. Fisher stated an item of contention was the location of the trail. The applicant wants the easement to continue down the path and through the boundaries of the properties belonging to Amy Powell and the Youngs. The Conservation Commission had previously done a site walk and determined the easement would be better served on the southerly line of the easement being granted to the Sprague Corporation.

Mr. Fisher wanted to expound on how the applicant's proposal would be a "win-win" situation as it would not be on someone's lawn and the applicant would build the trail. He also suggested the trail would diminish the value of the new Powell lot if the trail bifurcated in the southern part of the easement. The plan moves the existing easement to Golden Ridge Lane, and connects to the northern part of the easement where the applicant would build a trail.

Mr. Fisher addressed the open space to be donated as conservation area. His proposal was a strip of land, 75ft. wide, which is equal to what is needed to conserve. Mr. Fisher's client also reserves the right to carve up their 8.5-acre parcel once.

Mr. Charles stated the first item was completeness. They did receive a memo from the Town Manager concurring the financial capability of the applicant. Mr. Charles asked the board if there were any questions comments concerning completeness.

Mr. Sherman made the following motion:

BE IT ORDERED that, based on the plans and materials submitted, the application of K&K Realty for Minor Subdivision Review of Golden Ridge Lane, a 3-lot subdivision located off Bowery Beach Rd, be deemed complete.

Mr. Hatem seconded the motion and carried 6 in favor 0 opposed.

Mr. Charles stated the next item on the agenda as the public hearing and asked if there was anyone who would like to make comments.

Mr. Greg Powell, 2 Golden Ridge Lane, introduced himself and produced a letter addressed to the Planning Board and the Town Council and signed by the Powells, the

Chatmans, the Youngs and the Hagmanns. It stated that they supported the relocation of the right of way to Golden Ridge Lane for the following reasons:

1. Relocation will more clearly mark the start of the trail to the public.
2. Golden Ridge Lane is an established road that will benefit trail users by clearly marking boundaries of the trail.
3. The new trail will access Great Pond trail as the existing trail does.
4. Use of the current right of way is awkward and runs through the backyards of two private residences.
5. Moving the trail will reduce trespassing on private property.
6. A legal issue exists for the validity and scope to the town's present right of way of the existing easement on the Hagmanns property.
7. The relocation would be done at no cost to the town.

Mr. Powell then handed the letter to Mr. Charles and wanted the Board to know that collectively everyone had worked hard on the relocation. Mr. Powell said that he would be happy to field any questions.

Mr. Charles asked that Mr. Powell verify which route he and the neighbors were advocating.

Mr. Powell stated that they had worked very hard with lawyers for a month and a half and the deed reflects the trail on the northerly edge.

Mr. Griffin asked Mr. Powell if it was his opinion to make easements on lot lines for future easements.

Mr. Powell agreed with this because of clarification and simplicity Mr. Kennedy had received a deeded easement from the Spragues that was clear.

Mr. Sherman clarified with Mr. Powell that if the trail were located on the northern line of the easement, it would not bisect their lot; therefore, the lot would be more valuable. Mr. Powell confirmed that.

Mr. Sherman recalled from the site walk that someone had posed the question to Mr. Powell if it made a big difference where the trail was placed and his answer was no. Mr. Powell said that he didn't mean that and they had spent a lot of money on lawyers working on deeds.

Mr. Charles thanked him and asked for other comments.

Mr. Michael Duddy, 11 Crescent View Avenue, and also the chair of the Conservation Commission spoke. Issues he thought had been taken care of earlier in the year are still being discussed tonight. Mr. Duddy stated, in his years of being on the Board, that placing a trail on a property line is not an important factor to the Conservation

Commission. They try to site trails to give the citizens of the Town the best experience, on higher dry area, and off property lines so only one property owner is impacted. Mr. Duddy stressed that from the beginning they had been emphatic that the northern trail location is not desirable. It is unfortunate that deeds were drafted. They had been clear on what trail would best serve the town. The Conservation Commission vehemently opposed the trail to be located on the northern part of the easement and was unanimous to have it located on the southerly section. Mr. Duddy wanted to emphasize that they had compromised by having the trail move from the Hagmanns property to a walkway that would run along Golden Ridge Lane and that the verbiage could be easily changed by 18 ft to reflect the desired trail location.

Mr. Charles asked Mr. Duddy what the Conservation Commissions take was about the issue of legality surrounding the easement on the Hagmanns property.

Mr. Duddy stated that it was a new development to him.

Mr. Charles asked for Maureen's opinion.

Ms. O'Meara suggested that if it is an issue, they take it to the Town attorney to look at.

Mr. Sherman said he would want to get more guidance, as there seemed to be a subtle threat and would not want the town to end up without access to the Great Pond.

Mr. Charles suggested that they continue the Public Hearing.

Jonah Rosenfield, 243 Spurwink Ave., wanted to reiterate what Mr. Duddy said. Mr. Rosenfield, who is also a Conservation Commission member, said that they look at what is best for the town and that they would not want to "trade down" assets. The southerly trail on the easement is best for the town.

Jeff Kennedy, the applicant, disagreed because the people are not using the trail properly now and their compromise would be the northerly trail.

Mike Pulsifer, 30 Broad Cove Road and a member of the Conservation Commission, wanted to state that he thought that the current trail made him feel uncomfortable as it is in the back of the residents yard and someone had actually inquired to what they were doing.

Mr. Charles asked if anyone else cared to speak. Without anyone forthcoming, Mr. Charles closed the public hearing.

Mr. Charles asked if Mr. Fisher wanted to make a brief comment.

Mr. Fisher stated that the contention was on which side of the easement the trail will go. He stated that the applicant is the one that will be financially and physically building the trail and would like to see the trail in the northerly section.

Mr. Hatem wanted Mr. Fisher to explain the opposition of the southerly trail in a 1-2-3 format.

Mr. Fisher stated that part of the area in the building lot owned by the Powells, had been tested for a septic system and that area is located very close to the southern trail.

Mr. Sherman asked how far away a new house would be from the existing greenbelt trail.

Mr. Fisher stated that depended on where the house is built.

Mr. Charles asked if the house could be situated differently on lot.

Mr. Fisher answered yes.

Mr. Charles invited members of the board to pose any questions they might have at this time.

Mr. Sherman asked Mr. Fisher how they planned to deal with the open space issue.

Mr. Fisher wanted comments from the board and pointed out the allotted land.

Mr. Charles asked Ms. O'Meara for comment on that particular portion of land.

Ms. O'Meara stated she had met with the applicant's representative to determine a way to meet the open space standard. She suggested providing an easement over the wetland on the southern side of the lot the K & K lot with a dry walk able edge, and then continuing the easement along the property line of the K & K lot to reconnect with the Great Pond trail, creating a loop.

Mr. Kennedy stated up until a week ago the land donation had been sufficient and the wetland and easement donation should be sufficient.

Mr. Fisher said they would be willing to donate the entire wetland or any portion thereof but do not want the upland edge reconnection because of privacy to the property owner.

Mr. Charles stated that because of the unresolved placement of new easement, of open space vs. impact fee, and potential legal questions about the current easements, there could be an impact on any potential ruling. Mr. Charles wanted feedback at this point from the Board.

Mr. Cotter stated legality was not a problem for him and believes the applicant has put a lot of time and potentially money into a better trail. He believes that the questions remaining could easily be handled by conditions placed upon approval.

Mrs. Schenkel asked if improvements made on the parcel would count as part of open space.

Ms. O'Meara stated that this could be precedent setting and that improvements and easements should be one package since without improvements, this is not an equivalent trade.

Mr. Hatem mentioned that there is an existing easement and that should not be forgotten or surrendered without looking at it very carefully.

Mr. Sherman likes the idea of moving the easement and the only problem was the deviation of the trail from the location the Conservation Commission had recommended.

Mr. Charles said the Board could continue or send the applicant away until certain issues were addressed.

Mr. Cotter was not in favor of tabling the application.

Mrs. Schenkel stated that the Conservation Commission is not standing on ceremony and perhaps the applicant could reconsider putting the trail on the southerly edge of the easement.

Mr. Sherman suggested a 3-minute break for the client to confer.

Mr. Fisher returned after the break with the applicant acquiescing to the movement of the trail to the southerly edge of the easement as well as designating 40,000 sq. ft. of open space.

Mr. Charles asked for comments.

Mr. Sherman found it favorable.

Mr. Griffin favored allowing the applicant to have the 18ft waiver for the road.

Mr. Fisher asked for another moment to confer.

Mr. Fisher returned saying they stood by their revised proposal.

Mr. Sherman wanted to know if the open space would be of any value to the town since it is an RP2 wetland.

Mr. Fisher said it is an RP2 wetland with no ponding. During winter and dry summer months it is accessible but during spring months it is wet.

Mr. Charles wanted to reiterate what the Planner had mentioned with the dry edge for accessibility.

Mr. Sherman asked Ms. O'Meara if this would typically go back to the Conservation Commission for review for the 40,000 sq.ft. of open space.

Ms. O'Meara said typically yes. The Commission will usually go to the land and verify it is dry and a valued piece.

Mr. Sherman asked for Mr. Duddy's position on the compromise.

Mr. Duddy said as an individual member he thought it was a reasonable compromise.

Mr. Rosenfield and Mr. Sterling (Conservation Commission members) agreed with Mr. Duddy.

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

Findings of Fact

1. K & K Realty are requesting Minor Subdivision Review of the Golden Ridge Lane Subdivision, a 3-lot subdivision located off Route 77, which requires review under Sec. 16-2-3, Minor Subdivision Review.
2. The application depicts a buffer strip with tree and shrub plantings, but does not specify number of plantings, species, or minimum size at time of planting.
3. The proposed pedestrian easement location has been revised and the easement document should be revised to reflect the changes.
4. The proposed pedestrian easement will replace an existing pedestrian easement that currently has a marked greenbelt trail.
5. The road maintenance agreement needs to be revised to reflect sole responsibility of the applicant to maintain the road.
6. The applicant needs to provide open space to meet the open space standard.
7. The application substantially complies with Sec. 16-2-3, Minor Subdivision Review.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted, the application of K&K Realty for Minor Subdivision Review of Golden Ridge Lane, a 3-lot subdivision located off Bowery Beach 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 12/9/03.

2. That a planting schedule for the buffer strip be added to the plans which details number of plantings, species, and minimum size at time of planting;
3. That a pedestrian easement be submitted for the location approved by the Planning Board, in a form acceptable to the Town Attorney and signed by the applicant.
4. That the Planning Board recommends to the Town Council that the existing pedestrian easement not be extinguished until a greenbelt trail is installed in the new easement, which has been inspected for compliance with the approved plans by the Conservation Commission.
5. That a revised road maintenance agreement be submitted in a form acceptable to the Town Attorney and signed by the applicant.
6. That the applicant offer 40,000 sq. ft. open space along the southern edge of lot proposed lot C with a connecting easement; and
7. That there be no sale of lots nor issuance of a building permit nor recording of the subdivision plat until the plans have been revised and the above conditions have been satisfied.

Mr. Griffin seconded the motion.

Mr. Charles asked for discussion on conditions or findings of fact.

Mr. Hatem wanted to clarify that the Town Council must approve the stipulations and wanted to know a time frame.

Ms. O'Meara recommended that the applicant take care of all issues before approaching the Council as they have a lot of work to do in 90 days.

Mr. Charles asked if there was any more discussion before the board. He also added he was uncomfortable with open space as proposed and that the applicant had done a good job with the easement work.

Mr. Charles then asked for a vote and it carried 6 in favor and 0 opposed.

Mr. Hatem moved to adjourn.

Mr. Cotter seconded the motion and was 6 in favor and 0 opposed.

Respectfully Submitted,

Laurie Palanza

